

GAHC010146642024



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

Case No. : WA/261/2024

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF RAILWAYS, RAILWAY
BOARD, RAILWAY BHAWAN, NEW DELHI

2: THE GENERAL MANAGER/CON
NORTHEAST FRONTIER RAILWAYS
MALIGAON
GUWAHATI ASSAM 781011

3: THE CHIEF ADMINISTRATIVE OFFICER-3 (CONSTRUCTION)
NORTHEAST FRONTIER RAILWAYS
MALIGAON
GUWAHATI ASSAM 781011

4: PFA AND CAO (CONSTRUCTION) NF RAILWAY
O/O THE GENERAL MANAGER
CON
NORTHEAST FRONTIER RAILWAYS
MALIGAON
GUWAHATI ASSAM 781011

5: THE CHIEF ENGINEER/CON-V
O/O THE GENERAL MANAGER
CON
NORTHEAST FRONTIER RAILWAYS
MALIGAON
GUWAHATI ASSAM 781011

6: THE DEPUTY CHIEF ENGINEER
CON/TENDER
NFR-CONST. HQ-ENGINEERING/NF RAILWAY CONSTRUCTION
NORTHEAST FRONTIER RAILWAYS
MALIGAON GUWAHATI ASSAM 78101

VERSUS

ORIENTAL-PKB (JV)
HAVING ITS PRINCIPAL OFFICE AT GROUND FLOOR, HOUSE NO. 21, P.B
ROAD, REHABARI, GUWAHATI 781008

Advocate for the Petitioner : MR H GUPTA,

Advocate for the Respondent : MR. R SARMAH, FOR CAVEATOR

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE KALYAN RAI SURANA

ORDER

09-08-2024

(K. R. Surana, J)

Heard Ms. R. Devi, learned Central Government Counsel for the appellants as well as Mr. R. Sarmah, learned counsel for the respondent.

2. By filing this intra Court appeal, the appellants have assailed the order dated 25.06.2024, passed by the learned Single Judge in WP(C) No. 3166/2024.

3. The competent authority of the N.F. Railways had issued a Two Packet Tender vide Tender Notice No: CON/2024/FRB/03 bearing Tender No. CE-CON-N-K-MIS-2024-02 dated 26.02.2024 which is floated by the following work:-

“At Kamakhya Yard- Construction of Approach Road from Station building to NH-37 including cover drain, retaining wall, open drain etc., provision of Yard drainage, shifting of existing utilities and other miscellaneous works as well as Linking of BG track with 60kg/52kg single/long welded panels in main line/loop line on PSC sleeper as per instruction of railway. The work including linking of 1 in 12, 1 in 8½ and derailing switches on PSC sleepers (Fan shaped layout), laying of SEJs, in-situ glued joint etc., dismantling of BG track, point & crossings from km. 173/8 (AZA End) to 4/7(GHY End) = 2.70 KM in connection with NBQ-GLPT-KYQ doubling Project.”

4. The facts which are not in dispute is that on behalf of the respondent, which is a Joint Venture (JV) in the name of Oriental-PKB (JV), the constituent of the said joint venture, namely, M/s. Phanindra Kumar Baishya, the proprietor, had submitted the bid. The bid was not accompanied by Power of Attorney and on the said ground, the Tender Committee by a memo dated 24.06.2024, found the respondent as not eligible with a remark that the power

of Attorney of the JV was not submitted. Resultantly, in the website, the rejection of the Techno-Commercial Bid of the respondent was uploaded indicating that the Bid was rejected on the ground that the Power of Attorney was not submitted.

5. The aggrieved respondent had filed a writ petition to assail the rejection of its Techno-Commercial Bid. After hearing both the sides, the learned Single Judge of this Court had observed that the disqualification of the Technical Bid of the respondent by the Tender Committee was not in consonance with the harmonious reading of the Clause 1.4 of the Appendix-II (Guidelines and Conditions for Joint Venture Firm) to the Tender Notice dated 26.02.2024 and Clause B (xxi) of Appendix- III (Instruction to Tenderers) to the Tender Notice dated 26.02.2024.

6. Resultantly, the decision to disqualify the Technical Bid of the respondent herein and the actual act was accordingly, set aside and the appellants herein were directed to open the Tender/Financial Bid of the respondent herein and thereafter, consider him for the contract work, along with other eligible tenderers. Accordingly, said writ petition was allowed.

7. As indicated above, aggrieved by the said order, present appeal has been preferred.

8. The learned CGC has referred to the various Tender Clauses, specifically Clause 1.4 of Appendix-II as well as Clause B (xxi) of Appendix-III and it is submitted that the submission of the Power of Attorney was a mandatory requirement and therefore, as the respondent did not submit the Power of Attorney, there was no infirmity in the rejection of the Technical Bid of the respondent. Both the relevant Tender Clauses are extracted below:--

“Appendix-II Clause 1.4 and Appendix-III Clause (xxi) of the Tender Notice dated 26.02.2024 is reproduced hereinbelow as follows :

“Appendix-II (Guidelines & Conditions For Joint Venture Firm)

1.4. The tender form shall be purchased and submitted only in the name of the JV and not in the name of any constituent member. The tender form can however be submitted by JV or any of its constituent member or any person authorized by JV through Power of Attorney to submit tender.

Clause No. B (xxi) of constituent to Appendix-III (Instructions to the Tenderers) as stipulated at page No. 25 of the tender document, reads as under:

Appendix-III (Instructions to the Tenderers)

xxi) If the tenderer(s) are JV firm, all the documents like MOU/ JV Agreement,

Affidavit, Power of attorney etc. are to be submitted 2024:GAU-AS:6210 together.”

- 9.** The other submission of the learned CGC was to the effect that issue raised in the present appeal is also a subject matter of determination in WA No. 246/2024, where notice of motion was issued, which was made returnable on 19.08.2024 and accordingly, it is submitted that notice be issued in the present appeal.
- 10.** Per contra, learned counsel for the respondent has made a submission to support the order impugned in this appeal.
- 11.** In support of his submission, learned counsel for the respondent has produced a Paper Book containing the tender documents, specifically to show the relevant Tender Clauses, Appendix-II and Appendix-III thereof. The said Paper Book is made as a part of the record.
- 12.** It is already indicated above that the undisputed facts of the case is that on behalf of the Joint Venture, M/s. Phanindra Kumar Baishya through its proprietor had submitted the tender. The said fact is also confirmed from the rejection note which has been uploaded by the N.R. Railway authorities, where the supplier's name is mentioned as Phanindra Kumar Baishya. Therefore, there is no material on record in this memo of appeal that on behalf of the respondent, the Tender was submitted by a third party or by any other person who was authorized by the Joint Venture to submit tender.
- 13.** From the plain reading of the provisions of Clause 1.4 of Appendix-II, referred above, we find that in no uncertain terms, it has been provided that the Tender Form shall be purchased and submitted only in the name of the Joint Venture and not in the name of any constituent member. It is not the case of the appellant that the Tender was not submitted by the Joint Venture but submitted in the name of a constituent member of the Joint Venture.
- 14.** The said Clause 1.4 of Appendix-II further provides that the Tender Form can however be submitted by (i) a Joint Venture, (ii) any of its constituent member and (iii) any person authorized by Joint Venture through Power of Attorney to submit Tender. It is not the projected case of the appellant that the authorized person of the Joint Venture had submitted the Tender, which is not accompanied by a Power of Attorney. Therefore, from Clause 1.4 of Appendix-II, the Court is inclined to hold that the learned Single Judge did not misread and

misconstrue the said Clause 1.4 and accordingly, we did not find any infirmity in the finding recorded by the learned Single Judge that the disqualification of the Technical Bid by the Tender Committee is not found to be in consonance with the harmonious reading of Clause 1.4 of Appendix-II and Clause B (xxi) of Appendix-III.

15. As Clause 1.4 of Appendix-II specifically permits a constituent member of the Joint Venture to submit Tender, we concur with the finding of the learned Single Judge that there is no necessity to submit Power of Attorney.

16. In the present case in hand, the appreciation and interpretation of Clause 1.4 of Appendix-II read conjointly with Clause (xxi) of Appendix-III referred above, do not convey any meaning other than what has been held by the learned Single Judge. The said clauses do not envisage that if a constituent of the Joint-Venture submits a tender for and on behalf of the Joint Venture, any power of attorney is required to be submitted. The power of attorney is required only if an authorized person is submitting the tender, which is not so in the present case. Therefore, on facts, the learned CGC has failed to demonstrate that the order impugned in this intra-court appeal is vitiated by any patent error on the face of the record, or that the said order is against the established or settled principle of law, or that the said order is vitiated by any perversity whatsoever.

17. The learned CGC has also not been able to demonstrate that multiple interpretations could be given to the Clause 1.4 of Appendix-II of the tender document and therefore, the view taken by the Tender Evaluation Committee and/or by the Tendering Authority should be allowed to prevail as they are the tendering authority and know their requirement.

18. Under the circumstances, the question which arises for consideration in this intra-Court appeal is whether the Appellate Bench can substitute its view over the well considered opinion of the learned Single Judge. In a quest to the said query, it is noticed that the consistent judicial pronouncement of the Division Bench of this Court on the scope of intra-court appeal is to the effect that unlike other appeals where the whole evidence on record is examined anew by the appellate court, what is really examined in a writ appeal is the legality and validity of a judgment and/or order of the learned Single Judge and it can be set aside or should be set aside only when there is a patent error on the face of the record, or the

judgment is against the established or settled principle of law, or the judgment and/or order is vitiated by perversity. It has also been laid down that if two views are possible and a view, which is reasonable and logical, has been adopted by the learned Single Judge, which should, normally, be allowed to prevail. If one requires any authority on the point, one may refer to the pronouncement of this Court in the case of (1) *Assam State Electricity Board v. Sri Surya Kanta Roy*, (1994) 1 GLR 383: (1993) 0 Supreme(Gau) 190, (2) *State of Tripura v. Ramendra Nath Dey*, 2000 (3) GLT 214: (2001) 1 GLR 54: (2000) 0 Supreme (Gau) 280, (3) *Tractor and Farm Equipment Ltd. v. Secretary to the Gov. Of Assam Agriculture Department*, 2004 (1) GLT 117, (4) *Starline Agency v. Nabajit Das*, 2011 (1) GLT 710: (2011) 5 GLR 186: (2011) 0 Supreme(Gau) 149, (5) *North Eastern Regional Institute of Science and Technology v. Prabhanjan Kumar Pranav*, (2018) 1 GLR 383: (2017) 0 Supreme(Gau) 1509. In the case of *N. Ramachandra Reddy v. State of Telengana*, (2020) 16 SCC 478: AIR 2019 SC 4182, the Supreme Court of India has also held that while considering intra-court appeal, unless the appellate Bench concludes that the findings of Single Judge is perverse, it shall not disturb the same.

19. In view of the settled principles of law as laid down by the Supreme Court as well as by this Court, there is no perversity in the finding of the learned Single Judge in interpreting Clause 1.4 of the Appendix-II read with Clause B (xxi) of the Appendix-III of the Tender Documents and the discretion exercised by the learned Single Judge cannot be faulted with.

20. Accordingly, this Court finds no merit in the present writ appeal and the same is dismissed. The parties are left to bear their own costs.

JUDGE

JUDGE