

GAHC010178222024



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

Case No. : I.A.(Civil)/2770/2024

THE MUNICIPAL BOARD HAILAKANDI
REPRESENTED BY ITS CHAIRMAN, NAMELY, KALYAN GOSWAMI,
AGED ABOUT 51 YEARS, S/O LATE KANCHAN GOSWAMI, R/O
ASHRAM ROAD, HAILAKANDI TOWN, WARD NO. 6, P.O., P.S. AND
DIST-HAILAKANDI, ASSAM

VERSUS

ASHOK KUMAR DAS AND 5 ORS
S/O LATE ANIL CHANDRA DAS, R/O NATUN PARA, HAILAKANDI
TOWN WARD NO. VII, P.O., P.S. AND DIST- HAILAKANDI, ASSAM,
PIN-788151

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM
DEPARTMENT OF HOUSING AND URBAN AFFAIRS
DISPUR
GUWAHATI-6

3:THE STATE MISSION DIRECTOR
SMB (U)
ASSAM
DISPUR
GUWAHATI-6

4:THE EXECUTIVE OFFICER
MUNICIPAL BOARD
HAILAKANDI
DIST-HAILAKANDI
ASSAM
PIN-788151

5:THE TENDER EVALUATION COMMITTEE

MUNICIPAL BOARD
HAILAKANDI
REPRESENTED BY ITS CHAIRMAN
HAILAKANDI
ASSAM
PIN-788151

6:MUJIBUR RAHMAN BARBHUIYA
R/O RATANPUR ROAD
HAILAKANDI TOWN WARD NO. 11
P.O. AND DIST-HAILAKANDI
ASSAM
PIN-78815

Advocate for the Petitioner : MR. A M BARBHUIYA, S. M. ZINNA,MS A BEGUM,MS S
R MAZARBHUIYA

Advocate for the Respondent : MR H I CHOUDHURY, GA, ASSAM

Linked Case : **I.A.(Civil)/2696/2024**

MUJIBUR RAHMAN BARBHUIYA
S/O LT. MAHMUD R/O RATANPUR ROAD WARD NO. 11 DIST.
HAILAKANDI ASSAM PIN 788151

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF
ASSAM DEPTT OF HOUSING AND URBAN AFFAIRS DISPUR
GUWAHATI 6

2:THE STATE MISSION DIRECTOR
SBM (U)
ASSAM
DISPUR GUWAHATI 6

3:THE MUNICIPAL BOARD HAILAKANDI
REP BY ITS CHAIRMAN HAILAKANDI ASSAM PIN 788151

4:THE EXECUTIVE OFFICER
MUNICIPAL HAILAKANDI
DIST HAILAKANDI ASSAM PIN 788151

5:THE TENDER EVALUATION COMMITTEE
MUNICIPAL BOARD HAILAKANDI REP BY ITS CHAIRMAN

HAILAKANDI ASSAM PIN 788151

6:ASHOK KUMAR DAS

S/O LT. ANIL CHANDRA DAS R/O NATUN PARA WARD NO. VII
HAILAKANDI P.O. AND DIST. HAILAKANDI ASSAM PIN 788151

Advocate for : MR. S HAZARIKA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : **WP(C)/1947/2024**

ASHOK KUMAR DAS

S/O LT. ANIL CHANDRA DAS R/O NATUN PARA WARD NO. VII
HAILAKANDI P.O. AND DIST. HAILAKANDI ASSAM PIN 788151

VERSUS

THE STATE OF ASSAM AND 5 ORS

REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF
ASSAM DEPTT OF HOUSING AND URBAN AFFAIRS DISPUR
GUWAHATI 6

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3:THE MUNICIPAL BOARD HAILAKANDI

REP BY ITS CHAIRMAN HAILAKANDI ASSAM PIN 788151

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5:THE TENDER EVALUATION COMMITTEE

MUNICIPAL BOARD HAILAKANDI REP BY ITS CHAIRMAN
HAILAKANDI ASSAM PIN 788151

6:MUJIBUR RAHMAN BARBHUIYA

R/O RATANPUR ROAD WARD NO. 11 DIST. HAILAKANDI ASSAM PIN
788151

Advocate for : MR H I CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 16.09.2024

Heard Mr. H. I. Choudhury, learned counsel for the petitioner and Mr. A. M. Barbhuya, learned counsel for the Municipal Board, Hailakandi. Also heard Mr. B. Kaushik, learned counsel for the respondent No. 6 and Ms. U. Das, learned counsel for the respondent Nos. 1, 2 & 4.

2. The writ petitioner's grievance is that a Notice Inviting Tender (NIT) dated 12.02.2024 was issued by the Municipal Board, Hailakandi from approved and eligible Class-I Contractors/Firms, having "extensive experience of similar nature of works" for (i) Establishment & Commissioning of Material Recovery Facility (MRF) & Waster Compost Plant (W2C) against processing & disposal of SWM of Hailakandi Town and (ii) Development of Sanitary Landfill (SLF) at Kuchila, Hailakandi under SWM Projects at Hailakandi Town.

3. The petitioner, who was in other respects, otherwise eligible for participating in the NIT, did not participate in the said NIT, as the petitioner did not have the "extensive experience of executing similar nature of works", as stated above.

4. The petitioner came to learn on 15.03.2024 that only two bidders had participated in the NIT dated 12.02.2024 and both of them were evaluated as technically qualified bidders, though both of them did not possess the

requisite criteria of having “extensive experience of similar nature of works”.

5. The petitioner’s counsel submits that even though the bidders, who participated in the NIT did not have the essential condition of having “extensive experience of executing similar nature of works”, the Hailakandi Municipal Board proceeded to award the contract to the respondent No. 6, as his bid was the lowest. The petitioner’s counsel submits that as the two bidders, who participated in the NIT, did not have the essential condition required, the entire selection process had become vitiated. As such, the NIT dated 12.02.2024 and the subsequent selection of the respondent No. 6, pursuant to the said NIT, should be set aside.

6. This Court in its order dated 08.04.2024 had passed an interim order directing that no work order should be issued in pursuance to the NIT dated 12.02.2024.

7. The Municipal Board, Hailakandi has filed I.A.(Civil) 2770/2024, praying that the interim order passed by this Court on 08.04.2024 should be vacated/altered or alternatively to grant leave to the Municipal Board, Hailakandi, to re-tender the contract with modified and suitable terms and conditions.

8. The respondent No. 6 has also filed I.A.(Civil) 2696/2024 against the interim order dated 08.04.2024 praying for alteration/modification/vacation of the interim order dated 08.04.2024.

9. Mr. A. M. Barbhuya, learned counsel for the Municipal Board,

Hailakandi submits that the two bidders who participated in the NIT did not have the essential conditions required of a bidder, i.e. having "extensive experience of similar nature of works". He however submits that as the work was urgent in nature, the work order was allotted to the respondent No. 6. He submits that this Court should vacate/alter the interim order or in the alternative, allow the Municipal Board, Hailakandi to issue a fresh NIT, in lieu of the NIT dated 12.02.2024 with suitable modifications.

10. Mr. B. Kaushik, learned counsel for the respondent No. 6 submits that in view of the law laid down by the Supreme Court in the case of ***Central Coalfields Limited and another vs. SLL-SML (Joint Venture Consortium)***, reported in ***(2016) 8 SCC 622***, the Municipal Board, Hailakandi is empowered to deviate from the terms and conditions of an NIT. He also submits that as they are the author of the tender conditions, knowing their requirements, the prayer of the Municipal Board for issuing a new NIT, in lieu of the NIT, has made the respondent No.6's application infructuous.

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

12. It is an admitted fact that none of the bidders had the essential condition of having "extensive experience of similar nature of works", as required in the NIT dated 12.02.2024.

13. In the case of ***Central Coalfields Limited and another*** (supra), the Supreme has held that the issuance 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 also from the point of view of the employer. The terms of the NIT cannot be ignored as being redundant or superfluous and they must be given meaning and the necessary significance. Whether a term of the NIT is essential or not is a decision to be 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 and potential bidders as held in the case of ***Ramana Dayaram Shetty vs. International Airport Authority***, reported in ***(1979) 3 SCC 489***.

14. On perusing the averments made in para 4 of the affidavit of the Municipal Board, Hailakandi, it is clear that the bidders including the respondent No. 6, did not have the "extensive experience of similar nature of works". Despite the above, the Municipal Board has awarded the contract to the respondent No. 6. However, in terms of the judgment of the Supreme Court in the case of ***Central Coalfields Limited and another*** (supra), the employer has the inherent authority to deviate from an essential condition provided that the deviation is made applicable to all the bidders and potential bidders.

15. However, in this case, due to the fact that the petitioner did not have the essential condition of "extensive experience of similar nature of works", the petitioner could not participate in the tender process. The deviation made by the Municipal Board would have to be made applicable to all the bidders and potential bidders, which would have allowed the petitioner and other potential bidders to participate in the tender process. The same would be in public interest, as there would be more competitive bidding.

16. On considering the above and in view of the decision in the case of ***Central Coalfields Limited and another*** (supra), this Court is of the view that the alternative prayer made by the Municipal Board, Hailakandi should be allowed, i.e., they should be allowed to float a new NIT in respect of the above contract work with suitable modified conditions. The Hailakandi Municipal Board is accordingly allowed to issue a new NIT in lieu of the earlier NIT dated 12.02.2024, which should be cancelled by the Municipal Board, Hailakandi.

17. The writ petition and the two interlocutory applications are accordingly disposed of.

JUDGE

Comparing Assistant