

GAHC010262112022



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

WP(C) No. 8246/2022

KRISHNA BORAH
S/O- PADMA BORAH R/O- SIMALUGURI TOWN
WARD NO.2
P.O. AND P.S. SIMALUGURI
DIST.- SIVSAGAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
MUNICIPAL ADMINISTRATION DEPTT.
ASSAM
DISPUR
GHY-06

2:THE DIRECTOR
TOWN AND COUNTRY PLANNING
ASSAM
DISPUR
GHY-06

3:THE DY. COMMISSIONER
DIST.- SIVSAGAR
ASSAM- 785640

4:SIMALUGURI MUNICIPAL BOARD
SIMALUGURI
DIST.- SIVSAGAR
ASSAM- 785686

REP. BY ITS CHAIRWOMAN
SMT. KABITA MECH.

5:EXECUTIVE OFFICER
SIMALUGURI MUNICIPAL BOARD
SIMALUGURI
DIST.- SIVSAGAR

ASSAM- 785686
6:THE TENDER EVALUATION COMMITTEE
BEING REP. BY ITS PRESIDENT
SMT. KABITA MECH
SIMALUGURI
DIST.- SIVSAGAR
ASSAM- 785686
7:PRAKHANTA BORGOHAIN
SUNPURA GOHAIN GAON
P.O. NAGA GAON
P.S. SIVSAGAR
DIST.- SIVSAGAR
ASSAM- 785693

Advocate for : MR. R SHARMA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

23-03-2023

Heard Shri R. Sarma, learned Senior Counsel assisted by Ms. P. Phukan, learned counsel for the petitioner. Also heard Shri D. K. Sharmah, learned Addl. Senior Govt. Advocate representing the respondent Nos. 1 to 3; Ms. R. Begum, learned counsel for the respondent Nos. 4 and 6; Shri B. Islam, learned counsel for the respondent No. 5 and Shri S. Dutta, learned Senior Counsel assisted by Ms S. Musahary, learned counsel for the respondent No. 7.

Considering the subject matter and as agreed to by the parties, the writ petition is taken up for disposal at the admission stage.

An NIT dated 26.08.2022 was floated by the Simaluguri Municipal Board in the district of Sivsagar for construction of amongst others, a Construction of Rejuvenating of Bornohal Lake, under 15th FC Tied Fund (Phase-I). It is the case of the petitioner that he being eligible in all criteria had submitted his bid by quoting an amount of Rs.28,21,500/- (Rupees Twenty Eight Lakh Twenty One Thousand Five Hundred). The

bids were opened on 13.09.2022 and as per the petitioner, the bid submitted by him was found to be the lowest and accordingly he was declared L1. There were two other bidders in the fray. It is the case of the petitioner that on 03.12.2022, the respondent authorities had however granted the work to the respondent No. 7 followed by a Letter of Acceptance dated 05.01.2023. It is this action of granting the work to the respondent No. 7 which is the subject matter of the writ petition.

Shri Sarma, learned Senior Counsel for the petitioner has submitted that as per information gathered, the bid of the respondent No. 7 was not liable for consideration as the same was defective. He submits that apart from non-furnishing of certain essential documents, each and every page of the tender document was not signed by the respondent No. 7, which is required. It is the contention of the petitioner that such defects would make the bid of the respondent No. 7 invalid and therefore the interference of this Court is sought for.

The learned Senior Counsel for the petitioner further submits that the respondent authorities have taken extraneous factors into the consideration by taking note of the fact that the respondent No. 7 is equipped with machineries. He submits that no such condition is there in the tender document and basing the decision on such factors would amount to changing the rules of the game, which is not permitted under the law.

Ms. Begum, the learned counsel representing the Simaluguri Municipal Board, however, submits that the contention of the petitioner is incorrect. By producing photocopies of the document submitted, she submits that all the bidding documents were submitted by the respondent No. 7 and the pages were also signed and therefore the basis of filing of the writ petition is a non-existence one. She further submits that after the work was allotted, the respondent No. 7 had taken over the work and has completed a substantial portion.

Shri S. Dutta, learned Senior Counsel appearing for the respondent No. 7 while endorsing the submission made on behalf of the respondent authorities has reiterated

that the tender papers submitted by his client did not suffer from any infirmity or defect. He specifically submits that all the bidding documents were furnished and all the pages were duly signed. The learned Senior Counsel for the respondent No. 7 also contends that more than 50% of the work has been completed and at this stage, apart from no case for interference being made out, even in a given case, such interference would only mean to unsettling a settled position which would be against the interest of justice.

Shri Sarma, the learned Senior Counsel for the petitioner disputes the position regarding the status of the work by stating that only a small portion of the Lake has been done and remaining part is yet to be done.

After taking into consideration all the facts and circumstances, this Court is of the opinion that since the exercise of jurisdiction under Article 226 of the Constitution of India is only confined to the decision making process and not to the soundness of the decision itself, *prima facie*, it appears that the selection of the respondent No. 7 has been done in a fair manner by giving opportunity to the other competitors. Further, the primary allegation of defect in the tender papers of the respondent No. 7 being denied by the authorities, at best, the same would amount to a disputed question of fact which a Writ Court would not enter into adjudication of such dispute. This Court also finds force in the argument made on behalf of the respondent No. 7 that under the present situation where there is no apparent infirmity, interference by this Court would also be against the interest of public service as substantial part of the work has been completed.

So far as the contention regarding changing the rules of the games, though this Court has noticed that there is no clause that any bidder with machineries may be given preference, the said factor may not be held to be wholly extraneous moreso when the financial bids of the competitive parties are the same and therefore in the opinion of this Court basing the decision on the said factor *per se* not be a ground which will vitiate the decision making process.

In view of the above, this Court is of the view that the present is not a fit case for interference and accordingly the same is dismissed.

JUDGE

Comparing Assistant