

GAHC010113412023



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

Case No. : WP(C)/3109/2023

Sri Surendra Boro,
S/o Jaramal Boro,
Permanent R/o Village-Niz Kalaigaon,
P.O. & P.S. – Kalaigaon,
District-Udalguri BTR, Assam,
Pin-784525. **.....Petitioner.**

Versus

1. The State of Assam,
Represented by the Principal Secretary,
to the Govt. of Assam, Environment and Forest Department, Dispur,
Guwahati- 781006.
2. The Divisional Forest Officer,
Dhansiri Forest Division, Udalguri, Pin-784509.
3. The Bodoland Territorial Council
Rep. by the Principal Secretary,
Bodoland Territorial Council, BODOFA NWGWR, Kokrajhar, Dist.-
Kokrajhar, BTC,

Assam, Pin-783370.

4. The Addl. Principal Chief Conservator Of Forests cum CHD,
Bodoland Territorial Council, Kokrajhar,
Dist.-Kokrajhar, Assam, Pin-783370.
5. The Range Officers, Under Dhansiri Forest Division, Udalguri, Pin-781008.
6. The Asstt. Conservator of Forest (ACE),
Dhansiri Forest Division, Udalguri, Pin-781008.
7. Mr Bishnu Brahma, S/o of Ganesh Brahma, Vill-Deorigaon, P.O:
Gerua Bazar, P.S- Rowta Dist:-Udalguri (BTR), Assam.

.....**Respondents.**

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner	: Mr. G. Choudhury.	Advocate
For the respondent nos.1 - 6	: Mrs. R.B. Bora,	SC,BTC
For the respondent no.7	: Mr. T.J. Mahanta Mr. P.K. Deka	...Sr. Advocate, ...Advocate
Date of hearing	: 30.04.2024	
Date of Judgment	: 10.05.2024	

JUDGMENT AND ORDER (CAV)

- 1.** Heard Mr. G. Choudhury, learned counsel for the petitioner and Mrs. R. B.

Bora, learned Standing Counsel, BTC. Also heard Mr. T. J. Mahanta, learned Senior Counsel, assisted by Mr. P. K. Deka, learned counsel for the respondent No. 7.

2. The petitioner is challenging the disqualification of his bid for mining stone and sand for a period of seven years from Rangapani S.S. Mahal, pursuant to the Tender Notice dated 05.12.2022 and the settlement of the same with the respondent No. 7.

3. The petitioner's counsel submits that the petitioner was the highest bidder for the purpose of mining sand and stone for seven years along with one Mr. Karneswar Daimary, who had both submitted the same bid amount of Rs. 31,21,258/-. The second highest bidder was one Ms. Renu Boro, who submitted a bid amount of Rs. 30,69,280/-. However, the State respondents selected the lowest bidder, i.e. the respondent No. 7, whose bid amount was Rs. 29,96,400/-.

4. The petitioner's counsel submits that during the scrutiny of all the documents of all the bidders, it was acknowledged by the State respondent that all the tender documents of all the bidders had been submitted as required by the tender notice. However, the bids of all the bidders were disqualified on one pretext or the other, leaving only the bid of the respondent No. 7 as a valid bid. The petitioner's counsel submits that the bid of the petitioner has been disqualified on three grounds, namely, (i) the tender form was incompletely filled up in respect of the point No. 4 as the name, year and description of sand/gravel/bolder/stone had not been mentioned clearly, (ii) the petitioner did not fill up the date in the tender form, besides the declaration part of the tender form, and (iii) that the Court fee affixed on the petitioner's tender paper was

found to be tampered with, as the Court fee had been signed by the petitioner.

5. The petitioner's counsel submits that the tender notice having clearly stipulated that the tender was for mining for sand and stone, which was to be for a period of seven years, no prejudice was caused to the respondents by not mentioning the name, year and description of the mineral that were to be extracted. Further, as the petitioner had submitted all the required tender documents in time, the inadvertent error in not putting the date in the tender document cannot in any manner prejudice the respondents. Thirdly, there was no infirmity or illegality in the petitioner giving his signature on the Court fee, inasmuch as, in terms of Section 12(3) of the Indian Stamp Act, 1899, which was amended for the State of Assam, a person is required under Sub-Section (1) of Section 12 of the amended Indian Stamp Act to cancel an adhesive stamp/Court fee, by writing his name or initials on it or across the same. He accordingly submits that the grounds of rejection of the petitioner's tender document being perverse, the same should be set aside. Further, as the petitioner's bid amount was higher than the bid amount submitted by the respondent No. 7, the settlement of Rangapani S.S. Mahal with the respondent No. 7 should be set aside and Rangapani S.S. Mahal should be settled with the petitioner, in terms of the judgment of this Court in the case of ***Babu Ram Brah vs. Bodoland Territorial Council and others*** reported in ***(2024) 1 GLR 393 para 6.***

6. The petitioner's counsel submits that the rejection of the petitioner's tender document was based on the petitioner not complying with the ancillary conditions of the tender notice, which could be cured. Further, the State respondents have to differentiate between ancillary conditions and essential

conditions. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Poddar Steel Corporation vs. Ganesh Engineering Works and others*** reported in ***(1991) 3 scc 273 para 6***. Counsel for the petitioner further submits that the tender notice does not provide the manner in which the tender form is to be filled up and as such, non-filling up of point No. 4 of the tender form cannot be a ground for rejecting the petitioner's tender document.

7. Ms. R. B. Bora, learned Standing Counsel, BTC submits that the petitioner not having filled up the tender form, as required in the tender notice and as emphasized in Clause 13(E) of the tender documents, there was no infirmity with the rejection of the petitioner's tender. She also produced the official records for perusal of this Court. She submits that as the petitioner's tender document had been rejected on the grounds mentioned in para 11 and 12 of the affidavit-in-opposition filed by the respondent No. 2, the same goes to show that the petitioner had not complied with the essential conditions of the tender notice.

8. Mr. T. J. Mahanta, learned Senior counsel for the respondent No. 7 submits that the petitioner has not complied with Clause 13(E) of the tender notice, as reflected in para 11 and 12 of the affidavit-in-opposition filed by the respondent No. 2. He further submits that in terms of the decision of the Supreme Court in the case of ***Central Coalfields Limited and others vs. SLL-SML (Joint Venture Consortium and others)*** reported in ***(2016) 8 SCC 622***, whether a term of a tender notice is essential or not, is a decision to be taken by the employer, which should be respected. He further submits that the Supreme Court has also held that the issue of acceptance or rejection of a bid or a bidder

should be looked at, not only from the point of view of the unsuccessful party, but from the point of view of the employee. He submits that as the State respondent have found the bid of the petitioner to have not complied with the provisions of Clause 13(E) of the tender notice, the decision of the State respondents should be respected. He accordingly prays that the writ petition should be dismissed.

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

10. A perusal of the para 11 and 12 of the affidavit-in-opposition filed by the respondent No. 2 shows that the petitioner's bid has been rejected on three grounds, namely, (i) the tender form was incompletely filled up with respect to point No. 4 as the name, year and description of sand/gravel/stone has not been mentioned clearly, (ii) the petitioner did not fill up the date in the tender form besides the declaration part of the tender form, and (iii) that the Court fee affixed on the petitioner's tender paper was found to be tampered with, as the Court fee had been signed by the petitioner.

11. Paragraph 11 & 12 of the affidavit-in-opposition filed by the respondent no.2 states as follows :

“11. That with regard to the statement made in paragraphs No. 12 of the writ petition, the deponent begs to state that on scrutiny of the tender form of the petitioner Mr. Surendra Boro, it was found to be incompletely filled up with respect to tender form point No 4 wherein the name and year and description like sand/gravel/boulder/stone for which tender was floated was not mentioned clearly. Further, it was also observed that that the petitioner Mr. Surendra Boro have not filled up the date on the declaration part on the tender form and it was also observed that the court fee affixed on the tender paper was found tempered by signing on it

by the tenderer. Hence, it is noncompliance of tender notice point No. 13 (e).

12. That with regard to the statement made in paragraphs No. 13 of the writ petition, the deponent begs to state that as per point No. 12 of the tender notice all the four bidders namely (1) Sri Surendra Boro, (2) Sri Karneswar Daimary (3) Mrs Remu Boro and (4) Bishnu Brahma, the bidders for Rangapani SS Mahal have obliged the bidding criteria by bidding up to 25% above Govt. fixed value. Whereas, it was observed during scrutiny that the bidder No. 1 and bidder No. 3 as stated above have not filed the declaration part of the tender form and also did not filled up point No. 4 of the tender form properly elaborating the details. Moreover, the court fee affixed in the tender form was also found tempered by signing on it by both the parties. Moreover, on scrutiny it has also been observed in case of bidder No 2, wherein there was overwriting in point No 2 of the tender form which contradict the point No. 13 (e) and point No. 16 of the tender notice."

12. The question in Point No.4 of the Tender Form and the answer given by the petitioner to the same is reproduced below, as follows :

"The Name and year and description of the Sand/Gravel/Boulder/Stone for which the tender is given :"

"Rangapani S.S. Mahal."

A perusal of the same clearly shows that the peitoner has not answered all the queries raised in Point No.4.

13. In the case of ***Poddar Steel Corporation (Supra)***, the Supreme Court has held that the requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the

others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.

Thus, in terms of the above judgment, the question arises as to whether the non-compliance on the part of the bidder, with regard to the contents of paragraph-11 & 12 of the affidavit-in-opposition filed by the respondent no.2, was an ancillary/subsidiary condition of the tender notice or it was an essential condition.

14. In the case of ***Central Coalfields Limited (Supra)*** the Supreme Court has held that whether a term of the tender notice is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected.

15. In the case of ***Tata Cellular vs. Union of India***, reported in ***(1994) 6 SCC 651***, the Supreme Court has held that there must be judicial restraint in interfering with the administrative action, ordinarily the soundness of the decision taken by the employer ought not to be questioned, but the decision making process can certainly be subject to judicial review.

16. In the case of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail***

Corporation Ltd. & Another, reported in **(2016) 16 SCC 818**, the Supreme Court has held as follows-

“The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents.”

A perusal of the above three judgments show that it is the author of a tender who is to decide whether a condition in a tender is essential or ancillary condition.

17. There is no quarrel with the judgment relied upon by the petitioner passed by this Court in **Babu Ram Brah (supra)** which is with regard to the settlement of a market to the highest bidder. In matters of settlement, one of the major reasons to award a tender to a person is on the revenue to be earned by the State. However, the same does not take away the fact that the bid has to be first adjudged as a valid bid.

18. The issues raised in the present writ petition is as to whether there was any infirmity in respondents rejecting the petitioner’s bid keeping in view the fact that he had not filled up Point No.4 of the tender form as was required. Further, no date was filled up on the tender form and in the declaration part of the tender form, even though the signature of the petitioner was present.

19. The Declaration in the tender form that had not been filled up by the petitioner is as follows :

“DECLARATION:-

I agree that I will not withdraw the tender offered by me during the time that will be required for intimation of the acceptance of the tender for Mahal being given to me not I will withdraw it afterwards should my tender be accepted. If I withdraw the tender or such amount in account of deviance as in the opinion of the undersigned or CF/CAC may be considered necessary to make good the whole of the lose and damaged that may be suffered by Government in consequent thereof and I shall pay the same and If I fail to pay it there will be recovered from me as on arrear of land Revenue of Rs..... offered for Sand/Gravel Mahal No.....”

20. This Court finds that there is no infirmity with the rejection of the petitioner’s tender on the ground that he did not fill up the declaration made in the tender form as the same was an undertaking to be given by the petitioner and as such, an essential condition of the tender. Assuming the petitioner withdrew his tender, then the petitioner could always take the plea that he did not bind himself to make good the loss, as no amount of money was quantified by him or the declaration did not relate to the Mahal in question.

21. With regard to whether the petitioner’s signature on the Court Fee amounted to tampering with the Court Fee, this Court is of the view that the same cannot be considered to be in violation of the tender notice, nor does it amount to tampering with the Court Fee. This is due to the fact that in terms of Section 12(3) of the Indian Stamp Act, 1899, which was amended for the State of Assam, a person is required under Sub-Section (1) of Section 12 of the amended Indian Stamp Act to cancel an adhesive stamp/Court fee, by writing his name or initials on it or across the same. Thus the rejection of the petitioner’s tender on this ground is not sustainable and is accordingly set aside.

22. The above being said, though ground no.3 for rejection of the tender is found to be justified as it does not violate the tender condition, this Court is of the view that the rejection of the petitioner's tender on the other grounds, including the fact that the petitioner had not filled up the declaration made in the tender form does not suffer from any infirmity. On the other hand, there is nothing to show that the respondent no.8's tender form/documents was not in consonance with tender notice. No averment has been made by the petitioner that the disqualification of the bids of the other two persons had been made with the intention to favour of the respondent No. 7. Only because the respondent No. 7 was given the contract cannot be a valid ground to challenge the award of the mining contract to the respondent No. 7, unless the soundness of a decision is found to be arbitrary, irrational, mala-fide or intended to favour someone. However, in this case there is nothing to show that the selection of the respondent No. 7 is arbitrary, irrational, mala-fide or had been made to favour him. It should be remembered that the disqualification of the bids of the other 2 tenderers has not been challenged. Further, as per the law laid down in the case of ***Afcons Infrastructure Ltd. (supra)***, the State respondents are the best persons to understand and appreciate the tender documents. Accordingly, in view of the reasons stated above, this Court does not find any ground to exercise its discretion in the present case.

23. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant