

GAHC010211562024



2024:GAU-AS:12962

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

Case No. : WP(C)/5195/2024

OM PRAKASH AGARWALLA
S/O- LATE ARJUN LAL AGARWALLA,
R/O- TOWN BANTOS, WARD NO-14,
P.O AND P.S- KHALMATI, NORTH LAKHIMPUR, DIST- LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY, REVENUE AND DISASTER
MANAGEMENT DEPARTMENT, GOVT OF ASSAM, DISPUR, ASSAM
SECRETARIAT, P.O.-ASSAM SACHIVALAYA, GUWAHATI-781006

2:THE CHIEF ENGINEER
PWD BUILDING

O/O THE CHIEF ENGINEER
PWD BUILDING
CHANDMARI
GUWAHATI-03
KAMRUP (M)
ASSAM

3:THE SPECIAL CHIEF ENGINEER
THE CHIEF ENGINEER
PWD BUILDING
(HEALTH AND EDUCATION) CHANDMARI
GUWAHATI-03
KAMRUP (M)
ASSAM

4:TECHNICAL BID EVALUATION COMMITTEE
REP. BY THE CHIEF ENGINEER

PWD BUILDING
CHANDMARI
GUWAHATI-03
KAMRUP (M)
ASSAM

5:THE FINANCE DEPARTMENT
REP. BY THE COMMISSIONER SECRETARY TO THE GOVT OF ASSAM

FINANCE DEPARTMENT
GOVT OF ASSAM
DISPUR
ASSAM SECRETARIAT
P.O. ASSAM SACHIVALAYA
GUWAHATI-78100

Linked Case : WP(C)/4658/2024

MAHESH AGARWALLA AND ANR
S/O- OMPRAKASH AGARWALLA

R/O- TOWN BANTOS
WARD NO-14

P.O AND P.S- KHALMATI
NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM

2: OMPRAKASH AGARWALLA
S/O- LATE ARJUNLAL AGARWALLA

R/O- TOWN BANTOS
WARD NO-14

P.O AND P.S- KHALMATI
NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE DEPARTMENT OF REVENUE AND
DISASTER MANAGEMENT GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE CHIEF ENGINEER
PWD BUILDING

O/O THE CHIEF ENGINEER

PWD BUILDING
CHANDMARI

DIST- KAMRUP (M)
GUWAHATI-03
ASSAM

3:THE SPECIAL CHIEF ENGINEER

PWD (BUILDING) (HEALTH AND EDUCATION)
ASSAM

CHANDMARI

DIST- KAMRUP (M)
GUWAHATI-03
ASSAM

4:TECHNICAL BID EVALUATION COMMITTEE
REP. BY THE CHIEF ENGINEER
PWD BUILDING

CHANDMARI

DIST- KAMRUP (M)
GUWAHATI-03
ASSAM

5:THE FINANCE DEPARTMENT
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06
ASSAM

For the petitioner (s) : Mr. N. Choudhury, Advocate

For the respondent (s) : Mr. B. Gogoi, SC, PWD(B)
Mr. P. Nayak, SC, Finance

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

19.12.2024

Heard Mr. N. Choudhury, the learned counsel appearing on behalf of the petitioners in both the writ petitions. Mr. A. Bhattacharjee, the learned counsel appears on behalf of the Revenue Department; Mr. B. Gogoi, the learned counsel appears on behalf of the PWD (Building) as well as Mr. P. Nayak, the learned counsel appears on behalf of the Finance Department.

2. Both the writ petitions have been filed assailing the minutes of the Technical Bid Evaluation Committee dated 19.04.2024 whereby the respondent No.4, i.e. the Technical Bid Evaluation Committee had cancelled the tender process and also decided to forfeit the bid security so submitted by the petitioner in both the writ petitions.

3. Briefly stated, the facts which arise for consideration is that the Chief Engineer, PWD (Building) had issued a press notice dated 14.02.2024 inviting fresh bids for the work of construction of Tai Museum at Heritage Site of Habung in Dhemaji District under the PWD Global Head for the year 2023-24. Subsequent thereto, a detail notice inviting tender dated 19.02.2024 was

issued. The petitioner in both the writ petitions admittedly are related in as much as the petitioner in WP(C) No.5195/2024 is the father of the petitioner in WP(C) No.4658/2024. Both the petitioners thereupon submitted their bids. Upon submission of the bids, a technical evaluation was carried out whereby the Technical Evaluation Committee was of the opinion that the petitioner in both the writ petitions had committed breach of the Code of Integrity which was found to be in conflict of interest as per the Assam Public Procurement Rules, 2020, and more particularly, Clause 6 (3) (c), (d), (e) and (f). Accordingly, the Technical Evaluation Bid Committee, i.e. the respondent No.4 in both the writ petitions decided to cancel the tender process and forfeit the bid security of the petitioner in both the writ petitions. It is under such circumstances, the instant writ petitions were filed.

4. It is relevant to take note of that WP(C) No.4658/2024 came up before this Court on 13.09.2024 and WP(C) No.5195/2024 came up before this Court on 04.10.2024.

5. Mr. N. Choudhury, the learned counsel appearing on behalf of the respective petitioner in both the writ petitions during the course of the hearing has drawn the attention of this Court to Clause 38 of the "Instruction to Bidders" which contains an appellate provision against any decision, action or omission

regarding the procurement sought to be made by way of the tender in question. The learned counsel therefore submitted that taking into account that certain facts needs to be adjudicated upon factually, the interest of the petitioners in both the writ petitions would be well served to approach the Appellate Authority as mentioned in Clause 38 of the "Instruction to Bidders". He also submitted that the petitioners had also submitted the representations earlier which have not been taken into consideration.

6. Mr. B. Gogoi, the learned counsel appearing on behalf of the PWD submitted that he has no objection in the petitioners approaching the Appellate Authority as mentioned in Clause 38 of the "Instruction to Bidders".

7. Taking into account the above, this Court therefore disposes of both the writ petitions with the following observations and directions:-

(i) The instant writ petitions stands closed on the ground of availability of an efficacious remedy as would appear from a perusal of Clause 38 of the "Instruction to Bidders" read with Section 38 of the Assam Public Procurement Act, 2017.

(ii) The respective petitioner in both the writ petitions are given the liberty to avail the appellate provision under

Clause 38 of the "Instruction to Bidders" within 15 days from the date of the instant order.

(iii) The Appellate Authority shall upon filing of such appeals shall decide the same by following the mandate of Section 38, more particularly Section 38(2) and 38(3) of the Assam Public Procurement Act, 2017.

8. Before parting with the record, this Court finds it relevant to clarify that the grievance of the petitioners which has been entertained in the instant proceedings is only in respect to the forfeiture of the bid security. The same has no connection with the initiation of fresh tender process or cancellation of the tender process.

JUDGE

Comparing Assistant