

GAHC010119462024



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

Case No. : WP(C)/3077/2024

M/S H R ENTERPRISE
REPRESENTED BY ITS PROPRIETOR NAMELY SHRI PRANJAL PRATIM
BARUAH, AGED ABOUT 41 YEARS, SON OF RAJENDRA NATH BARUAH,
OFFICE ADDRESS AT BHETAPARA, BELTOLA, GUWAHATI 28, PO AND PS
BASISTHA DIST KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
WOMEN AND CHILD DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI
06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
WOMEN AND CHILD DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI 06

3:THE SECRETARY
TO THE GOVT. OF ASSAM
FINANCE (B) DEPARTMENT
DISPUR GUWAHATI 06

4:THE DIRECTOR

DIRECTORATE OF WOMEN AND CHILD DEVELOPMENT ASSAM
UZAN BAZAR
GUWAHATI 01

5:THE STATE LEVEL PROCUREMENT COMMITTEE
HEADED BY ITS CHAIRMAN CUM THE DIRECTOR

WOMEN AND CHILD DEVELOPMENT ASSAM
UZAN BAZAR
GUWAHATI 1

6:SHREE SIDDHA MANGALAM
SITUATED AT JATIYA SWAHID PATH
BELTOLA
GUWAHATI 781028

7:M/S J.N TRADING
SITUATED AT HOUSE NO. 31
BYE LANE NO. 9
R.G.B ROAD
ZOO TINIALI GUWAHATI 781024
(NOTICE TO THE RES. NO. 6 AND 7 MAY BE SERVED THROUGH THE RES.
NO. 4

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

24.06.2024

1. Heard Mr. J.I. Borbhuiya, learned counsel for the petitioner. Also heard Mr. D. Nath, learned counsel for the respondent nos.1, 2, 4 & 5. Ms. R.M. Barooah, learned counsel appears for the respondent no.3.

2. The petitioner's case is that the State respondents have issued supply order dated 20.01.2024 to respondent no.6 and supply order dated 07.08.2023 to respondent no.7, without call of tender. He submits that the impugned action of the respondents being illegal, the supply orders mentioned above should be set aside and the respondent nos.6 & 7 should be restrained from supplying

plastic chairs and tables to the Model Anganwadi Centres, in pursuance to the above work orders.

3. Mr. J.I. Borbhuiya, learned counsel for the petitioner submits that an inquiry should be initiated against the officials who issued the impugned supply/work orders dated 20.01.2024 and 07.08.2023 to the respondent nos.6 & 7.

4. Mr. D. Nath, learned counsel for the respondent nos.1, 2, 4 & 5 submits that on the basis of a tender notice dated 10.03.2023, the approved rates for supply of plastic chairs and tables for Model Anganwadi Centres and Mini Anganwadi Centres had been fixed by the State respondents. He submits that in the tender notice issued for fixing the approved rates for supply of plastic chairs and tables, 6 (six) tenders had submitted their bids, which included the petitioner. The petitioner was L2. However, as the rate approved by the State respondents was the rate/bid submitted by the respondent no.7 who was L1, all the tenderers were given supply/work orders for supply of plastic chairs and tables, as per the L1 approved rate. The petitioner also made supplies in pursuance to the same.

5. Mr. D. Nath further submits that as the construction of Model Anganwadi Centres was a time bound project constructed under NIDA & RIDF component and on the basis of a loan provided by the NABARD, it was decided by the State respondents that the floating of a new tender for supply of plastic chairs and tables would be time consuming and there could be a delay in the functioning of

Model Anganwadi Centres. Hence, the internal Committee constituted by the State respondents, made a suggestion that as there was already an approved rate for procurement of plastic chairs and tables, which had been supplied by the six tenderers which included the petitioner, new plastic chairs and tables for the Model Anganwadi Centres should also be supplied by the same six tenderers as per the already approved rate. Accordingly, the Internal Committee in its meeting dated 20.07.2023, decided to issue letters to all the approved firms, to submit their willingness to supply plastic chairs and tables as per the L1 approved rate.

6. Mr. D. Nath submits that letter no.DWCD (ICDS)G/ con/65/2021/Pt-II/4 dated 21.07.2023 was issued by the Director, Women and Child Development, Assam to all the six tenderers including the petitioner, for submission of willingness for providing plastic chairs and tables to the Model Anganwadi Centres in pursuance to the minutes of the Internal Committee meeting dated 20.07.2023. He submits that the petitioner M/s Kushan Choudhury did not respond to the letter dated 21.07.2023 issued by the Director, Women and Child Development, Assam. Thus out of the six tenderers, supply orders were issued to the respondent nos.6 & 7, MM Associates and M/s Shivam Traders. He submits that MM Associates and M/s Shivam Traders have not been made parties in this case and the petitioner has only made a challenge to the supply orders issued to the respondent nos.6 & 7.

7. Mr. D. Nath submits that the respondent no.6 was issued supply order dated 20.01.2024 and the materials had been supplied by the respondent no.6. The bill of respondent no.6 was submitted on 25.02.2024 and payment has

been made on 04.03.2024. In respect of respondent no.7, supply/work order was issued on 07.08.2023 and supply of the materials has already been done. The respondent no.6 submitted his bill on 11.01.2024 and payment was made on 22.01.2024. He accordingly submits that there is nothing left to adjudicate in this matter, inasmuch as, the impugned supply orders dated 20.01.2024 and 07.08.2023 had been issued pursuant to the approved rate for plastic chairs and tables, made in pursuance to tender notice dated 10.03.2023.

8. Mr. J.I. Borbhuiya, learned counsel for the petitioner submits that the petitioner did not receive any offer for submission of willingness as per the letter dated 21.07.2023 issued by the Director, Women and Child Development, Assam, for supply plastic chairs and tables for the Model Anganwadi Centres.

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

10. As can be seen from the submissions made by both the parties, the petitioner had participated in the tender notice dated 10.03.2023 for supply of plastic chairs and tables to Anganwadi Centres and mini Anganwadi Centres. Six bids had been received including the bid of the petitioner. The State respondents thereafter approved the rate of respondent no.7, who was L1, while the petitioner was L2. The supply orders were then issued to all the bidders including the petitioner, who made supply of plastic chairs and tables pursuant to the tender notice dated 10.03.2023, as per the approved L1 rates.

11. The State respondents thereafter decided to supply plastic chairs and

tables to Model Anganwadi Centres on the basis of the earlier approved L1 rates, to avoid delay as the construction of Model Anganwadi Centres was a time bound project.

12. The basic grievance of the petitioner is that he was not given any supply order, while it is the case of the State respondents that he had been given letter dated 21.07.2023 by the Director, Women and Child Development, Assam for submission of his willingness to supply plastic chairs and tables to Model Anganwadi Centres, in terms of the approved L1 rates.

13. On considering the fact that the State respondents had issued supply orders for supply of plastic chairs and tables for Model Anganwadi Centres on the basis of the approved L1 rates, this Court does not find any infirmity with the issuance of the supply orders. Further, as on date, all the impugned supply orders have been acted upon and payment for the same has been made. There is nothing to prove whether there was any offer actually made to the petitioner for supply of articles as per the approved rates or whether the petitioner had not responded to the offer. These are basically disputed questions of fact, which cannot be decided in this writ petition. In any event, as the supply orders have been acted upon and payments made for the supplies, there is nothing left to adjudicate at this juncture. Accordingly, the prayer of the petitioner to set aside the supply orders and to restrain the respondent nos.6 & 7 from supplying the plastic chairs and tables has become redundant. Consequently, this Court does not find any reason to dwell further on the issue raised by the petitioner, regarding an inquiry to be conducted against the officials who issued the impugned supply orders, as this was a considered decision which appears to be

reasonable. The issue with regard to whether the letter dated 21.07.2023 was given to the petitioner is basically a question of fact which cannot be proved in this writ proceeding. The writ petitioner is however given the liberty to approach an appropriate forum, if he is of the view that he is entitled to damages for not being offered his willingness to supply the articles as per the approved L1 rates, in terms of the letter dated 21.07.2023. Keeping in view the facts and circumstances of this case, this Court does not find any ground to exercise its discretion.

14. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant