



Serial No.01
Supp. List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 34 of 2024

Date of Decision :07.06.2024

Sri. Odimar Syiemsad,
Aged about 51 years,
Son of Late J.Syiemiong,
Resident of Langkyrding Mihngi,
Block – 3, East Khasi Hills District,
Shillong – 793012, Meghalaya.

...Petitioner

-Versus-

1. The State of Meghalaya
Represented by the
Commissioner & Secretary,
Meghalaya Power Generation
Corporation Limited,
Office of the Chief Engineer (C)
Maintenance and Small Hydro,
Lumjingshai, Short Round Road,
Shillong – 793001.
2. Sri. H.W.Lyngdoh Mawnai,
Chief Engineer (C)
Maintenance and Small Hydro,
Meghalaya Power Generation
Corporation Limited,
Meghalaya, Short Round Road,
Shillong – 793001.
3. The Director (Generation),
Meghalaya Power Generation
Corporation Limited,
Short Round Road,
Shillong – 793001.



4. The Director (Transmission),
Meghalaya Power Transmission
Corporation Limited,
Short Round Road,
Shillong – 793001.
5. The Secretary,
Special Purpose Vehicle Society,
Short Round Road,
Shillong – 793001.
6. The Company Secretary,
Meghalaya Electric Corporation Limited,
Short Round Road,
Shillong – 793001.
7. The Chief Accounts Officer,
Meghalaya Electric Corporation Limited,
Short Round Road,
Shillong – 793001.
8. The Executive Engineer (MIS),
Meghalaya Electric Corporation Limited,
Short Round Road,
Shillong – 793001.
9. Sri Taibin Warjri,
Cleve Colony, Shillong – 793003.
10. Smti. Connie F. Sawkmie,
Proprietor,
M/s. Shrolenson Marbaniang,
Cleve Colony,
Shillong – 793 003.
11. Sri. Collinstar Sawkmie,
Cleve Colony, Shillong – 793 003.

...Respondents



Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. S.Dutta, Sr. Adv. with
Mr. I.Lahiri, Adv.
Ms. I.Das, Adv.

For the Respondent(s) : Mr. A.S.Pandey, Adv.
Mr. A.H.Kharwanlang, Adv. for R 2-8.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER

1. The writ petitioner, a registered Class-I Contractor under the Meghalaya Power Generation Corporation Limited, by way of the instant petition is challenging the issuance of a work order dated 15-02-2024, in pursuance to a tender notice dated 04-07-2023, in favour of the private respondent No. 9.

2. The brief facts are that the Meghalaya Power Generation Corporation on 04-07-2023, had issued a tender notice for construction of a multi-purpose Indoor Stadium at Nongtra Village, Mawsynram, East



Khasi Hills, for an estimated value of ₹ 2,87,89,896.00, for bidding through e-tender, on a two-bid system (technical and financial) from registered Class-I Contractors, under the Meghalaya Power Generation Corporation Limited. The petitioner along with 4 others (respondents No. 9, 10 & 11) and one Shri. Mostophar Kharkongor, participated in the bid process and on 26-07-2023, when the bids were opened, it was found that respondents No. 9, 10 & 11 and Shri. Mostophar Kharkongor, had quoted identical rates, whereas the bid of the petitioner was fractionally higher. The petitioner thereafter, being surprised that there was no system of technical evaluation, represented before the respondents and on not receiving any positive response, caused him to file further representations and letters, but however, by a work order dated 15-02-2024, the contract was awarded to the respondent No. 9, one of the tenderers who had quoted identical rates. Being aggrieved thereby, the writ petitioner has approached this Court.

3. Mr. S.Dutta, learned Sr. counsel assisted by Mr. I.Lahiri, learned counsel for the petitioner, has submitted that the selection of the respondent No. 9, is vitiated with arbitrariness and malafide, as firstly, the identical quotation of rates by the respondents No. 9, 10 & 11, hints at a cartel being formed by the respondents and secondly, the selection of respondent No. 9, from amongst the 3 bidders who had quoted identical



rates, clearly shows nepotism on the part of the respondents, inasmuch as, there is no justification as to how his bid was superior to the rest. It has also been submitted that the validity of 90 days had expired in October 2023, and as such, the award of the work order could not have been issued in February 2024.

4. It has further been submitted that the contract being an item rate contract, it was not possible to quote the exact same rates and arrive at the quoted price as given in the tender. He submits that the bid of the petitioner was only ₹1.34 paise higher than the quoted rate, and that if all bidders are equal, at least they should have all been invited for negotiations instead of the respondent No. 9 being arbitrarily selected, and allotted the work. The learned Sr. counsel has also contended, that the evaluation of the technical bid, is a condition precedent to evaluation of financial bids and the respondents, by not adhering to the same has vitiated the entire tendering process.

5. On another limb of submission, the learned Sr. counsel submits that as is apparent from a meeting dated 07-02-2024, held in the office of the respondent No. 3, the minutes of which have been annexed to the affidavit-in-opposition, the tendering committee as well as the 4 other bidders who had quoted identical rates, came to a mutual understanding by coming to a resolution that the respondent No. 9, be awarded the work which is



unheard of, in any tender process. The role of the tender committee in the entire sequence of events, he submits, is against all norms and practices which should be adhered to in any competitive bidding process, inasmuch as, work was awarded to one of the bidders quoting identical rates, on the basis of undertakings given by the other bidders. It is contended that the tender committee, is not even empowered to enter into such negotiations with any of the bidders for finalization of the award, as the said power vests with the employer of the contract, that is, the respondent No. 2 (Chief Engineer). The learned Sr. counsel has also referred to the affidavit filed indicating service upon the private respondents, and submits that the said respondents all belong to the same family, and in fact, 2 amongst the 3 notices were received by the same person and that the 4 tenderers coming from the same family, had made the entire tender process a family affair. It is further contended that the entire exercise entered into by the tender committee, is against all canons of the guiding principles laid down for all government contracts such as, the General Financial Rules of 2017, as well as the Manual for Procurement of Works, 2022 issued by the Government of India, Ministry of Finance, which have been a standard referral document for such contracts or public procurement, and also the procedure laid down by the Government of Meghalaya in their web portal “Tenders Meghalaya”. It is lastly submitted that the argument of the respondents that



the contract was awarded to the lowest bidder, is inconsequential in the instant discussion, inasmuch as, the bid of the petitioner was higher by only a mere ₹1.34 paise in a contract amounting to over ₹ 2,87,89,896.00. As such, he submits, the entire exercise which has been done by the respondents being irrational, arbitrary and malafide, the impugned work order is liable to be struck down.

6. In support of this arguments, learned Sr. counsel has relied upon the case of *B.S.N. Joshi & Sons Ltd. vrs. Nair Coal Services Ltd. & Ors. reported in (2006) 11 SCC 548*.

7. In reply, Mr. A.S.Pandey, learned counsel on behalf of the respondents No. 2-8 has submitted that the petitioner's bid was INR 1.34 paise more than the lowest bidder, and as such, the petitioner has no locus to jeopardize the tender process. He then submits that the tender notice dated 04-07-2023, categorically mentions that the estimated tender value for the project is INR 2,87,89,896.00, and that this estimated value, is the minimum price of the bid which was quoted by the 3 private respondents. The learned counsel has referred to Clause 4 (iii) of the tender document under the heading 'Financial Bid' which stipulates that tender(s) quoting below the estimated costs of the work will not be accepted, and submits that the submission of identical bids which is the lowest bid, therefore does not amount to any cartelization. He submits that the mere submission of



identical bids by the bidders that too, at the estimated or minimum value of the project cannot and will not lead to any prejudice being caused to public interest. He then submits that as 3 out of 4 bidders having identical bids agreed to withdraw in favour of respondent No. 9, there was no other criteria needed to determine, or to resolve the tie of the identical bids.

8. Learned counsel then submits that the petitioner has no legal or fundamental right to institute the present writ petition, as it is settled law that even the highest or lowest bidder, has no vested right for award of contract, and therefore, the petitioner who is not the lowest bidder does not possess any right to interfere with the tender process. The learned counsel has in the affidavit filed on behalf of the respondents 2 to 8 cited the following decisions on locus and on the limited scope of judicial review in tender matters, and how undue interference in such contractual matters affects public interest.

- (i) *M/s A.M.Yusuf vrs. Mumbai Municipal Corporation & Ors. W.P. (Civil) No. 2666 of 2008, vide judgment dated 11.12.2008.*
- (ii) *Vinoy Kumar vrs. State of U.P & Ors. (2001) 4 SCC 734.*
- (iii) *State of Orissa vrs. Ram Chandra Dev & Another AIR 1964 SC 685 para 8.*
- (iv) *Tata Motors Ltd. vrs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST), 2023 SCC Online SC 671.*
- (v) *N.G.Projects Ltd. vrs. Vinod Kumar Jain, (2022) 6 SCC 127.*
- (vi) *Jagdish Mandal vrs. State of Orissa (2007) 14 SCC 517.*



9. He lastly submits that where the relationship is governed purely in terms of contract as in the instant case, a writ would not lie to enforce such civil liability, and that relief under Article 226 of the Constitution of India is based on the existence of a legal or fundamental right, and its violation thereof. As such, he prays that the writ petition be dismissed.

