

GAHC010093142023



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

Case No. : I.A.(Civil)/1152/2023

M/S SHREE GANESH TRADERS,
A PROPRIETORSHIP FIRM,
HAVING ITS REGISTERED OFFICE AT BRINDABANHATI,
P.O., P.S. AND DISTRICT- BARPETA,
ASSAM, PIN- 781301,
REPRESENTED BY ITS PROPRIETOR MR. ANSHUDEEP PATHAK.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, MEDICAL EDUCATION AND RESEARCH
DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI- 22.

4:THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
FAKHRUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL
BARPETA
PIN- 781301.

5:THE SUPERINTENDENT
FAKHRUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL

BARPETA
PIN- 781301.

6:THE TENDER COMMITTEE FOR OUTSOURCING OF DIETARY SERVICES
OF FAKHRUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL
BARPETA
PIN- 781301
REPRESENTED BY ITS CHAIRMAN

Advocate for the Petitioner : MR. J PATOWARY

Advocate for the Respondent : SC, HEALTH

Linked Case : WP(C)/4980/2022

M/S. SHREE GANESH TRADERS
A PROPRIETORSHIP FIRM
HAVING ITS REGISTERED OFFICE AT BRINDABANHATI
P.O.
P.S. AND DIST. BARPETA
ASSAM
PIN- PIN- 781301
REPRESENTED BY ITS PROPRIETOR MR. ANSHUDEEP PATHAK.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
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DISPUR
GUWAHATI-781006.

2:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
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BARPETA
PIN- 781301
REPRESENTED BY ITS CHAIRMAN.

7:DEBEN DAS
S/O LT JAMUNA DAS
R/O NALBARI TOWN
WARD NO 1
BHAKATPARA ROAD
P.O AND DISTRICT NALBARI
ASSAM.

8:N P CATERING AND CONFECTIONERY BAKERY
TALUKDAR COMPLEX
MAJHAR PATH
ASEB ROAD
GUWAHATI-781005
REP. BY ITS PROPRIETOR MS BABBI TALUKDAR.

Advocate for : MR. J PATOWARY
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM AND 7 ORS.

Linked Case : WP(C)/54/2023

M/S SHREE GANESH TRADERS
A PROPRIETORSHIP FIRM
HAVING ITS REGISTERED OFFICE AT BRINDABANHATI
P.O.
P.S. AND DISTRICT- BARPETA
ASSAM
PIN- 781301
REPRESENTED BY ITS PROPRIETOR MR. ANSHUDEEP PATHAK.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
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DISPUR
GUWAHATI- 781006.

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OF FAKHRUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL
BARPETA
PIN- 781301

REPRESENTED BY ITS CHAIRMAN.

Advocate for : MR. J PATOWARY

Advocate for : SC

HEALTH appearing for THE STATE OF ASSAM AND 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 04-05-2023

The instant interlocutory application is preferred in connection with the common Judgment and Order dated 28.04.2023 passed in two writ petitions, W.P.(C) no. 4980/2022 and W.P.(C) no. 54/2023. The present applicant as the writ petitioner had preferred those two writ petitions.

2. By a Tender Notice (e-Tender) dated 27.05.2022, e-Tenders were invited for 'Outsourcing of Dietary Services' for patients of the Fakhruddin Ali Ahmed Medical College & Hospital, Barpeta ("FAAMC&H, Barpeta", in short). e-bids were received in response to the Tender Notice (e-Tender) dated 27.05.2022. After opening and evaluation of the technical bids of the participant bidders, the bidding process was cancelled *vide* a Cancellation Notice/Order (e-Tender) dated 29.07.2022. The writ petition, first in point of time, W.P.(C) no. 4980/2022 was preferred assailing the said Cancellation Notice/Order (e-Tender) dated 29.07.2022. Subsequently, the tendering authority issued a Re-Tender Notice (e-Tender) dated 05.08.2022 whereby e-Tenders were again invited online for 'Outsourcing of Dietary Services' for patients of the FAAMC&H, Barpeta. Assailing the Re-Tender Notice (e-Tender) dated 05.08.2022, the second writ petition, W.P.(C) no. 54/2023 was preferred by the applicant as the writ petitioner.

3. By the common Judgment and Order dated 28.04.2023, both the writ petitions were dismissed. The respondent authorities in the Health & Family Welfare Department, Government of Assam were allowed to proceed with the

bidding process initiated by the Re-Tender Notice (e-Tender) dated 05.08.2022 to bring it to its logical conclusion as expeditiously as possible, in order to enter into a Rate Contract for 'Outsourcing of Dietary Services' for patients at the FAAMC&H, Barpeta.

4. Heard Mr. J. Patowari, learned counsel for the applicant; Mr. B. Gogoi, learned Standing Counsel, Health & Family Welfare Department for the opposite party nos. 1 to 6; and Mr. T. Deori, learned counsel for respondent no. 8 in writ petition, W.P.(C) no. 4980/2022.

5. The learned counsel for the parties have, at first, conjointly submitted that an error has crept in in Paragraph 3.6 of the common Judgment and Order dated 28.04.2023, on that the description of the writ petition, mentioned therein, has been wrongly quoted as 'W.P.(C) no. 4980/2022' instead of 'W.P.(C) no. 4930/2022'.

6. In order to appreciate the said submission, a reference to Paragraph 3.6 of the common Judgment and Order dated 28.04.2023 is necessary and the same is quoted herein below :-

“3.6. The petitioner stated to have learnt that the respondent authorities were in contemplation of cancelling the bidding process initiated by the Tender Notice (e-Tender) dated 27.05.2022 at the behest of bidders who did not meet the terms and conditions laid down in the Tender Notice [e-Tender] dated 27.05.2022. With such apprehension, the petitioner had approached this Court by way of a writ petition, W.P.[C] no. 4980/2022 inter-alia with a prayer to declare the results of evaluation of the Technical Bids. The writ petition, W.P.[C] no. 4980/2022 was listed on 30.07.2022 for consideration. But prior to

30.07.2022, the competitive bidding process initiated by the Tender Notice [e-Tender] dated 27.05.2022 came to be cancelled by a Cancellation Notice/Order [e-Tender] dated 29.07.2022 issued under the hand of the respondent no. 5. In view of the Cancellation Notice/Order [e-Tender] dated 29.07.2022, the writ petition, W.P.[C] no. 4980/2022 was withdrawn by the petitioner with liberty to file a fresh writ petition to assail the Cancellation Notice/Order [e-Tender] dated 29.07.2022."

7. Upon consideration of the pleadings of the parties and other materials of the case record, it is found that the description of the writ petition has been inadvertently mentioned as 'WP(C) no. 4980/2022' instead of 'W.P.(C) no. 4930/2022'. Since it is apparently a typographical error which has crept in inadvertently, the prayer made in this interlocutory application for correction of the description of the writ petition as 'W.P.(C) no. 4930/2022' instead of 'W.P.(C) no. 4980/2022' in Paragraph 3.6 of the common Judgment and Order dated 28.04.2023 is allowed. It is ordered that for all intents and purposes, the description of the writ petition appearing in Paragraph 3.6 in the common Judgment and Order dated 28.04.2023 is to be read as 'W.P.(C) no. 4930/2022' instead of 'W.P.(C) no. 4980/2022', by treating this order as part and parcel of the common Judgment and Order dated 28.04.2023.

8. Mr. Patowari, learned counsel for the applicant who was the writ petitioner in the two writ petitions, has further submitted that the start date of e-Tenders in response to the Re-Tender Notice (e-Tender) dated 05.08.2022 was 17.08.2022 and the last date of submission of e-Tenders was 29.08.2022. When the writ petition, W.P.(C) no. 4980/2022 was moved on 18.08.2022, the Court had, as an interim measure, directed the tendering authority not to take any

further steps in the process of re-tendering, for the purpose of balancing the equities. As the writ petitioner had assailed the Cancellation Notice/Order (e-Tender) dated 29.07.2022, he did not submit e-Tender in response to the Re-Tender Notice (e-Tender) dated 05.08.2022 in the subsequent period since the interim order was in operation. Mr. Patowari has highlighted that in the course of the afore-mentioned writ proceedings, it was submitted by the learned Standing Counsel, Health & Family Welfare Department, that by the Re-Tender Notice (e-Tender) dated 05.08.2022, the petitioner was not made ineligible to participate in the bidding process for 'Outsourcing of Dietary Services' for patients at the FAAMC&H, Barpeta. It is, thus, submitted that the applicant was under the legitimate expectation that since the interim order was in operation, the last date of submission for e-Tender would be extended by a reasonable period of time. But it is learnt now that the tendering authority had accepted the e-Tenders from the intending bidders in response to the Re-Tender Notice (e-Tender) dated 05.08.2022.

9. It is submitted by Mr. G. Gogoi, learned Standing Counsel, Health & Family Welfare Department, on instruction, that six numbers of bids had been received in response to the Re-Tender Notice (e-Tender) dated 05.08.2022. With the recalling of the interim order dated 18.08.2022, the respondent authorities are in contemplation to proceed with the bidding process with the opening of those technical bids, followed by their evaluation.

10. In reply, Mr. Patwari, learned counsel for the applicant has submitted that since the technical bids are not yet opened, the applicant may be permitted to submit his bid and given such an opportunity, the applicant be able

to submit his bid in response to the Re-Tender Notice (e-Tender) dated 05.08.2022 within two working days thereafter.

11. I have considered the submissions of the learned counsel for the parties in respect of the second prayer made in this interlocutory application. It is pertinent to mention that the applicant as the writ petitioner, had not sought any relief in either of the two writ petitions for permitting him to submit e-Tender in response to the Re-Tender Notice (e-Tender) dated 05.08.2022. In such view of the matter, allowing such prayer after disposal of the two writ petitions by the common Judgment and Order would amount to broadening the scope of the *lis*, after its final determination. While declining the said prayer made in this interlocutory application, this Court is of the view that the applicant can approach the competent authority in the Health & Family Welfare Department, by way of a Representation with the request to permit him to submit his bid in response to the re-Tender Notice (e-Tender) dated 05.08.2022. Such representation is to be submitted within two working days from today and if such representation is submitted by the applicant, the respondent authorities in the Health & Family Welfare Department shall consider the same on its own merits by taking into consideration the fact that the stage of opening and devaluation of the Technical Bid is not yet over and its decision permitting the applicant to submit his bid or otherwise, shall thereafter, be communicated to the applicant forthwith.

12. This order disposes of the instant interlocutory application.

JUDGE

Comparing Assistant