

GAHC010197482023



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

Case No. : WP(C)/5201/2023

BRAHMAPUTRA UDYOG PVT LIMITED
MLN ROAD, PANBAZAR, GUWAHATI, PIN-781001, KAMRUP (M), ASSAM,
REPRESENTED BY ITS DIRECTOR - SRI MANOJ SARAF, AGE - 50 YR, S/O
LATE RATAN LAL SARAF, R/O JORPUKHURI, UZAN BAZAR, GUWAHATI-
781001, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF HOUSING AND URBAN AFFAIRS, DISPUR

2:THE PROJECT DIRECTOR
JICA ASSISTED GUWAHATI WATER SUPPLY PROJECT
TRIPTI TOWERS
1ST FLOOR
GANESHGURI
GUWAHATI-781005

3:M/S PURBANCHAL ENTERPRISE PVT. LTD. AND M/S PRAKASH
ENTERPRISE
(JOINT VENTURE)
S.S. ROAD
LAKHTOKIA
GUWAHATI-781001
REPRESENTED BY ITS PROPRIETOR SHRI RAVI PASARI

4:M/S BHASKAR BARUAH
ZOO ROAD
GUWAHATI-3
REPRESENTED BY SHRI BHASKAR BARUAH

5:M/S TAZUDDIN AHMED
MORI MUSLIM GAON
MORIGAON-782105
REPRESENTED BY TAZUDDIN AHMED

6:M/S SUNRISE ASSOCIATES
SEUJI PATH
ZOO ROAD TINALI GUWAHATI-781003
REPRESENTED BY ITS PROPRIETOR SMTI URMILA BARUAH

7:M/S KBS COMMERCIAL PVT. LTD.
HOUSE NO. 7
SWAHID DILIP CHAKRABORTY PATH
R.G. BARUAH ROAD
GUWAHATI-781005
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
SHRI MANOJ KUMAR MORE

8:M/S S.S. ENTERPRISES AND M/S BAALAARK ENTERPRISE
(JOINT VENTURE)
OPP. MASZID
JYOTIKUCHI
LOKHRA ROAD
GUWAHATI
KAMRUP METROPOLITAN
ASSAM-781034
REPRESENTED BY ITS PROPRIETOR MOHAMMAD SHEKH SEDULLA

Advocate for the Petitioner : Mrs. M. Hazarika, Sr. Advocate
Ms. S. Newar, Advocate
Advocate for the Respondents : Mr. K. Bhuyan, Advocate
Mr. H. Betala, Advocate
Mr. S. Bora, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 09.04.2024

Date of Judgment : 09.04.2024

JUDGMENT AND ORDER (ORAL)

This is an application under Article 226 of the Constitution challenging the undated and unsigned Evaluation Sheet (Annexure-5); the minutes of the meeting and notification dated 05.08.2023 whereby the respondent Nos.3 to 8 have been chosen as the six top vendors for awarding the contract of "parallel rate contract for providing drinking water House Service Connections in lots of 5,000 each for total of approximately 30,000 households in South-Central and North Guwahati area providing all the required goods and materials, install the employer supplied water meters, install the piles and accessories, excavation and road restoration works all complete'.

2. From the records, it reveals that the respondent No.2 herein had published a Notice Inviting Bids for providing drinking water House Service Connections by IFB No.GWSP/LCB/C-12B1/2023-86 dated 07.05.2023 in respect to the works described herein above. Pursuant to the said Notice Inviting Bids, as many as 16 bidders participated. The Tender Committee in its meeting held on 18.07.2023, evaluated the bids of all the 16 participating bidders. Thereupon, after detail evaluation of the bids, the Tender Committee found bids of 12 bidders meeting the minimum requirement in the Inviting for Bids (IFB) whereas 4 non-compliant bidders were rejected. Thereupon, in terms with para 2.2 of the IFB, and more particularly, paragraph No.2.2.1, the evaluation was carried out. While carrying out the said evaluation, the petitioner as well as the respondent Nos.3 to 8 were awarded the following marks:-

Bidders	Marks obtained
Respondent No.3	82.81
Respondent No.4	63.51
Respondent No.5	62.27
Respondent No.6	53.35
Respondent No.7	45.87
Respondent No.8	42.65
Petitioner	28.92

In view of the fact that the petitioner was assessed at 28.92 marks, the petitioner was put at Sl. No.10. Consequently, the impugned order was passed thereby selecting the respondent Nos.3 to 8 as the six top vendors who would be granted the contract of 5,000 each out of the 30,000 household in South Central and North Guwahati Area.

3. Being aggrieved by the said recommendation and the subsequent awarding of the contracts to the respondent Nos.3 to 8 on 05.08.2023, the petitioner approached this Court by filing the instant writ petition. Amongst the various contentions which have been forwarded, it reveals that one of the contention was that while granting marks for work experience, the marks were awarded taking into account the House Service Connections of one D. Kumar and Company which was otherwise a disqualified bidder.

4. When the instant writ petition was moved before this Court, this Court vide a detailed order dated 12.09.2023 directed while issuing notice that till the returnable date, the notification of the award dated 05.08.2023 in so far as 6th rank bidder, i.e. respondent No.8 shall remain

suspended. It is under such circumstances, the respondent No.8 approached this Court by filing an Interlocutory Application which was registered and numbered as I.A.(C) No.3166/2023 seeking vacation, modification and/or alteration of the order dated 12.09.2023. Thereupon, when the matter was listed before this Court, directions were issued to the respondent Nos.1 to 2 to provide the computation of the marks in terms with para 2.2.1 as per original assessment so carried out as well as the computation of marks by taking into account the House Service Connections of the qualified bidders. In accordance to the said direction passed by this Court on 28.11.2023, Mr. S. Borah, the learned Standing Counsel for the respondent Nos.1 & 2 placed before this Court the computation as per original assessment so carried out and the computation by taking into account the House Service Connections of the qualified bidders. The said two documents were placed on record and marked with the letters "X" and "Y".

5. From a perusal of the documents marked with the letters "X" and "Y" and more particularly the document marked with the letter "X", it is seen that the assessment was carried out on the basis of the House Service Connections of the respondent No.4 whose work experience was in respect to 8218 connections. Be that as it may, in respect to the petitioner, the Official Respondents had assessed the petitioner on the basis of 1330 House Service Connections thereby rejecting the retrofitting connections and consequently, the petitioner was only given 4.86 marks out of marks on account of work experience. This assessment so carried out which led to the passing of the impugned order had put the petitioner at Serial No.10 out of the sixteen participating bidders.

6. The second document which is marked with the Letter "Y" is a document by which the petitioner's entire House Service Connections were taken into account, i.e. 4231 and the petitioner was awarded 15.45 marks as against 30 marks on account of work experience. On the basis of the second computation which was carried out pursuant to the passing of the order by this Court, the respective standing of the private respondents and the petitioner is noted herein under:-

Bidders	Marks
Respondent No.3	89.46
Respondent No.4	67.91
Respondent No.5	66.96
Respondent No.6	57.20
Respondent No.7	50.94
Respondent No.8	44.26
The petitioner	41.76

7. Therefore, from the above assessment, it would be seen that even after the necessary corrections carried out as per the grievances of the petitioner, the standing of the petitioner does not come within the ambit of the first six top vendors. Be that as it may, this Court vide an order dated 30.11.2023 taking into account those documents which have been kept on record and marked with the letters "X" and "Y", vacated the earlier order dated 12.09.2023. However, while doing so, this Court on account of the submission made by Mrs. M. Hazarika, the learned senior counsel for the petitioner to the effect that the computation shows that the documents on the basis on which the respondent Nos.3 & 5 have shown

their work experience for the House Service Connections could not have been taken into consideration in as much as they were registered with certain authorities which have nothing to do with the House Service Connections observed vide the said order dated 30.11.2023, this Court observed that works allotted to the respondent Nos.3 & 5 shall be subject to the outcome of the writ petition.

8. Pursuant thereto, the parties have filed various pleadings before this Court in as much as the respondent Nos.3 & 5 have shown that they had carried out House Service Connections for which they are entitled to be considered and have been rightly considered so. On the other hand, it was submitted by Mrs. M. Hazarika, the learned senior counsel for the petitioner that the documents which have been enclosed by the respondent No.5, the same on the face of it appears to be documents, the authenticity of which are questionable. The learned senior counsel for the petitioner drew the attention of this Court to the documents dated 10.06.2019 issued purportedly by the Kolkata Municipal Corporation and submitted that the said document could not have been taken into consideration the said document is not on a letter head of the said Corporation. She further submitted that why a Corporation would even spell its name wrongly in as much as the spelling used of Kolkata as 'Kolkatta'. The learned senior counsel for the petitioner further submitted that all the documents submitted by the respondent No.5 would also show that while he hails from Morigaon as per his registration but these documents do not refer to him as Tajuddin Ahmed from Morigaon but rather from Guwahati. The learned senior counsel for the petitioner, therefore, submitted that the respondent authorities have illegally taken

into consideration that these documents without making necessary investigation or enquiry for which the bid submitted by the respondent No.5 ought not to have been taken into consideration.

9. On the other hand, Mr. K. Bhuyan, the learned counsel appearing on behalf of the respondent No.5 submitted that those mistakes which have been mentioned by the learned senior counsel for the petitioner have been duly clarified in the affidavit, and as such, the question does not arise for interference with the award passed in favour of the respondent No.5.

10. This Court had perused the materials on record and the contentions forwarded by the respective parties, have been considered. The submissions so made by the learned senior counsel for the petitioner are submissions within the realm of disputed question of facts. Unless materials are placed from the respective Departments who issued the certificates to the respondent No.5 to the effect that the said documents were not authentic/fake/fraudulent the question of this Court at this stage to enter on the authenticity of the said documents would amount to exercising jurisdiction of judicial review far beyond the scope envisaged under law.

11. This Court, however, finds it very pertinent to take note of the Notice Inviting Bids dated 07.05.2023 wherein it categorically mentions that there is a code of integrity prescribed for bidders as specified in the Assam Public Procurement Act, 2017 and the Assam Public Procurement Rules, 2020 and any breach thereof has consequences which is apparent from the perusal of the Clause 11.3 and other Clauses of the IFB.

12. It is the opinion of this Court that if fraudulent/fake documents have been placed before the authority by any bidder and on the basis have been successful to obtain the contract, the same would violate the Code of Integrity prescribed in both the Assam Public Procurement Act, 2017 and the Assam Public Procurement Rules, 2020 and consequences thereof should follow.

13. Under such circumstances, this Court directs the respondent Nos.1 & 2 to carry out the necessary enquiry and investigation in respect to the documents which were submitted by the respondent No.5. This Court opines and directs that if during the enquiry, any materials comes to light which would show that the respondent No.5 had violated the Code of Integrity, the Authority after giving due opportunity of hearing to the respondent No.5, deal with the Respondent No.5 in accordance with law.

14. With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant