

GAHC010045162024



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

Case No. : WP(C)/1217/2024

TRADE SUPPLY INDIA
A SOLE PROPRIETORSHIP, REPRESENTED BY ITS SOLE PROPRIETOR MR.
MADHUSUDHAN SHAHI, AGED ABOUT 71 YEARS, WITH PRINCIPAL
PLACE OF BUSINESS AT BEHIND HOTEL BHARGAV GRAND, SHAHI PATH,
AHOM GAON, BETHKUCHI, GUWAHATI-781035, KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF AGRICULTURE AND HORTICULTURE, E-BLOCK, 1ST
FLOOR, ASSAM SECRETARIAT, G.S. ROAD, GUWAHATI-781006

2:THE DIRECTOR OF HORTICULTURE
DIRECTORATE OF HORTICULTURE AND FP ASSAM
KHANAPARA
GUWAHATI-781022
ASSAM

3:DEPARTMENTAL BID COMMITTEE
REPRESENTED BY THE CHAIRMAN
CONSTITUTED FOR EVALUATING TENDERS PERTAINING TO BIDDING
DOCUMENT DATED 29.07.2023 BEARING BID REFERENCE NO.
HORT.FP/701/TENDER (HMNEH)/PART-III/2021-22/004 INVITING BIDS FROM
ELIGIBLE BIDDERS FOR PARALLEL RATE CONTRACT OF AGRO-
MACHINERIES AND MINOR TOOLS FOR THE DIRECTORATE OF
HORTICULTURE AND F.P. FOR THE YEARS 2023-24 AND 2024-2

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : SC, AGRI. DEPARTMENT

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

06.03.2024

1. Heard Mr. M. Sarma, learned counsel for the petitioner as well as Ms. R. Bora, learned counsel appearing for all the respondents.
2. The petitioner's grievance is that his technical bid has been disqualified at the Technical Bid Evaluation stage and that the appeal preferred by him before the Director of Horticulture & Food Processing has been disposed of, without giving an opportunity of hearing to the petitioner.
3. The petitioner's case is that he participated in a tender process pursuant to Tender Notice dated 29.07.2023 for the "Parallel Rate contract of Agro-machineries and Minor Tools for the year 2023-24 & 2024-25". However, the petitioner's technical bid was disqualified, on the ground that the items to be supplied by the petitioner, was not as per the specification laid down by the respondents. The petitioner thereafter submitted an appeal dated 26.02.2024 to the Director of Horticulture & Food Processing, Assam in terms of Section 38 of the Assam Public Procurement Act, 2017 (hereinafter referred to as 'the 2017 Act').
4. The petitioner's initial grievance was that the said appeal has not been disposed of by the appellate authority.
5. Ms. R. Bora, learned counsel for the respondents has submitted a Letter dated 01.03.2024 issued by the Director of Horticulture & Food Processing,

Assam to the petitioner, wherein it appears to show that the items to be supplied by the petitioner are not compatible in terms of the specification provided by the respondents in the Tender Notice.

6. The petitioner's counsel submits that the disposal of the appeal by the Director is cryptic and is only a clarification of the finding made by the Bid Evaluation Committee. No independent finding has been made by the first appellate authority and there is no final decision taken in the Letter dated 01.03.2024, showing that the petitioner's appeal has been rejected. He also submits that in terms of Section 38(2) of the 2017 Act, the petitioner has to be given an opportunity of being heard, which was not done in the present case.

7. Ms. R. Bora, learned counsel for the respondents submits that the petitioner's appeal has been rejected by the Director, though it has not been stated so in the said letter. She however fairly admits that in terms of Section 38(2) of the 2017 Act, an opportunity of hearing has to be provided to the appellant/writ petitioner.

8. I have heard the learned counsels for the parties.

9. The Letter dated 01.03.2024 issued by the Director of Horticulture & Food Processing, Assam, disposing of the petitioner's appeal is cryptic and does not contain any finding of the appellate authority. No final decision has also been made in the said letter.

10. The above being said, Section 38(2) of the 2017 Act provides that prior to deciding an appeal, a reasonable opportunity of being heard should be provided by the Appellate Authority to the appellant. Section 38 (2) is as follows-

“2) On receipt of an appeal under sub-section (1), the officer designated under that sub-section shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the rules and guidelines made there under and the terms of the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall, subject to the order passed under sub-section (5), be final and binding on the parties to the appeal.”

11. As it appears that the appellate authority has not given an opportunity of hearing to the petitioner, prior to the issuance of the letter dated 01.03.2024, this Court is of the view that the appeal of the petitioner should be re-heard by the Director of Horticulture & Food Processing, Assam and decide the same, after giving an opportunity of hearing to the petitioner. Consequently, the Letter dated 01.03.2024 issued by the Director of Horticulture & Food Processing, Assam is hereby set aside. The Director of Horticulture & Food Processing, Assam is directed to dispose of the petitioner's appeal dated 26.02.2024, after giving an opportunity of hearing to the petitioner. The same should be concluded within a period of 2(two) weeks from today.

12. The Letter dated 01.03.2024 issued by the Director of Horticulture & Food Processing, Assam is made a part of the record and marked as Annexure-X.

13. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant