

GAHC010135642024



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

Case No. : WP(C)/3465/2024

EASTERN TECHNOLOGY GROUP
ITS REGISTERED OFFICE AT AIDC, R. G BARUAH ROAD, GUWAHATI-
781024, REPRESENTED BY ITS SOLE PROPRIETOR, SRI DEEPAK
CHOUDHURY, AGED ABOUT 50 YEARS, SON OF SHRI DHARANI
CHOUDHURY, RESIDENT OF FLAT NO 4E, DICHANG APARTMENT,
BELTOLA TINIALI, GUWAHATI, DISTRICT - KAMRUP (M), PIN - 781028
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, SECONDARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI, DISTRICT- KAMRUP (M), PIN - 781006, ASSAM.

2:THE ADARSHA VIDYALAYA SANGHARSHA
ASSAM
REPRESENTED BY ITS MANAGING DIRECTOR
KAHILIPARA
GUWAHATI
DISTRICT- KAMRUP (M)
PIN - 781019
ASSAM.

3:MANAGING DIRECTOR
THE ADARSHA VIDYALAYA SANGHARSHA
ASSAM KAHILIPARA
GUWAHATI
DISTRICT- KAMRUP (M)
PIN - 781019
ASSA

Advocate for the Petitioner : MR. S BANIK, MS F BEGUM

Advocate for the Respondent : SC, SEC. EDU.,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

06.08.2024

Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. S.M.T. Chistie, learned counsel for all the respondents.

2. The petitioner has made a challenge to Clause 23.8 of the NIT, on the ground that the said Clause is arbitrary and in violation of Article 14 of the Constitution.

3. Clause 23.8 of the NIT states as follows:-

“23.8. Bidder should not have been blacklisted or debarred at any point of time by any Central/State Government Organization/PSU's/Government Educational institutions etc. Undertaking to be submitted from Bidder.”

4. The petitioner's case is that an NIT dated 20.06.2024 was issued in the GeM Portal by the Adarsha Vidyalaya Sangathan for supply of various items. Clause 23.8 of the NIT stated that bidders should not have been blacklisted or debarred at any point of time by any Central/State Government Organization/PSUs/Government Educational Institutions etc. and that an undertaking in that respect was to be submitted by the bidder. The Disclaimer Clause in the NIT provided that if any seller/bidder had any objection/grievance against any additional Clause or otherwise on any aspect of the NIT, they could

raise their representation against the same by using the representation window provided in the bid details field in seller dashboard, after logging in as a seller within 4 days of the bid publication on GeM. The buyer/respondents were then duty bound to reply to all such representations and would not be allowed to open bids if the buyers/respondents failed to reply to such representation.

5. The petitioner's counsel submits that while the petitioner did not submit any representation in the GeM Portal in terms of the Disclaimer Clause provided in the NIT, the petitioner submitted two representations dated 28.06.2024 and 20.06.2024, by submitting hard copies of the same to the office of the respondent No.3. The last date of submission of bids was 01.07.2024 and though the petitioner's representations were not replied to by the respondent No.3, the petitioner submitted his bid on 01.07.2024.

6. The petitioner's counsel submits that the bids were opened on 01.07.2024 at 5.30 p.m. He submits that as the petitioner has been blacklisted by the IIT, Guwahati in the year 2012, the petitioner apprehends that his bid would not be considered in view of Clause 23.8 of the NIT. He submits that the Clause with regard to blacklisting and debarment of a person is very clear and that the said Clause stipulated in the NIT clearly violates the rights of the petitioner in terms of Article 14 of the Constitution. He further submits that the submission of a representation in the proposed format by the petitioner against Clause 23.8 of the NIT would be a meaningless exercise, in view of the fact that the State respondents in their affidavit at Para 9 have stated that the respondents being the employer of the project and having authored the tender documents, they did not want any bidder to participate, who had been blacklisted or debarred at any point of time, because integrity of such a bidder was doubtful. Further, as

the primary product was for students, the Adarsha Vidyalaya Sangathan wanted participation from bidders, whose integrity had never been doubted earlier. He accordingly submits that the response of the State respondents in Para 9 of the affidavit-in-opposition clearly shows that even if the petitioner had made any representation against Clause 23.8, in terms of the Disclaimer Clause in the NIT, the Clause would not have been changed or withdrawn by the respondents. He accordingly submits that as Clause 23.8 is violative of Article 14 of the Constitution, Clause 23.8 should be set aside.

7. Mr. S.M.T. Chistie, learned counsel for the respondents, on the other hand, submits that the respondents in Para 10 of the affidavit-in-opposition filed by the respondent No.3, has clearly stated that as the petitioner did not follow the requirement of filing a representation in the GeM Portal, pertaining to his objection to Clause 23.8 of the NIT, the petitioner cannot now be allowed to make a challenge to the same, in violation of the procedure laid down in the NIT. Further, as the petitioner had submitted his tender documents on 01.07.2024, he cannot be now allowed to make a challenge to Clause 23.8 of the NIT.

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

9. In the case of ***Vidarbha Irrigation Development Corporation and Ors. Vs. Anoj Kumar Agarwala and Ors.***, reported in ***(2020) 17 SCC 577***, the Supreme Court has referred to the judgment in ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd.***, reported in ***(2016) 16 SCC 818*** and in ***R.D. Shetty Vs. International Airport Authority***, reported in ***(1979) 3 SCC 489***, which is to the effect that 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. The Court must defer to this understanding and appreciation of the tender documents, unless there is mala-fides or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. Further, the word used in the tender documents cannot be ignored or treated as redundant or superfluous and they must be given meaning and their necessary significance. Para 16 of the decision of the Supreme Court in ***Vidarbha Irrigation Development Corporation (supra)*** is reproduced hereinbelow as follows:-

“It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous – they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court.”

10. In the case of ***R.D. Shetty (supra)***, the Supreme Court has held that the executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them.

11. In the case of ***Pune Municipal Corporation and another vs. Harakchand Minirimal Solanki***, reported in ***(2014) 3 SCC 183***, the Supreme Court has held that it is a settled proposition of law that where a

power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

12. On application of the decisions of the Supreme Court referred to above, it is clear that the words in the Disclaimer Clause in the NIT dated 20.06.2024 cannot be ignored or treated as redundant or superfluous. They have to be given their meaning and necessary significance as provided in the Disclaimer Clause. When the procedure for filing any objection/grievance against any Clause of the NIT is required to be made through the GeM Portal, it was incumbent on the part of the petitioner to have followed the said procedure. When the said authorities are required to be rigorously held to the standard by which it professes its action to be judged, the private persons, such as the petitioner would also be equally liable to be held to be judged in terms of the procedure to be followed in the NIT.

13. The petitioner has not submitted any objection/grievance against Clause 23.8 of the NIT as required under the Disclaimer Clause and as such, it can be implied that the petitioner did not have any grievance against Clause 23.8, keeping in view the Disclaimer Clause provided in the NIT. Further, the petitioner had submitted his bid pursuant to the NIT dated 20.06.2024, knowing fully well that objection/grievance against any Clause had to be made as per the procedure provided in the NIT.

14. On considering the above facts, this Court is of the view that the petitioner not having made any objection/grievance against Clause 23.8 of the NIT, the petitioner cannot be allowed to now make a challenge to the same, as he has missed the bus. Further, in the case of ***Sibaram Deka Vs. the State of***

Assam and 7 Ors. in ***W.A. No.395/2022***, the Division Bench of this Court has held that when a tenderer participates in tender process without objection and is subsequently found to be not successful, a challenge to the process is precluded. Such a tenderer cannot be allowed to turn around and contend that the process was unfair by virtue of existence of a clause in the NIT. Though, in the present case, the bids of the tenderers have not been opened, this Court is of the view that the above decision of the Division Bench of this Court applies to the facts of the case, inasmuch as, the petitioner has submitted his bid, without submitting any objection to Clause 23.8 of the NIT, as per the procedure provided in the NIT.

15. With regard to the plea raised by the petitioner's counsel that the larger question regarding the validity/legality of Clause 23.8 of the NIT should be decided, this Court is not inclined to enter into that arena, as the same would only be of academic interest, keeping in view the fact that the petitioner did not make a challenge to Clause 23.8, in terms of the procedure stipulated in the NIT by the author of the tender.

16. In view of the reasons stated above, this Court is not inclined to exercise its discretion in this case. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant