

GAHC010178092023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4760/2023

ABDUL WAHAB
S/O- LATE ASMAT ALI,
R/O- VILLAGE KATAHBARI, NEAR NO-2 MASJID,
P.O AND P.S- GORCHUK, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
TRANSPORT DEPARTMENT , DISPUR, GUWAHATI, PIN-781006

2:THE SECRETARY
TO THE GOVT OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI
PIN-781006

3:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI
PIN-781006

4:THE DIRECTOR
INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI-07

5:THE EXECUTIVE ENGINEER

INLAND WATER TRANSPORT DIVISION
ASSAM
ULUBARI
GUWAHATI-07

6:THE DEPARTMENTAL TENDER COMMITTEE
REP. BY THE DIRECTOR
IWT
ASSAM
ULUBARI
GUWAHATI-07

7:SARAT HAZARIKA
S/O NAREN HAZARIKA
R/O VILL.- UPAR KURUA (PART)
P.S.- SIPAJHAR
SUB-DIVISION MANGALDOI
DIST.- DARRANG
ASSAM

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : SC, TRANSPORT

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

Date :- 11.10.2023

Heard Mr. N. Borah, learned counsel for the petitioner; Ms. M.D. Bora, learned Standing Counsel, Transport Department for the respondent nos. 1 – 6; and Mr. B. Choudhury, learned counsel for the respondent no. 7.

2. The subject-matter of this writ petition is a settlement process undertaken by the respondent Inland Water Transport [IWT] Department authorities for settlement of a ferry service viz. *Chandrapur – Kirakara Ferry Service*.

3. The necessary facts relevant for the purpose of consideration of the writ petition, can be stated as follows :-

3.1. The respondent no. 5 had published a Tender Notice on 28.06.2022 whereby sealed tenders were invited for leasing out 15 [fifteen] nos. of ferry services including *Chandrapur – Kirakara Ferry Service* [‘the Ferry Service’, for short]. In the Tender Notice dated 28.06.2022, the base value of the Ferry Service for the contemplated 2 [two]-years period of lease : 2022-2024 was fixed at Rs. 3,64,375/- per year. In response to the Tender Notice, bids were submitted by a number of bidders. After receipt of the bids, the Tender Committee opened the bids of the participant bidders after expiry of the bid submission date and after their scrutiny, prepared a Comparative Statement in its Meeting, held on 12.08.2022. As per the Comparative Statement so prepared, 4 [four] nos. of bidders including the petitioner, submitted their bids for the Ferry Service for the period : 2022-2024. After evaluation of the bids, the Tender Committee found two bids, that is, of Abdul Wahab [the petitioner] and one Putul Das compliant to the terms and conditions of the Tender Notice and accordingly, accepted the said two bids while rejecting the other two deficient bids. The Tender Committee had thereafter, prepared a Price Schedule Statement stating therein the details of the 15 [fifteen] nos. of ferry services. As per the said Price Schedule Statement, the ferry service, ‘*Chandrapur – Kirakara Ferry Service*’ had received the highest bid value of Rs. 9,00,000/-. The petitioner has claimed that it was the petitioner, who had the highest bid value of Rs. 9,00,000/-.

3.2. In the affidavit-in-opposition filed by the respondent no. 4, it is averred that Putul Das had offered the highest bid value of Rs. 18,00,000/- but he did not submit the requisite land valuation certificate covering such bid value. It has been stated that Putul Das also expired on a later date. For the said reason, his bid was not accepted. In view of non-acceptance of the bid of the highest bid, the Tender Committee recommended for settlement of the Ferry Service in favour of the petitioner at his offered bid value of Rs. 9,00,000/-, as the petitioner

emerged as the highest bidder thereafter. It is stated in the affidavit that as per the directive received from the Government, a Re-Tender Notice was again published on 22.05.2023. Thus, the respondent no. 5 on 22.05.2023 without settling *Chandrapur – Kirakara Ferry Service* in favour of the petitioner in the 1st tender process, had issued a Re-Tender Notice whereby bids were again invited for settlement of *Chandrapur – Kirakara Ferry Service* for the remaining period of the financial years : 2022-2024

3.3. In the Re-Tender Notice dated 22.05.2023, the base assessment value for *Chandrapur – Kirakara Ferry Service* was fixed at Rs. 4,73,700/-. In response to the Re-Tender Notice, 4 [four] nos. of bids were received including that of the petitioner. After evaluation of the bids and scrutiny of the documents submitted along with the bids, the Tender Committee in its Meeting, held on 17.06.2023, found the bid of the petitioner responsive at his offered bid value of Rs. 6,50,500/-. The respondent no. 7 had also participated in the 2nd bidding process initiated by the Re-Tender Notice dated 22.05.2023. The Tender Committee after evaluation, in the Meeting held on 17.06.2023, observed that the bid of the respondent no. 7 was not responsive due to failure on the part of the respondent no. 7 to submit – [i] proper land valuation certificate; and [ii] proper financial soundness certificate. The Tender Committee found the bid of the petitioner responsive at his offered bid value of Rs. 6,50,500/- against the base value for the Ferry Service fixed at Rs. 4,73,700/ per year.

3.4. The Tender Committee, as per the Minutes of the Meeting, held on 17.06.2023, recommended the name of the petitioner for settlement of *Chandrapur – Kirakara Ferry Service* at an amount of Rs. 6,50,500/- per year. The Tender Committee had thereafter, met again on 15.07.2023 and took a decision to re-visit its earlier decision on the ground that only one bidder i.e. the petitioner had qualified at the Technical Bid evaluation stage and there was an erroneous decision as regards the bid of another bidder, Sarat Hazarika [the respondent no. 7]. Pursuant to the Meeting of the Tender Committee dated 15.07.2023, the respondent no. 5 has again issued a Re-Tender Notice on 05.08.2023, whereby, the respondent authorities have again invited tenders for settlement of *Chandrapur – Kirakara*

Ferry Service.

3.5. Assailing the Re-Tender Notice dated 05.08.2023 as well as the decision taken by the Tender Committee in its Meeting, held on 15.07.2023, the petitioner has preferred the writ petition.

4. In the affidavit-in-opposition, the respondent no. 4 has averred that in the 2nd tender process initiated by the Re-Tender Notice dated 22.05.2023, the bid of the respondent no. 7 was found to have been rejected on an erroneous ground. The respondent no. 7 had submitted a land valuation certificate along with his bid which was issued by the Circle Officer. The Tender Committee had originally recorded that the land valuation certificate submitted by the respondent no. 7 was not compliant to the Tender Condition. Ms. Bora, learned Standing Counsel, Transport Department has submitted that the Tender Notice required submission of a land valuation certificate only from the authorities mentioned therein. When the Tender Committee found that the respondent no. 7 submitted a land valuation certificate from the jurisdictional Circle Officer, an authority not mentioned in the Tender Notice, the technical bid of the respondent no. 7 was rejected. In the affidavit-in-opposition, the respondent no. 4 has averred that subsequently, a clarification was sought from the Deputy Commissioner, Darrang who, in turn, informed the respondent no. 4 that the Circle Officer was empowered to issue a land valuation certificate on behalf of the jurisdictional Deputy Commissioner. The respondent no. 4 has, thus, averred that the matter regarding the ground of rejection of the bid of the respondent no. 7 *qua* the land valuation certificate issued by the Circle Officer is required to be re-visited. The Tender Committee had observed therein that it would be in the interest of higher revenue and more participation, the ferry service, *Chandrapur – Kirakara Ferry Service* be again put to tender.

4.1. A query has been put to Ms. Bora, learned Standing Counsel, Transport Department as to whether the 2nd tender process initiated by the Re-Tender Notice dated 22.05.2023 had been cancelled on receipt of instructions from the Government, like the direction, stated to

have been received from the Government in respect of the 1st tender process initiated by Tender Notice dated 28.06.2022. In response, Ms. Bora has submitted that no instruction has been received in that regard and there is no averment as regards the reason for cancellation of the 2nd tender process initiated by the Re-Tender Notice dated 22.05.2023 in respect of *Chandrapur – Kirakara Ferry Service*, other than the reasons recorded by the Tender Committee in the Minutes of the Meeting, held on 15.07.2023.

5. The Minutes of the Meeting of the Tender Committee, held on 17.06.2023, are part of the case records. As per the Minutes of the Meeting of the Tender Committee, held on 17.06.2023, there were only one technically qualified bidder in respect of *Barchala - Moirabari Ferry Service* and *Manikpur - Pamerchar Ferry Service*. Like the recommendation made in favour of the petitioner for settlement in respect of *Chandrapur – Kirakara Ferry Service* on his emergence as the sole responsive bidder, the Tender Committee had recommended the names of the said two sole technically qualified bidders for settlement of those two ferry services viz. *Barchala - Moirabari Ferry Service* and *Manikpur - Pamerchar Ferry Service* respectively. It was only in respect of *Chandrapur – Kirakara Ferry Service*, the respondent authorities had deviated from settling the ferry service in favour of the sole technically qualified bidder i.e. the petitioner and had taken a decision for initiating a fresh tender process for settlement of *Chandrapur – Kirakara Ferry Service* by re-visiting its earlier decision taken on 17.06.2023, in the Meeting subsequently held on 15.07.2023 on the ground that there remained only one technically qualified bidder.

6. From the Minutes of the Meeting of the Tender Committee, it has further emerged that the ferry service named *Barchala - Moirabari Ferry Service* with base value of Rs. 9,36,910/- per year, had been recommended for settlement in favour of the single technically qualified bidder at a bid value of Rs. 12,05,510/-. In respect of *Manikpur - Pamerchar Ferry Service*, the single qualified bidder quoted a bid value of Rs. 2,13,000/- against a base value of Rs. 1,08,000/- per year. In so far as the ferry service, *Chandrapur – Kirakara Ferry Service* is concerned, the petitioner as the sole responsive bidder, quoted a bid value of Rs.

6,50,500/- against the base value of Rs. 4,73,700/- per year. From such facts, it emerges that the petitioner had quoted Rs. 1,76,800/- higher than the base value. When all the aforementioned three ferry services vis-à-vis the highest bid values offered by the sole qualified bidders *qua* the respective base value are considered together, it clearly emerges that the petitioner had offered more or less same proportionate higher amount than the base value, like the two sole qualified bidders in respect of *Barchala - Moirabari Ferry Service* and *Manikpur - Pamerchar Ferry Service*.

7. It is settled that the bidders participating in the tender process cannot insist that their tenders should be accepted simply because a given bid is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that a participating bidder is entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of his bid. It is also settled that in the matter of award of contracts, the Government and its agencies have to act reasonably and fairly at all points of time and to that extent, the bidder has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against.

8. It is true that the tendering authority has the right to refuse the highest bid too or any other bid submitted by the bidders provided its decision is neither arbitrary nor discretionary as it amounts to violation of Article 14 of the Constitution of India. It is also trite that price is not the sole consideration. The State or its instrumentalities are also required to act reasonably, fairly and in public interest at all points of time in matters relating to awards of contracts/leases, etc. Legal certainty is an important aspect of rule of law. The decision not to proceed further with the 2nd bidding process by the decision taken in its Meeting, held on 15.07.2023, on the premise that there remained one responsive bidder in the fray for the ferry service, *Chandrapur – Kirakara Ferry Service* is found not in conformity with its earlier decision taken in its Meeting, held on 17.06.2023, recommending leasing out of *Barchala - Moirabari Ferry Service* and *Manikpur - Pamerchar Ferry Service* in favour of the

respective lone responsive bidder therein. Thus, the decision not to proceed further with the 2nd bidding process due to single bidder, who incidentally was the petitioner herein, is found discriminatory and arbitrary in nature. The decision about expectation of lower bid value in future bidding process is also found to have suffered on the same ground when the bid value *qua* the base value in respect of *Chandrapur – Kirakara Ferry Service* in the 2nd bidding process are considered in comparison with the bid values *qua* the base value in respect of *Barchala - Moirabari Ferry Service* and *Manikpur - Pemerchar Ferry Service*.

9. From the fact situation obtaining in the case, as discussed hereinabove, no valid reason is found to have been assigned by the respondent authorities in not bringing the 2nd bidding process initiated by the Re-Tender Notice dated 22.05.2023 to its logical conclusion. As regards the decision to cancel the said tender process, no valid and tangible reason has been assigned by the respondent authorities save and except that the State Government was in expectation of higher bids in the 3rd bidding process initiated again by the Re-Tender Notice dated 05.08.2023. Conspicuously, no such decision of the State Government has been placed before this Court to the effect that the State Government is in expectation of higher bids. In view of the failure on the part of the respondent authorities to indicate any valid reason save and except the ground that the Government is in expectation of higher bid amount, this Court is of the considered view that the respondent authorities have arbitrarily cancelled the 2nd tender process initiated by the Re-Tender Notice dated 22.05.2023 and had proceeded for a fresh tender process for the third time by the Re-Tender Notice dated 05.08.2023. Finding the decision to proceed with the fresh tender process vide Re-Tender Notice dated 05.08.2023 suffering from arbitrariness, the same is set aside. Consequently, the respondent authorities are directed to bring the tender process initiated by the Re-Tender Notice dated 22.05.2023 in respect of *Chandrapur – Kirakara Ferry Service* to its logical conclusion by re-visiting it from the stage of evaluation of the technical bids of the participant bidders. The respondent authorities have taken a ground in the affidavit, in addition to the observations made in the Meeting of the Tender Committee, held on 15.07.2023, that a legal aspect as regards land valuation certificate of the respondent no. 7 had escaped its scrutiny,

during the stage of evaluation of bids of the participant bidders. The Tender Committee while re-visiting the matter, shall also take the decision as regards responsiveness or non-responsiveness of the bid of the respondent no. 7 in respect of the land valuation certificate by strictly adhering to the terms and conditions laid down in the Re-Tender Notice dated 22.05.2023 and the clarification stated to have been received. It is further observed that the respondent authorities shall complete the entire exercise within a period of 1 [one] month from the date of receipt of a certified copy of this Order at the office of the respondent no. 4 from the petitioner.

10. With the observations made and the directions given above, the writ petition is allowed to the extent indicated. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant