

GAHC010249362023



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

Case No. : WP(C)/6508/2023

PARASH KUMAR BHATTACHARJEE
S/O- LATE S. N. BHATTACHARJEE, CONTRACTOR BY PROFESSION AND AS
WELL AS PETITIONER IN PERSON, REGENT PARADISE, 2B ,GHORAMARA,
GUWAHATI-28.

VERSUS

THE ADDITIONAL CHIEF SECRETARY AND 5 ORS.
IN-CHARGE, IRRIGATION, DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF IRRIGATION
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE DEPARTMENT OF IRRIGATION
DISPUR
GUWAHATI-781006.

4:THE CHIEF ENGINEER
ASSAM
IRRIGATION
CHANDMARI
GUWAHATI-781003.

5:THE CHIEF ENGINEER (MINOR IRRIGATION)

CHANDMARI
GUWAHATI-781003.

6:THE EXECUTIVE ENGINEER
LAKHIPUR DIVISION (IRRIGATION)

KANAKPUR
SILCHAR-06

Advocate for the Petitioner : PETITIONER IN PERSON

Advocate for the Respondent : SC, IRRIGATION

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 15.11.2023

Heard Mr. P.K. Bhattacharjee, petitioner-in-person. Also heard Mr. N. Upadhyay, learned standing counsel for the Irrigation Department.

2. The case of the petitioner is that he is a contractor in Irrigation Department. It is projected that the Chief Engineer, Minor Irrigation Department has issued a tender bearing NIT No. 28(SMI) 2023-24 dated 11.10.2023 having a total value of Rs.2791.69120 lakh pertaining to package no.1. The case of the petitioner is that he had applied for information under RTI Act and he has been informed in the RTI reply that the package includes about 21 groups having separate estimates for various items. It is projected that the Govt. at the behest of bigger contractors has envisaged this device to curtail competition and to eliminate small bidders from participating in the bidding process. It is projected by the petitioner that in envisaging the NIT to curtail competition, various provisions of the Contract Act like section 10, 13 and 14 have been violated.

3. It is submitted that in a similar circumstances, a coordinate Bench of this Court by order dated 04.08.2023, passed in WP(C) 4185/2023 had issued a notice to examine the matter. It is also submitted that in connection with lack of consent or tainted consent, he is also relying on a judgment of the Allahabad

High Court in the case of *Deo Nandan (deceased by LRs) v. Chhote*, AIR 1983 Allahabad 9.

4. In the context of the preparation of a tender, it is the choice of the authorities who would frame the terms and conditions of the tender. Merely because a particular contract envisages various estimates would not be sufficient to presume that the Govt. at the behest of bigger contractors has devised a means and ways to eliminate competition. A comparative example can be had with regard to construction of a building where several estimates are prepared, the PWD in the Civil Wing would prepare an estimate on the RCC construction, whereas PWD Electrical would have a separate estimate for electrical items. Similarly, in respect of certain other items, it may be possible that the department would also have their own estimate, for example the authorities making the water connections may have their own estimates to be given. Therefore, merely because a contract envisages multiple components spread over a large area in the entire State of Assam itself is not sufficient ground for the Court to substitute its wisdom on the nature of tender which has been floated/called by the authorities. The Court has absolutely no expertise to make an assessment as to what would be arena or area of the contract, what would be the scope and nature and the other modalities which are required for day to day management of the tender process.

5. The coordinate Bench of this Court had issued a notice, but the issue had not been decided and therefore, mere issuance of notice would not constitute a binding precedent for this Court to issue a notice mechanically without being satisfied that there are materials to show that the Govt. are in league or unholy nexus with large contractors to device this tender in such a manner so as to eliminate competition from smaller contractors in the field.

6. Insofar as the decision of the Allahabad High Court in the case of *Deo Nandan (supra)* is concerned, the facts of the said case is that a sale deed relating to agricultural land was impugned by the plaintiff on the ground that it was fraudulent and that the deed was obtained by practicing fraud and it is under the said circumstances that the Allahabad High Court had been called upon to examine the contract in the light of provisions of section 10, 13 and 14 of the Contract Act. There is nothing contained in the provisions of section 10, 13 and 14 which would go on to show that the tender, which is merely an offer made by the State for the contractors to participate and/or make their bids to become a contract between two parties within the meaning of the Contract Act, and so as to examine the tender in light of section 10, 13 and 14 of the Contract Act. Section 10 is the provision relating to "what agreements are contracts"; section 13 defines "consent"; and section 14 defines "free consent". None of these three issues would arise in connection with notice inviting tender. Therefore, the Court is of the considered opinion that the issuance of notice inviting tender has got no relevance insofar as section 10, 13 and 14 of the Contract Act is concerned.

7. It has been well settled that in the process of inviting tender, the scope of the State is within the realm of an offer or contract and therefore, the State should have its own say in envisaging the scope of the tender and scope of the work on commercial viability or range of the contract. Therefore, merely because a tender process envisages work within the entire State and may have different estimates and/or components in the estimates, in the considered opinion of the Court, these considerations would not be sufficient for the Court to start evaluating or examine the initiation of the tender process and to embark on a fact finding work as to whether the tender is proper or not, or what could

be the scope of the contract, or why a large contract cannot be split into multiple contracts, or why multiple contracts should not be clubbed and made a composite contract. These, in the opinion of the Court, are exclusively within the domain of the State or the authorities concerned.

8. Therefore, the Court finds no reason to entertain this writ petition and therefore, this writ petition stands dismissed at the “motion stage” without issuance of notice on the respondents.

JUDGE

Comparing Assistant