

GAHC010255432024



2024:GAU-AS:12933

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

Case No. : WP(C)/6377/2024

JYOTISH DAS
S/O SRI STISH DAS
VILL- BAREGAON
P.S. AND P.O. SORBHOG
DIST. BARPETA, ASSAM-781317

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF HOUSING AND URBAN AFFAIRS, A- BLOCK,
GROUND FLOOR, JANATA BHAWAN, DISPUR, GUWAHATI-06

2:THE CHIEF ENGINEER (TECHNICAL)
DEPARTMENT OF HOUSING AND URBAN AFFAIRS
55- RAJGARH MAIN ROAD
GUWAHATI-781003

3:SRI NARAYAN JYOTI TALUKDAR
SORBHOG
P.O. AND P.S. SORBHOG
DIST. BARPETA
ASSAM-781317

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the petitioner : Mr. S. Hoque, Advocate
Advocate for the respondent 1& 2 : Mr. SR Boruah, Advocate
Dates of hearing : 16.12.2024
Date of judgment : 19.12.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. S Hoque, learned counsel for the petitioner. Also heard Mr. SR Boruah, learned counsel for the respondent Nos. 1 & 2.

2. Mr. S Hoque, learned counsel for the petitioner submits that in terms of Clause 29(IV) of the Notice Inviting Tender (NIT), a bid value beyond 10% below the estimated amount cannot be considered and would have to be rejected as nonresponsive.

3. The petitioner's counsel submits that the petitioner's bid was exactly 10% below the estimated price. However, the bid value of the respondent No.3 was beyond 10% below the estimated price, i.e., by 43 paise.

4. The petitioner's counsel submits that the bid of the petitioner, the respondent No. 3 and one other tenderer Harshajit Roy, who is not a party to the case, are as follows:-

Petitioner (L3) - Rs.10298700.00

Harshajit Roy (L2) - Rs.10298699.99

Respondent No. 3 (L-1)- Rs.10298699.57

5. The petitioner's counsel submits that as the bid of the respondent No. 3 was lower than 10% below the estimated amount by 43 paise, the said bid amount would have to be rejected as nonresponsive, in terms of Clause 29(IV) of the NIT. Similarly, would be the fate of the bid of Harshajit Roy, whose bid was lower than 10% below the estimated amount by 1 paise. However, the bid of the respondent No. 3 has been held to be L-1 and the bid of the petitioner has been held to be L-3, even though the petitioner's bid amount was exactly 10% below the estimate value of the contract. He submits that once the bid of the respondent No. 3 or any other person is below 10% of the estimated amount in terms of Clause 29(IV) of the NIT, the financial bid of the respondent No. 3 and Harshajit Roy would have to be considered to be non-responsive in terms of Clause 26(III) of the NIT. He accordingly submits that the acceptance of the bid of the respondent No. 3 by the Chief Engineer (Technical) Department of Housing & Urban Affairs, Guwahati, vide letter of acceptance dated 20.11.2024 for the contract work, should be set aside and the said contract work should be allotted to the petitioner.

6. Mr. SR Boruah, learned counsel for the respondent Nos. 1 & 2 submits that the bid of the respondent No. 3 was lower than 10% below the estimated amount by 43 paise. However, the Tender Committee had to follow the Notification No. CRD.119/2003/5 dated 21.09.2004, issued by the Commissioner & Special Secretary, Government of Assam, PWD, wherein rounding up of the bid price to the nearest rupee value was to be done. The counsel for the

respondent Nos. 1 & 2 submits that in view of the rounding up of the bid price of the respondent No. 3 to the nearest rupee, there has been no violation of Clause 29(IV) of the NIT. He further submits that besides the above, the bid capacity of the respondent No. 3 was significantly better than the bid capacity of the petitioner in terms of Clause 29(V) of the NIT. He accordingly submits that the writ petition should be dismissed.

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

8. Clause 26(III), Clause 29(IV) and 29(V) of the NIT are reproduced herein below as follows:-

“26(III) If a “Financial Bid” is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

29(IV) Quoted bid value of beyond 10% (ten percent) below of the estimated amount shall not be considered for award. Rates quoted by the Bidder beyond 10% lower than the estimated rates shall be rejected as non-responsive.

29(V) In case more than 1(one) bidder stand as L1 as per the Comparative Statement of Financial Bids, the employer will decide & allot the award of contract to bidder, whoever found suitable through analysis to carry out the contract. The solely decision of the Department/Employer what so ever in this regard shall be final and binding upon each bidder. Every bidder shall carefully pursue this clause and his tender accordingly. If the tenderer submits his bid it will be presumed that he has submitted this bid on agreeing with this

clause along with all clauses of the Bid Documents.”