10. Having heard learned counsel for the parties, and also having perused the materials on record, it is seen that the entire controversy is with the tender proceedings, especially on the manner of award of contract by the respondent No. 2 in favour of the respondent No. 9. Coming to the crux of the matter, the settlement of the work with the respondent No. 9, it is seen was arrived at in a meeting held on 07-02-2024, in the office chamber of the respondent No.3, wherein the respondent No. 3 as the Chairman of the tender committee and in the presence of the bidders that is, respondents No. 9, 10 & 11 and one Mostophar Kharkongor, resolved to award the contract to respondent No. 9. The meeting, it appears, was convened to decide on who was to be favoured with the contract, as all the above noted 4 bidders had quoted the rate at par i.e. ₹2,87,89,896.00 and considered L-1 bidders. This aspect deserves consideration and examination by this Court, inasmuch as, it has been stated on affidavit and not rebutted by the respondents, that respondents No. 9, 10 & 11, all



belong to the same family. The petitioner at para 2 of the affidavit indicating service has stated as follows:-

“2. That by an order dated 13/03/2024; this Hon’ble Court directed the petitioner to serve notices upon the private respondents No. 9, 10 & 11 namely Sri. Taibin Warjri, Smti. Connie F. Sawkmie and Sri Collinstar Sawkmie through dasti. It is pertinent to mention herein that Sri. Taibin Warjri (respondent No. 9) is the son of Sri. Collinstar Sawkmie (respondent No. 11). It is also mentioned that Smti. Connie F.Sawkmie (respondent No. 10) and Sri. Collinstar Sawkmie are related as brother and sister. However, in pursuance thereof, notices dated 15/03/2024 were served on the same date to all the three private respondents through dasti mode. It may be noted that two amongst the three notices were received by the same person, that is, one Mrs. S. Warjri and the third notice by one Damaian Kynter.”

Apart from the above, the acknowledgment notices as seen from the registered A/D cards also show that the said respondents also reside in the same address or locality. These facts and events which show that there is apparent collusion and manipulation, is no doubt very disturbing as tender matters concern the distribution of public largesse and as such demand a high degree of transparency and probity, on the part of the authorities who decide on such matters.

11. In the instant case, it appears that the tender committee had taken upon itself the task of settling the contract, when in fact the same is within the discretion of the owner of the contract, or the authority that had floated



the NIT. Reverting back to the meeting dated 07-02-2024, it is observed that there is no mention about the technical aspect of the bids being examined, even though the NIT had clearly invited bids in a 2-bid system. No discussion is present or materials produced to attest to the fact that the conditions given in clause 3 of the Detailed Tender Notice dealing with the technical aspect were noted or discussed. Further, the circumstances and manner as to how the invitations were extended to the bidders by the tender committee, the authority under which the meeting was convened, and the contract settled summarily in the meeting itself, defies logic and reasoning.

12. The submission of identical rates by the 4 tenderers is against the basic principles of competitive bidding and is contrary to the purpose and concept of an open tender system. Such practices need to be discouraged and, in the event, as has occurred in the present case, especially in an item wise contract, a detailed cost analysis should have been gone into by the tendering committee, to arrive at the most suitable bidder as all the rates quoted were identical. Though it has been submitted that there has been no cartelization, and that no loss would be caused to the public exchequer as the 4 bidders had quoted the estimated value as given in the NIT, however the fact that, without there being any other evaluation of the bids on the technical aspect, more so when all the bids were identical, and the



settlement arrived at by inviting the bidders to negotiate and come to an understanding among themselves speaks otherwise.

13. Though it is settled law that a writ court should refrain or restrain itself from interfering in tender matters, inasmuch as, the same are essentially commercial functions and the principles of equity should not be brought into play and judicial review be not invoked as it would be inimical to public interest and policy, the converse however, also holds true, as it is also settled law that judicial review would apply to prevent arbitrariness and illegality. As held in the case of *Tata Cellular vrs. Union of India (1994) 6SCC 651*, the duty of the Court is to confine itself to whether a decision making authority exceeded its powers, committed an error in law, committed a breach of the rule of natural justice, reached a decision which no reasoned tribunal would have reached, or whether if there was an abuse of powers. In the instant case, what is patently seen from the facts and discussions made hereinabove, is that there is a serious flaw in the decision making process, inasmuch as, there exists elements and instances of procedural impropriety, irrationality, arbitrariness and unreasonableness on the part of the tender committee which has gone beyond its jurisdiction and mandate, apart from the award of contract also being the product of cartelization.



14. In the considered view of this Court, the fact that the writ petitioner technically is not the L-1 bidder as his bid was ₹1.34 paise more than the bids of the respondents No. 9, 10 & 11 will not take away his rights to question the tender process, inasmuch as, the issue of technical evaluation had been raised by the writ petitioner through various letters dated 18-10-2023, 30-10-2023, 01-12-2023, which have been annexed at Annexures V, VI and VIII to the writ petition, but however, received no response from the respondents.

15. It may be further added herein, that the very fact that the respondents No. 9, 10 & 11 have chosen to stay away and not participate in the instant proceedings inspite of receipt of notice, fortifies the statements and averments that have been made by the writ petitioner in the writ petition on the aspect of bid rigging and cartelization, as also the vitiation of the entire tender process.

16. For the reasons aforementioned, and in the facts and circumstances of the case, the instant writ petition is allowed and the impugned work order dated 15-02-2024, awarded to the respondent No. 9, is set aside and quashed.

17. Writ petition accordingly stands closed and disposed of.



18. No order as to costs.

Judge

Meghalaya
07.06.2024

SAMANTHA ANNA
LIYA RYNJAH

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