

GAHC010255122022



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

Case No. : WP(C)/8007/2022

M/S ASSAM ELECTRIC STORE
A PROPRIETORSHIP FIRM OF SRI BIMAL KUMAR DUGAR HAVING ITS
REGISTERED OFFICE AND P.S. KOKRAJHAR, DIST. KOKRAJHAR, ASSAM,
REP. BY ITS AUTHORISED REPRESENTATIVE SRI KAMAL SINGH DUGAR.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SPL. SECRETARY TO THE GOVT. OF
ASSAM, PUBLIC WORKS DEPARTMENT (P.W.D.) DISPUR, ASSAM,
GUWAHATI-06

2: THE CHIEF ENGINEER

P.W.D.
BUILDING
ASSAM
CHANDMARI
GUWAHATI-3.

3: THE ADDITIONAL CHIEF ENGINEER

P.W.D. (ELECT.)
ASSAM
CHANDMARI
GUWAHATI-03.

4: THE SCRUTINY COMMITTEE
UNDER THE OFFICE OF CHIEF ENGINEER
P.W.D
BUILDING
ASSAM

CHANDMARI

GUWAHATI-03

Advocate for the Petitioner : MR. R DUBEY

Advocate for the Respondent : SC, PWD

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

03.05.2024

1. Heard Mr. R. Dubey, learned counsel for the petitioner and Mr. B. Gogoi, learned counsel for the PWD.
2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has (i) assailed the decision of the tender scrutiny committee, conveyed by letter no. CS/CE/BLD/ ELECT/17/2022-2023/24 dated 23.11.2022, issued by the Addl. Chief Engineer, PWD (Elect.), Assam, to hold that the "justification" given by the petitioner was not acceptable and thereby rejecting the bid of the petitioner as non-responsive; (ii) for quashing the fresh tender process through NIT dated 02.12.2022; and (iii) for directing the respondents to award the contract to the petitioner.
3. The case of the petitioner is that the petitioner had submitted his bid at 30.59% lower than the estimated amount. The petitioner was asked to justify his low tender bid amount. The petitioner subsequently submitted "justification" for submitting his low bid amount. The same was scrutinized by the Tender Committee and was rejected on five counts, which was communicated, vide letter dated 23.11.2022 issued by the Addl. C.E., PWD (Electric), Assam. The meeting minutes of the Tender Scrutiny Committee held on 18.11.2022,

rejecting the petitioner's "justification" for his low bidder amount has also been made a part of the order of this Court dated 30.12.2022.

4. The rejection of the petitioner's "justification" for the low bid amount submitted by him, in terms of the Tender Committee meeting minutes dated 18.11.2022 is as follows-

"1) In the original estimate, 250 KVA 11/0.433 KV Copper Wound Transformer was considered whereas the bidder has submitted Tax Invoice for Aluminum Wound Transformer.

2) Required brand for U.G. cable is to be Havells/ RR Cable/Polycab, whereas the bidder has submitted Tax Invoice for KEI.

3) Regarding D. G set, the bidder has submitted only the company quotation, no Tax Invoice has been submitted

4) Fail to provide storage of Stadium Mast as per BOQ.

5) The bidder has mentioned that there is a Godown at Boragaon, whereas the materials are shipped to different places of Assam as per Tax Invoice."

5. Mr. B. Gogoi, learned counsel for the PWD submits that pursuant to the NIT dated 02.12.2022, one M/s Assam Electricals has been awarded the contract work for "Construction of Mukti Yodha Bhumidhar Bordoloi Suwarani Stadium at Malor Gaon, Sootea, District- Biswanath under Signature Project for the year 2021-22" (External Electrification Works) at the bid price of Rs.1,77,57,517/-. He submits that M/s Assam Electricals has completed 85% of the contract work. He further submits that due to enhancement of the contract work, the estimate amount has been enhanced to Rs.2,30,84,634/-. In this regard he has submitted letters dated 22.12.2022 and 23.12.2022 issued by the

Addl. Chief Engineer, PWD(Elect.), Assam and the status report. The letters dated 22.12.2022 and 23.12.2022 issued by the Addl. Chief Engineer, PWD(Elect.), Assam and the two connected documents are made a part of the record and marked as Annexure- X, (Page 1-4).

6. On perusing the said documents, this Court finds that M/s Assam Electricals has completed 85% of the contract work. Further, M/s Assam Electricals is not a party in this writ petition. Be that as it may, the facts show that the contract work has nearly been completed and as such, the prayer of the writ petitioner to be awarded the contract work and for quashing the NIT dated 02.12.2022 cannot be granted at this stage, due to the above reasons.

7. This writ petition is not being decided on merits in relation to the contentions raised by the parties and is being dismissed, only due to the fact that the contract work in question is being carried out by M/S Assam Electricals, who has completed 85% of the work. Further, no stay/interim order was passed in this case.

8. In view of the above facts, the writ petition stands dismissed. However, if the petitioner is still aggrieved with the action of the respondents and is of the view that he is entitled to damages due to the rejection of his "justification", he may approach the appropriate forum with his grievance, if so advised.

JUDGE

Comparing Assistant