

GAHC010080212023



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

**Case No. : WP(C)/2089/2023**

BALRAJ AGRO INDUSTRIES  
536/20, SINGLE CYCLE ROAD,  
INDUSTRIAL AREA-C, OPPOSITE DHANDARI RAILWAY STATION,  
LUDHIANA, PUNJAB- 141003,  
BEING REPRESENTED BY ITS AUTHORIZED SIGNATORY,  
RIDIP MAHANTA, AGED ABOUT 40 YEARS,  
S/O- LATE RATNA MAHANTA,  
ANANDNAGAR, SIXMILE,  
GUWAHATI, DISTRICT- KAMRUP(M),  
ASSAM, PIN- 781022.

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
WELFARE OF MINORITIES AND DEVELOPMENT DEPARTMENT,  
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM  
WELFARE OF MINORITIES AND DEVELOPMENT DEPARTMENT  
DISPUR GUWAHATI- 781006.

3:THE DIRECTORATE OF CHAR AREAS DEVELOPMENT  
ASSAM HENGRABARI ROAD  
DISPUR GUWAHATI- 781006.

4:THE DIRECTORATE OF CHAR AREAS DEVELOPMENT ASSAM  
HENGRABARI ROAD  
DISPUR GUWAHATI- 781006.

5:THE BID EVALUATION COMMITTEE  
DIRECTORATE OF CHAR AREAS DEVELOPMENT ASSAM  
HENGRABARI ROAD DISPUR  
GUWAHATI- 781006

For the petitioner : Mr. R.C. Saikia,  
Ms. K. Saikia. ....Advocates  
For the respondents : Ms. M.D. Borah, .... SC, WMD

**WP(C)/498/2023**

BALRAJ AGRO INDUSTRIES  
536/20 SINGLE CYCLE ROAD  
INDUSTRIAL AREA-C  
OPPOSITE DHANDARI RAILWAY STATION  
LUDHIANA  
PUNJAB  
PINCODE- 141003  
BEING REPRESENTED BY ITS AUTHORISED SIGNATORY  
SRI RIDIP MAHANTA.

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM  
WELFARE OF MINORITIES AND DEVELOPMENT DEPARTMENT  
DISPUR GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM  
WELFARE OF MINORITIES AND DEVELOPMENT DEPARTMENT  
DISPUR GUWAHATI- 781006.

3:THE DIRECTORATE OF CHAR AREAS DEVELOPMENT ASSAM  
HENGRABARI ROAD  
DISPUR GUWAHATI- 781006.

4:THE DIRECTOR  
DIRECTORATE OF CHAR AREAS DEVELOPMENT ASSAM  
HENGRABARI ROAD DISPUR GUWAHATI- 781006.

5:THE BID EVALUATION COMMITTEE  
DIRECTORATE OF CHAR AREAS DEVELOPMENT ASSAM  
HENGRABARI ROAD DISPUR GUWAHATI- 781006.

6:M/S BHABANI  
A PROPRIETORIAL FIRM  
OWNED BY DILIP KR. DAS  
DHAMDHAMA ROAD  
WARD NO. 05 P.O.- MILANPUR  
NALBARI DISTRICT  
PINCODE- 781337 ASSAM.

BEFORE

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

For the petitioner : Mr. S. Khound,  
Ms. M. Sharma. ....Advocates

For the respondents : Ms. M.D. Borah, .... SC, WMD

Date of hearing : 30.01.2024

Date of Judgement : 02.02.2024

**JUDGMENT AND ORDER (CAV)**

Heard Mr. R. C. Saikia, learned counsel for the petitioner and Ms. M. D. Borah, learned Standing Counsel, WMD Department.

**2.** The petitioner has put to challenge the decision of the review meeting of the Tender Committee held on 21.03.2023, wherein the earlier tender process for procurement of battery operated hand sprayer machines, pursuant to the E-Tender notice dated 09.11.2022, has been cancelled by quoting point No. 37 of the instructions of the tender document.

**3.** The petitioner's counsel submits that the petitioner had participated in the tender process, pursuant to the E-tender notice dated 09.11.2022 for procurement of battery operated hand sprayer machines.

**4.** It is the case of the petitioner that the petitioner's bid was found responsive during the opening of the financial bid, though his bid was L2.

However, the Bid Evaluation Committee having found the rate quoted by L1 at Rs. 1,700.80 much lower than the market price, L1 was not accepted on the ground that there was a possibility of compromising on the quality of the item to be procured. Accordingly, the Bid Evaluation Committee, vide meeting minutes dated 07.12.2022, decided to award the supply of battery operated hand sprayer machines to the second lowest bidder, i.e., the petitioner, who had quoted Rs. 2428/-.

**5.** As there was a delay in awarding the work to the petitioner, the petitioner approached this Court by filing a writ petition, being WP(C) 498/2023 and this Court while issuing notice, vide order dated 01.02.2023, stated that the pendency of the case would not be a bar for the State respondents to take a decision, in terms of the meeting minutes dated 07.12.2022 of the Bid Evaluation Committee, where it had decided to award the supply order to the petitioner. Subsequent to the above facts, a review meeting of the tender committee was held on 21.03.2023, wherein it cancelled the earlier tender process for procurement of battery operated hand sprayer machines by quoting point No. 37 of the instruction of the tender document, in pursuance to the letter dated 09.03.2023 issued by the Government of Assam.

**6.** The decision of the tender committee to cancel the tender, as reflected in the review meeting minutes dated 21.03.2023, is reproduced herein below as follows:-

*“After threadbare discussion with present all members of the Tender Committee and perusal of the Govt. direction vide letter No.WMD.7/2023-WMD1/139912/2023, Dt.09.03.2023, the earlier Tender process regarding*

*procurement of Battery Operated Sprayer Machine is here by cancelled by quoting point No.37 of the Instruction of the Tender document”.*

**7.** The letter dated 09.03.2023 issued by the Joint Secretary to the Government of Assam, Welfare Minutes and Development Department, which is reproduced hereinbelow as follows:-

*From : The Joint Secretary to the Govt. of Assam  
Welfare of Minorities and Development Department.*

*To : The Director  
Char Areas Development Assam  
Hengrabari, Guwahati*

*Sub: Regarding procurement of inputs/items under Directorate of Char Areas Development Assam for the year 2022-2023 under SOPD*

*Ref: Letter No. CADA. 303/2022-23/Agril/118/2795-96 dated 25th January, 2023*

*Sir/Madam,*

*With reference to the letter on the subject cited above, I am directed to inform you that Finance Department has made the following observations regarding procurement of inputs/items:*

*1) Finance Department has stated that once the financial bids are opened and bidders have been ranked in ascending order of their respective quotes, the justification provided by the Committee for rejecting L1 and recommending L2 seems to be insufficient. The justification for recommending L2 over L1 provided by the Bid Evaluation Committee wherein it is stated that "There is a possibility of compromising on the quality of the item, hence the rate of Rs. 1700.80 cannot be accepted as reasonable after the survey on the existing market price of the item" is not sufficient. Reasonableness is best gauged in relation to the estimated price which the committee has not mentioned.*

*2) Under the 2 bid tender process followed here, if any bidder should have been rejected owing to not fulfilling the requisite quality criteria, it should have been done at the Technical Evaluation stage itself. After*

*opening the financial bids, in the Financial Evaluation stage, the lowest evaluated bidder (L1) should only be awarded the contract.*

*3) Since it would not be proper to award the contract to the L2 bidder at this stage and the matter is already under litigation vide writ petition filed by the L2 bidder, it would be advisable for the incumbent tender committee to cancel this tender process by quoting Point number 37 of the instruction to Tenderers.*

*4) The required items may then be procured through Government e-Marketplace (GeM) by floating a fresh tender, as the items are also available on GeM.*

*5) It may also be mentioned that GeM has been made mandatory for all procuring entities for procurement of Goods and Services that are available on GeM. This is mentioned via notification No. FEB.224/2021/5 by Government of Assam dated 28th January, 2022.*

*You are therefore requested to take necessary action in the light of the observations made by Finance Department."*

**8.** Point No. 37 of the said instruction states that the acceptance or rejection of the bids vest with the Director, who does not bind himself to accept the lowest bid and reserved the right to reject fully or partially any or all the bids, without assigning any reasons whatsoever thereof.

**9.** The petitioner has now put to challenge the impugned order dated 21.03.2023, by which the tender process was cancelled and prayed for issuance of a work order in favour of the petitioner, in view of the decision of the Bid Evaluation Committee, deciding to award the contract to him, pursuant to the cancelled E-Tender Notice dated 09.11.2022.

**10.** The petitioner's counsel submits that the Bid Evaluation Committee, having found the rate given by L1 to be unworkable, as there was a possibility

of compromising on the quality of the goods and having decided that the petitioner should be given the work order, the State respondents cannot be allowed to rescind the decision taken by the Bid Evaluation Committee to award him the work order. He submits that in terms of the decision of this Court in the case of *Leon Boruah and Associates (M/S) & Another -vs- State of Assam & Ors*, reported in 2023(6) GLT 541, a Writ Court has jurisdiction to examine the decision making process without going into the merits of the decision. As such, it is the rightfulness of the decision and not the soundness, which has to be examined by a Writ Court. He submits that the decision to cancel the tender process was not reasonable, fair or transparent, inasmuch as, the petitioner was capable of doing the contract, as the petitioner's rate was found to be workable. He accordingly prays that the impugned order dated 21.03.2023 should be set aside and a direction should be issued to the respondent to award the work/supply order to the petitioner.

**11.** Ms. M. D. Borah, learned Standing Counsel, WMD Department, submits that the tender proceeding, pursuant to the E-Tender notice dated 09.11.2022 had been cancelled, due to the decision made by the Finance Department in the letter dated 09.03.2023. Further, the tender floated was with regard to State Owned Priority Development (SOPD) Scheme for the year 2022-2023, wherein the budget provision was up to March, 2023. As per financial rules, there is a budget provision for each financial year and the SOPD fund for the same had automatically lapsed, as the tender process for the year 2022-2023 had not been completed. She further submits that the State respondent had floated a fresh tender for battery operated hand sprayer machines for the financial year 2023-2024 on 20.12.2023. However, the same was cancelled in view of the

interim order dated 12.04.2023 passed by this Court. A fresh budget has now been allotted for procurement of the said item for the financial year 2023-2024 and unless the respondent is allowed to procure the battery operated hand sprayer machines for the financial year 2023-2024, the budget would again lapse. She thus prays that the State respondents should be allowed to float a tender for the year 2023-2024 for purchase of battery operated hand sprayer machines.

**12.** I have heard the learned counsels for the parties.

**13.** As can be seen from the submissions made by the parties, the petitioner had quoted the second lowest bid for procurement of battery operated hand sprayer machines. As the bid of L1 was found to be much lower than the market price, the same was not accepted by the Bid Evaluation Committee, on the ground that there was a possibility of compromise on the quality of the goods to be supplied. As such, the Bid Evaluation Committee decided to award the supply of the goods to the petitioner. However, the entire selection process for procurement of the goods has subsequently been cancelled by the State respondents, due to the decision of the Finance Committee, as reflected in the letter dated 09.03.2023.

**14.** A perusal of the above letter dated 09.03.2023 shows that the Government has found the reasons for rejection of the bid of L1 and the consequential acceptance of the bid of the petitioner by the Bid Evaluation Committee, to be insufficient. It has also been stated that the reasonableness of the rates of L1 and the subsequent recommendation of the rate of L2 could not

be gauged, as the estimated market price of the item was not mentioned by the Bid Evaluation Committee. Further, whether a bidder could have fulfilled the requisite quality criteria in supplying quality goods could/should have been known/decided at the time of the technical evaluation stage. The tender process, being a two bid system, whereby the technical evaluation stage had been crossed, the quality of the goods to be supplied could not have been an issue at the time of opening and evaluating the financial bids. Another point that has been taken by the State respondent, as a reason for cancelling the tender, is that the matter being under litigation, the required items could be procured from the Government e-Marketplace (GeM), as the items were available at GeM. Further, the procurement of goods through GeM was required as per the notification issued by the Government on 21.08.2022.

**15.** On considering the reasons for cancellation of the earlier tender process, this Court also does not find any arbitrariness with the findings of the Finance Department in the letter dated 09.03.2023 for cancelling the tender process, inasmuch as, the Bid Evaluation Committee had come to a finding that the bid of L1 was lower than the market price, without stating as to what was the market rate for the battery operated hand sprayer machines. Secondly, the Bid Evaluation Committee had also stated that there was a possibility of compromising on the quality of the items sought to be procured, only on the alleged ground that the bid of L1 was much lower than the market price. As stated earlier, the estimated market price of the battery operated hand sprayer machine has not been reflected anywhere by the Bid Evaluation Committee. Further, the question of quality of the items to be procured should have been gone into at the time of opening of the technical bids. Once L1 and L2 have

crossed the technical evaluation bid stage, it implies that the items to be supplied are acceptable. As such, the Bid Evaluation Committee could not have back-tracked and made a comment on the possibility of the items to be procured through L1 to be compromised, at the financial evaluation stage. The financial evaluation stage is basically for comparison of price/bids only. The stage, whether an item to be supplied is of the desired quality, should have been looked into at the technical evaluation stage. Nothing has been brought on record by any of the parties, to show that the item to be procured through L1 would have been of inferior quality.

**16.** In view of the reasons stated above, this Court does not find any ground to interfere with the cancellation of the tender process. Further, in view of the fact that the State Government has now decided to procure the items through GeM, which is in public interest and not in favour of a particular person, this Court does not find any reason to allow the writ petitions. Consequently, the writ petitions are dismissed. Interim order passed earlier stands vacated.

**JUDGE**

**Comparing Assistant**