

GAHC010181122024



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

Case No. : WP(C)/4483/2024

M/S MEGA ELECTRICALS
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
SHRI UMESH BORO, AGED ABOUT 56 YEARS, SON OF LATE
DHARMESWAR BORO RESIDENT OF HOUSE NO. 12,3RD BYELANE,
NABAGRAHA ROAD, SILPUKHURI, GUWAHATI 781003

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY PUBLIC WORKS
DEPARTMENT, DISPUR GUWAHATI 781006

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT BUILDING
ASSAM CHANDMARI
GUWAHATI 781003

3:THE BID EVALUATION COMMITTEE
REPRESENTED BY ITS CHAIRMAN
BID EVALUATION COMMITTEE CUM SPECIAL CHIEF ENGINEER PUBLIC
WORKS DEPARTMENT
BUILDING
HEALTH AND EDUCATION ASSAM CHANDMARI
GUWAHATI 781103

4:THE SPECIAL CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT
BUILDING
HEALTH AND EDUCATION ASSAM CHANDMARI
GUWAHATI 781103

5:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS (BUILDING AND NH) DEPARTMENT
ASSAM CHANDMARI GUWAHATI 781003

6:THE MEMBER SECRETARY
BID EVALUATION COMMITTEE CUM ADDITIONAL CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT
ELECTRICAL ASSAM CHANDMARI
GUWAHATI 781103

7:THE MEMBER
BID EVALUATION COMMITTEE CUM SUPERINTENDING ENGINEER (1)
O/O THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT
BUILDING
ASSAM CHANDMARI
GUWAHATI 781003

8:THE MEMBER
BID EVALUATION COMMITTEE CUM FINANCE AND ACCOUNT OFFICER
PUBLIC WORKS DEPARTMENT
BUILDING AND NH
O/O THE CHIEF ENGINEER PWD BUILDING
ASSAM CHANDMARI
GUWAHATI 781003

9:SHREE GAUTAM CONSTRUCTIONS COMPANY LIMITED
4TH FLOOR
AMAZA TOWER
A.T ROAD
OPP. PANBAZAR
OVERBRIDGE
GUWAHATI 781001 REP. BY VIJAY SINGH

10:M/S ASSAM ELECTRIC STORE
R.NB ROAD
KOKRAJHAR 783370 (BTC) ASSAM
INDIA AND 414 PURBI COMPLEX
A.T ROAD
GUWAHATI 781001 AND BRANCH OFFICE AT ULUBARI
SOUTH SARANIA BYE LANE NO. 1 HOUSE NO. 9
GUWAHATI 781007 REP. BY MR. BIMAL KUMAR DUGA

Advocate for the Petitioner : MR. N N B CHOUDHURY, MR. A A BARMAN, MR. D
SUTRADHAR

Advocate for the Respondent : GA, ASSAM, MS. A B KAYASTHA (R-10), MR. A N I HUSSAIN (R-
10), MR. R DUBEY (R-10), SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

03.10.2024

Heard Mr. N.N.B. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, PWD and Mr. R. Dubey, learned counsel for the respondent No.10.

2. The petitioner's case is that though his bid was technically responsive and was declared as L1, he has not been awarded the contract, in pursuant to the Notice Inviting Tender (NIT) dated 04.07.2024, for construction of 33 KV dedicated HT Line from 132 KV Pavoil GSS to BCMC&H Campus with Laying of 33 KV armoured cable on railway track crossing, Installation of 3 Nos. of 2500 KVA OLTC Transformer 33/0.433 KV Sub Station at BCMC&H Campus and Construction of one (1) No. of 33 KV Bay at 132 KV Pavoil GSS for Biswanath Chariali Medical College and Hospital at Biswanath Chariali, District Biswanath.

3. The petitioner's counsel submits that the respondent No.10 has been considered to be L1 in terms of the Minutes of the Financial Bid Evaluation Committee Meeting held on 06.08.2024, as per the price bid quoted in his "Form of Bid", which is Rs.10,50,03,707/-, while the respondent No.10's quoted price bid in the "Bill of Quantities" was Rs.13,32,87,265/-.

4. The petitioner's counsel submits that the petitioner's bid has now been treated as non-responsive in terms of Clause 13.2 of the NIT. He submits that in terms of Clause 13.2, a bidder is to quote his bid price in Section 6 (Form of

Bid), both in figure and words, which is to be duly signed by the bidder. He submits that as the "Form of Bid" was in unencrypted form, if the petitioner had put his bid price in the Form of Bid, the other bidders would have immediately come to know the price being offered by the petitioner and they would have had an opportunity to withdraw their earlier bid amount and make a new bid offer, as the same was allowed in terms of the NIT. He submits that to ensure that the other bidders would not be able to know the price bid of the petitioner, the petitioner had in Sl. No.1 of his "Form of Bid" stated that the offer to execute the works would be as per the quoted price in the "Bill of Quantities." He submits that due to the said declaration having been made by the petitioner in the "Form of Bid", the price bid offered in the Bill of Quantities should have to be considered, as the bid price in the Form of Bid.

5. The petitioner's counsel submits that the respondent No.10 could not be declared as L1 in view of the fact that the "Form of Bid" submitted by the respondent No.10 had many blank spaces which were mandatorily required to be filled up. In this respect, he submits that Para No.6 of the "Form of Bid" submitted by the respondent No.10 shows that the respondent No.10 had not appointed any person as the dispute review expert. The column regarding "witness" and "address" was also kept blank. There was also no digital signature on behalf of the respondent no.10. He accordingly submits that the declaration of the respondent No.10 as L1 could not have been done, as the "Form of Bid" submitted by the respondent No.10 was not complete in all respects.

6. The petitioner's counsel submits that in terms of Clause 13.1, when there is a difference of the "price bid" in the "Bill of Quantities" and in the "Form of Bid", the price bid mentioned in the Bill of Quantities would have to be

considered to be the "price bid" of the bidder. As the petitioner had stated in his "Form of Bid" that the price bid in the Form of Bid would be in terms of the price bid offered in the "Bill of Quantities", the price bid of the petitioner would have to be considered in terms of the price bid offered in the "Bill of Quantities". As such, the petitioner had substantively complied with the requirement of submitting his price bid in the "Form of Bid." On the other hand, the respondent No.10 had given his price bid in his Bill of Quantities as Rs.13,32,87,265/-, while in his Form of Bid he had given Rs.10,50,03,707/-. Though the State respondents were bound to accept the price bid in the "Bill of Quantities", due to two different price bids quoted by the respondent No.10, the respondents have unreasonably accepted the price bid offered by the respondent No.10 in his "Form of Bid", which is not in consonance with Clause 13.1 of the NIT.

7. The petitioner's counsel also submits that as the State respondents had accepted the "Form of Bid" submitted by the respondent No.10, even though he had not supplied all the information required as per the different columns in "Form of Bid", the same relaxation should have been given to the petitioner in respect of the petitioner not submitting the price bid in the Form of Bid, as required under Clause 13.2 of the NIT. He accordingly prays that the petitioner's financial bid should be declared responsive.

8. Mr. B. Gogoi, learned Standing Counsel, PWD submits that a reading of Clause 13.1 & 13.2 of the NIT clearly goes to show that when there are two different price bids in terms of the "Bill of Quantities" and in the "Form of Bid", the price bid quoted in the Form of Bid would prevail over the price quoted in the Bill of Quantities. He further submits that Clause 13.2 clearly provides that the price bid has to be submitted both in figure and in words, which is to be

duly signed by the bidder. A financial bid without any mention of price bid in the Form of Bid shall be treated as non-responsive and shall not be considered for evaluation. He submits that Clause 13.2 being an essential condition of the NIT, there was no infirmity in declaring the petitioner's bid as non-responsive, as the same had not been adhered to by the petitioner.

9. Mr. R. Dubey, learned counsel for the respondent No.10 reiterates the submission made by Mr. B. Gogoi, learned Standing Counsel, PWD. He submits that the signature of the respondent No.10 is present in the Form of Bid submitted by the respondent No.10, though it is not a digital signature.

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

11. Clause 13.1 and 13.2 of the NIT states as follows:-

“13.1 The contract shall be for the whole works as described in Sub-Clause 1.1 based on the priced Bill of Quantities submitted by the Bidder.

13.2 The Bidder shall fill in rates and prices and line item total (both in figures and words) for all items of the works described in the Bill of Quantities along with total bid price (both in figures and words) rounded to the nearest rupee. Items for which no rate or price is entered by the bidder will not be paid for by The Spl. Chief Engineer, PWD Bldg. (H&E), Chandmari, Guwahati-3 when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.

The Bidder must quote his bid price in Section-6 (Form of Bid) both in figure and words, which is to be duly signed by the bidder. A Financial Bid without any mention of bid price in the Form of Bid shall be treated as Non-responsive and shall not be considered for evaluation.”

12. Clause 13.2 clearly states that a bidder must quote his price in Section 6 (Form of Bid) both in figure and words. In the present case, the petitioner has

not put his bid price in figure and words. Clause 13.2 further states that a financial bid, without any mention of bid price in the Form of Bid, shall be treated as non-responsive. The same clearly goes to show that failure of putting the bid price in figure and in words would entail the financial bid of the bidder to be treated as non-responsive. As the petitioner had failed to quote his bid price in the "Form of Bid" both in figure and words, as required in terms of Clause 13.2, this Court does not find any infirmity with the decision of the State respondents in declaring the petitioner's bid as non-responsive.

13. In the case of ***Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and Another***, reported in ***(2016) 16 SCC 818***, the Supreme Court held 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. It was also held as under:

"13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala-fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.

xxx xxx xxx

15. We may add 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 constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala-fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

14. In the case of ***Galaxy Transport Agencies vs. New J.K. Roadways***, reported in ***2020 SCC Online SC 1035***, a three-judge Bench of the Supreme Court held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings.

15. In the case of ***Jagdish Mandal vs. State of Orissa***, reported in ***(2007) 14 SCC 517***, the Supreme Court held that Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala-fides. Its purpose is to check whether the choice or decision is made "lawfully" and not to check whether the choice or decision is "sound." When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out.

16. In the present case, it has been clearly spelt out in Clause 13.2 that non-mentioning of the bid price in the "Form of Bid" in the Financial Bid shall be treated as non-responsive and shall not be considered for evaluation. There can be no other interpretation to the above clause, except to come to a finding that the said condition is an essential condition of the NIT. As held by the Supreme Court in various decisions, the terms and conditions of a tender cannot be open

to judicial scrutiny, because the invitation to tender is in the realm of contract, except if the same is arbitrary and unreasonable or actuated by bias or malafide. In the present case, the petitioner's financial bid was not in consonance with the essential term and condition required under Clause 13.2 and as such, it cannot be said that the declaration of the petitioner's bid as non-responsive was arbitrary or unreasonable. Further, the petitioner has also not made any prayer for setting aside the decision of the respondents in declaring the petitioner's bid as non-responsive.

17. In view of the reasons stated above, this Court does not find any reason to exercise its discretion in this case. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant