

GAHC010109752024



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

Case No. : WP(C)/2978/2024

NIRMAL JYOTI BHOWMICK
S/O- LATE NIHAR RANJAN BHOWMICK,
RESIDENT OF SHANTIPALLY, KARIMGANJ ROAD,
TARAPUR, SILCHAR, P.O. AND P.S.- SILCHAR,
DIST.- CACHAR, ASSAM, PIN- 788003.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EXCISE DEPARTMENT, DISPUR, GUWAHATI, PIN- 781006.

2:THE JOINT COMMISSIONER OF EXCISE
HOUSEFED COMPLEX
DISPUR
GUWAHATI
PIN- 781006.

3:THE DISTRICT COMMISSIONER CUM CHAIRMAN OF THE E-TENDER/
BID COMMITTEE
CACHAR DISTRICT
P.O. AND P.S.- SILCHAR
PIN- 788001.

4:THE SUPERINTENDENT OF EXCISE
CACHAR DISTRICT
P.O. AND P.S.- SILCHAR
PIN- 788001

Advocate for the Petitioner : MR. S K SINGHA

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

19.06.2024

1. Heard Mr. S. K. Singha, learned counsel for the petitioner. Also heard Mr. R.R. Gogoi, learned counsel for the Excise Department, i.e. respondent nos.1, 2 & 4. Mr. S.S. Roy, learned counsel appears for the respondent no.3.

2. The case of the petitioner is that the petitioner had submitted his bid for an IMFL Retail "OFF" Licence for Shop No. CAR-1, Sonai Road Link Road Point, pursuant to a notice inviting E-Bid No. EXCI-12/1096/2023/61 dated 09.02.2024. The petitioner was the sole tenderer for CAR-1 and his bid amount was Rs.5,50,001/-. The meeting minutes dated 11.03.2024 of the Bid Committee found that the bid of the petitioner for CAR-1 was only Rs.5,50,001/-, which was less than the bid received for CAR-4, which was Rs. 36,11,111/-. The Bid Committee thus held that as acceptance of the petitioner's bid would result in a very low revenue collection for the Government, a re-tender for CAR-1 should be made.

3. The petitioner is thus aggrieved with the decision of the Bid Tender Committee in rejecting his bid amount and the recommendation for retendering the IMFL "OFF" Licence for CAR-1.

4. The petitioner's counsel submits that though CAR-2 and CAR-4 are both

located in urban areas, their location is far from each other and in different municipality areas. The density of wine shops in CAR-2 and CAR-4 are different and as such, the State respondents cannot be allowed to reject the petitioner's bid, as the annual turnover of a business in a particular area cannot be equated with a similar business in a different area. He accordingly submits that the meeting minutes dated 11.03.2024 of the Bid Committee Meeting, insofar as it involves the rejection of the petitioner's bid should be set aside, along with the communication made by the respondents regarding the rejection of his bid. He also submits that the State respondents can reject the bid of a sole tenderer with the previous approval of the State Government, in terms of the provisions of Rule 114A(1)(xiv) of the Assam Excise (Amendment) Rules, 2023. He submits that as the conditions required for invoking Rule 114A(1)(xiv) of the amended Rules is not present in the present case, the rejection of the bid of the petitioner has to be set aside.

5. Mr. R.R. Gogoi, learned counsel for the respondent nos.1, 2 & 4 submits that in terms of Clause 13 of the NIT dated 09.02.2024, the District Collector has the right to accept or reject any bid or to annul the selection process without assigning any reason. He submits that as the bid of the petitioner had been evaluated by the Bid e-Tender/Tender Committee head by the District Commissioner, Cachar, the rejection of the petitioner's bid on the ground that his bid amount was very low compared to the neighbouring shop was justified.

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

7. Section 26 of the Assam Excise Act, 2000 (hereinafter referred to as “the Act”) states as follows :

“1) The Excise Commissioner, Collector or any Officer or authority, in issuing any licence or in making any settlement of shops under this Act, or rules framed thereunder, shall be guided by such directions as may be issued by the State Government from time to time either generally or in particular.

(2) The State Government may, at any time, if in their opinion it is so necessary, cancel any notice calling for tenders for settlement of shops in accordance with the rules framed under this Act or any tender received in pursuance of any such notice or withdraw any shop from settlement for such period without assigning any reason therefor and such power of cancellation or withdrawal shall be deemed to have always been vested in the State Government.

(3) Notwithstanding anything in this Act, the State Government may issue direction to the Excise Commissioner, Collector or any Officer or authority to cancel any notice in accordance with rules framed under, this Act calling for tenders for settlement of shops or any tender received in pursuance of any such notice or to withdraw any shop from settlement at any time without assigning any reason therefor and the Excise Commissioner, Collector or any Officer or authority, as the case may be, shall comply with such directions and such power of issuing direction to the Excise Commissioner, Collector or any Officer or authority shall be deemed to have always been vested in the State Government.

(4) If any notice inviting tenders received in pursuance of any such notice is cancelled under this section the value of Court fee stamps affixed to any such tender or any money deposited along with any such tender required by or under this Act shall be refunded to the person fixing the stamp or depositing the money.”

A perusal of Section 26(2) provides that the State Government can cancel

any tender received in pursuance of any tender notice without assigning any reason. The word “cancel” used in Section 26(2) can also be read as “reject”, inasmuch as, the word cancel may not be the appropriate word to be used for not accepting the tenderer’s bid.

8. The amended Rule 114A(1)(xiv) of the Assam Excise (Amendment) Rules, 2023 (hereinafter referred to as “the Amended Rules”) provides as follows :

“Where there is only one tender for a shop, if the licensing authority is satisfied that the tenderer is eligible for grant of licence and that the statutory requirements have been fulfilled, he shall accept the ‘Initial Grant Bid’ offered by the applicant and may grant the licence with the previous approval of the State Government after realizing the applicable Licence Free and Security Deposit.

Provided that if he is not so satisfied, he may reject the application after recording the reasons therefor.”

9. A reading of the above sub-Rule shows that where there is only one tender for a shop and if the licensing authority is satisfied that the tenderer is eligible for grant of licence and that the statutory requirements have been fulfilled, he shall accept the ‘Initial Grant Bid’ offered by the applicant and may grant the licence with the previous approval of the State Government. However, the proviso to the said sub-Rule provides that if the Licencing Authority is not so satisfied, he may reject the offer/bid made by the applicant after recording the reasons therefor. The sub-Rule clearly provides that while grant of licence would have to be made with the previous approval of the State Government if the tender is found eligible for grant of licence and statutory requirements have been fulfilled, the proviso does not put a limitation on the exercise of power by

the Licencing Authority for rejection of a tenderer's application for grant of licence.

10. The Act and the amended Rules having provided the authority who can reject a tender application, the rejection of the petitioner's tender by the Tender Committee headed by the District Commissioner, in terms of the NIT does not appear to be in consonance with the Act and the Amended Rules.

11. In the case of ***Union of India & Another vs. Tulsiram Patel***, reported in ***(1985) 3 SCC 398***, the Supreme Court has held that there must be a source of power for exercising the same. In the present case, the Act and the Amended Rules clearly provides the source of power for the State Government and the Licencing Authority to act upon the bids of tenderers. As such, it would have to be the State Government or the Licencing Authority who should take a decision as to whether the tender of the petitioner should be accepted or not. Consequently, as the State Government had not taken any decision on the said issue, the respondent no.1 is directed to take a decision as to whether to accept or reject the petitioner's tender under Section 26(2) of the Act. The same should be done expeditiously and preferably within a week from the date of receipt of a copy of this order.

12. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant