

GAHC010194122024



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

Case No. : WP(C)/4785/2024

M/S S B ENTERPRISE
REPRESENTED BY ITS PROPRIETOR SRI SANJIB BHATTACHARJEE,
AGED ABOUT 48 YEARS,
SON OF LATE SHANKA BHATTACHARJEE,
R/O- BELTOLA, COLLEGE ROAD,
PO.- BELTOLA, P.S.- BASISTHA,
DISTRICT- KAMRUP(M), ASSAM,
PIN- 781028.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT
ASSAM
UZAN BAZAR
GUWAHATI-1

Advocate for the Petitioner : MR. B CHAKRABORTY, N GOGOI,MR A SARANIA,MR
R.BEZBARUAH,MR. P P GOGOI,MR. A I KATHAR,MR. M SARANIA

Advocate for the Respondent : GA, ASSAM,

BEFORE

THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Order

19.09.2024

1. Heard Mr. M Sarania, learned counsel for the petitioner. Also heard Mr. SS Roy, learned State counsel for the respondents.
2. The present application is filed challenging two qualifications criteria mandated for bidder in the bid for supply of learning and playing kit issued by the Directorate of Women and Child Development, Assam. The impugned qualifying criteria No. 3 prescribes that the bidder must have minimum average annual turnover of Rs. 70 crores during the financial year 2021-2022, 2022-2023 and 2023-2024. The further challenge is the qualification criteria No. 8, which prescribes that the bidder must have experience in supplying of goods, material in the State of Assam only under any Central / State Government / Semi-government Department during the financial year 2021-2022, 2022-2023 and 2023-2024 for at least a single work order value of Rs. 30 crores.
3. The additional challenge made is as regards the time given to submit bid i.e. initially 10 from the date of NIT in GeM which was subsequently extended to 13 days.
4. According to the petitioner, there is no reasonable ground for prescribing annual turnover of Rs. 70 crores during the last three financial years. Therefore, such condition is arbitrary and irrational. It is the further contention of the petitioner that by prescribing experience in supplying of goods and material in the State of Assam only, other bidders, who are not having such experience are deprived from participating in the tender process resulting in violation of Article

19(1)(g) of the Constitution of India inasmuch as according to the learned counsel for the petitioner such restriction cannot be said to be a reasonable restriction.

5. So far relating to the period prescribed for submission of tender, it is the contention of Mr. Sarania that during the first 10 days of periods, there were official holidays almost for 5 days. Therefore, the authorities have to consider such period inasmuch as such holidays disentitled many of the tenderers including the petitioner to obtain official documents required to be submitted with tender in the GeM portal. It is also contention of the petitioner that he could not get the information as regards uploading in the GeM for the reason that the petitioner cannot find out the number of bid in absence of any notification. In this context Mr. Sarania relies on the judgment of Hon'ble Apex Court in ***Jagdish Mandal vs State of Orissa and Ors.*** reported in **(2007) 14 SCC 517** to contend that the decision made by the authority is arbitrary and irrational and public interest is affected for the reason that this shorter period of time for submission of tender as well as prescription of high annual turnover shall disentitle many bidders like the petitioner to participate in the tender process.
6. Countering such argument, Mr. SS Roy, learned State counsel submits that as per general term and condition, the minimum period for bid submission should be clear 10 days, which has been followed in the case. So far relating to the challenge to the clauses, Mr. Roy submits that it cannot be said to be unreasonable condition prescribing turnover of Rs. 70 crores inasmuch as the supply involves 175 crores and the authorities want a supplier with a sound financial background. It is the contention of Mr. Roy that criteria of experience in

supply of goods and materials in the State of Assam only has been prescribed taking note of the special terrain of the State of the Assam inasmuch as such supply is to be made to Anganwadi Centre in different location which includes difficult terrain. Therefore, according to Mr. Roy such condition cannot be said to be arbitrary and illegal.

7. This court has given anxious consideration to the submissions made by the learned counsel for the parties.
8. In ***Jagdish Mandal (supra)***, the Hon'ble Apex Court while dealing with number of previous determinations made by the Hon'ble Apex Court as regards judicial review of Govt. Contract/ tender held that when the power of judicial review is invoked, in the matters relating to tender or award of contract, certain special feature should be born in mind. It was held that a contract is a commercial transaction. Evaluating tenders and awarding contract are essentially commercial in nature and therefore, principle of equity and natural justice stay at a distance. The Hon'ble Apex Court further went to say that if the decision relating to award of contract is bona-fide and is in public interest, court will not, in exercise of its power of judicial review, interfere even if some procedural aberration or error in assessment or prejudice to a tenderer is made out. It was held that the power of judicial review will not be permitted to invoke to protect private interest at the cost of public interest or to decide contractual disputes. While concluding, the Hon'ble Apex court culled out certain exceptions when the power of judicial review can be exercised such as whether the process adopted or decision made by the authority is mala-fide or intended to favour some one.

9. In the case in hand, the petitioner has failed to show any mala-fide in the process adopted while issuing the tender in GeM inasmuch as to contend alleged mala-fide, specific statements are required to be averred and the person against whom mala-fide is alleged, is required to be made party which is not done in the present case. Further, from the prescription of the GeM portal as well as the general condition of the contract, it is seen that the tender has been issued in the GeM portal and petitioner admittedly is registered in the GeM portal as a contractor/ supplier and therefore, the petitioner cannot complain that less time was granted inasmuch as the condition of the GeM portal itself prescribes clear period of 10 days is to be given, which has been adopted in this case.

10. Now, coming to the other contention, this court cannot find fault with the authorities, if they decide to fix a criteria of having minimum turnover of Rs. 70 crores as prescribed under qualification No. 3 more particularly, when the contract itself is a supply work of Rs. 175 crores. It is by now well settled that the employer is the best authority to decide their requirement and it is not the job of a writ court while exercising power of judicial review to determine what should be the minimum financial turnover i.e. required by the employer more particularly in absence of any unreasonableness. Similar is the case as regards seeking experience of supplying goods in Assam worth 30 crores inasmuch, this court is of the opinion that the employer is within their domain to prescribe such criteria.

11. Therefore, in the totality of the matter and for the reason recorded, this court neither find the process adopted by the employer to be so arbitrary or irrational nor the decision can be treated as a decision that no responsible

authority acting reasonably and in accordance with relevant law could have reached, as held in ***Jagdish Mandal (supra)***. So far relating to the contention of effect on public interest, in the considered opinion of this court, the same cannot be a ground, when the petitioner himself is admittedly not qualified.

12. Accordingly, in view of the aforesaid, the present writ petition stands dismissed. Parties to bear their own costs.

JUDGE

Comparing Assistant