9. Notification No. CRD.119/2003/5 dated 21.09.2004, issued by the Commissioner & Special Secretary, to the Government of Assam, PWD, states as follows:-

“To

1. The Chief Engineer, PWI) (Roads), Assam, Chandmari, Guwahati -3. .
2. The Chief Engineer, PWD (Buildings), Assam, Chandmari, Guwahati-3.
3. The Chief Engineer, PWD (NH Works), Assam, Chandmari, Guwahati-3.
4. The Chief Engineer, PWD) (Border Roads), Assam, Chandmari, Guwahati-3.
5. The Chief Engineer, PWD (ARIASP/RIDF). Assam, Chandmari, Guwahati - 3.

Sub: Financial Evaluation of Bid.

Sir.

It has been observed during scrutinizing of tender documents and comparative statements framed by you on financial evaluation that you have entered the grand total "Bid Price' upto one paise. As transaction from Bank is not made upto paise the amount so taken into consideration has no meaning. Hence, the Bid price may be rounded off at grand total amount arrived at after multiplication & summing up from detailed itemwise rate and quantities to nearest rupee by ignoring paise below fifty and to next rupee for amount with

fifty paise or more.

Thus, in the financial bid the ranking of bidders should be made and may be forwarded to the Govt. for placing before the tender committee.

This has come in to force immediately from the date of issue of this circular.

Please circulate the contents of this circular to all EDAEE under your jurisdiction for necessary action."

10. The counsel for the respondent Nos. 1 and 2 has also submitted a letter dated nil issued by the Chief Engineer, Technical Cell, Department of Housing & Urban Affairs, Guwahati addressed to the counsel for the respondent Nos. 1 & 2, which states that besides the bid of the respondent No. 3 having been rounded off to the nearest rupee by ignoring paise below fifty paise and rounding upwards paise above 50 paise to the nearest rupee, the bid capacity of the respondent No. 3 was significantly better than the bid capacity of the petitioner.

11. In the present case, the petitioner's only challenge to the selection of the respondent No. 3 as the successful tenderer, is on the ground that the bid of the respondent No. 3 was beyond 10% below the estimated price and as such, hit by Clause 29(IV) of the NIT.

12. The fact that the bid of the respondent No. 3 was lower than 10% below the estimated rate by 43 paise, is not in dispute. However, in view of the fact that the notification dated 21.09.2004 allows for the rounding off the bid price to the nearest rupee, by rounding upwards paise above 50 paise, this Court does not find any ground to interfere with the decision of the respondent authorities in awarding the contract to the respondent No. 3. The bid of the

respondent No. 3 would have to be considered to be 10% below the estimated price. Further the notification dated 21.09.2004 has not been put to challenge. The difference of 43 paise in a contract matter involving Rs.1,02,98,700, in the view of this Court, is being hyper technical, as 43 paise does not actually make any real difference. In any event, the notification dated 21.09.2004 having provided for rounding off the bid price of a tenderer to the nearest rupee value, shows that the bid price of the respondent No. 3 would now be the same as the bid price of the petitioner, i.e. Rs.1,02,98,700. As such, Clause 29(IV) of the NIT has not been violated.

13. The rounding off the value of paise to the nearest rupee is not unreasonable as the same is also allowed in terms RBI Circular RPC D No. RF.BC.68/D.1-90-91 dated 01-01-1991, which advised banks that all transactions, including payment of interest on deposits/charging of interest on advances, should be rounded off to the nearest rupee, i.e., fraction of 50 paise and above shall be rounded off to the next higher rupee and fraction of less than fifty paise shall be ignored. Bank were however advised that cheques issued by clients containing fractions of a rupee should not be rejected or dishonoured.

14. As per Section 170 of the CGST Act all tax, interest, penalty, refund, or other amounts owed should be rounded off to the nearest rupee, using the standard rounding off tax liability method. In this type of rounding off, if the value in paise is 50 paise or more, it is rounded upward to the nearest rupee and if the value in paise is less than 50 paise it is rounded downward to the nearest rupee.

15. As can be seen from the bids submitted by the petitioner and the other tenderers, the petitioner's bid was L3 while the bid of the respondent No. 3 was L1. There was another bidder, i.e., Sri Harshajit Roy, whose bid was L2, inasmuch as, his bid was lower than 10% below the estimated amount by 1 paise. As the petitioner has put to challenge the bid of the respondent No. 3 on the ground that the same could not be considered, as it was to be rejected as nonresponsive, in view of Clause 29(IV) of the NIT, the same analogy would have to be applied by the petitioner against the bid submitted by Harshajit Roy. However, Harshajit Roy has not been made a party in this present case.

16. As the letter dated nil issued by the Chief Engineer, Technical Cell, Department of Housing & Urban Affairs, Guwahati, which is made a part of the record and marked as Annexure-X, has stated that rounding off the bid price to the nearest rupee was done in terms of the notification dated 21.09.2004 and as there is no challenge to the stand taken by the State respondents that the bid capacity of the respondent No. 3 was significantly better than the petitioner's in terms of Clause 29(V) of the NIT, this Court does not find any ground to exercise its discretion, to interfere in the present case.

17. The writ petition is dismissed accordingly.

JUDGE

Comparing Assistant