

GAHC010263172023



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

Case No. : WA/434/2023

PARASH KUMAR BHATTACHARJEE
S/O- LATE S. N. BHATTACHARJEE, CONTRACTOR BY PROFESSION AND AS
WELL AS PETITIONER IN PERSON, REGENT PARADISE, 2B ,GHORAMARA,
GUWAHATI-28.

VERSUS

THE ADDITIONAL CHIEF SECRETARY AND 5 ORS.
TO THE GOVT. OF ASSAM. IRRIGATION DEPARTMENT, DISPUR ,
GUWAHATI 781006

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF IRRIGATION
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE DEPARTMENT OF IRRIGATION
DISPUR
GUWAHATI-781006.

4:THE CHIEF ENGINEER
ASSAM
IRRIGATION
CHANDMARI
GUWAHATI-781003.

5:THE CHIEF ENGINEER (MINOR IRRIGATION)

CHANDMARI
GUWAHATI-781003.

6:THE EXECUTIVE ENGINEER

LAKHIPUR DIVISION (IRRIGATION)
KANAKPUR
SILCHAR-06

Advocate for the Petitioner : PETITIONER IN PERSON

Advocate for the Respondent : SC, IRRIGATION

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 23/02/2024
Suman Shyam, J

Heard Mr. P.K. Bhattacharjee, petitioner-in-person. We have also heard Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department, Assam, appearing for the official respondents.

This intra-court appeal is directed against the order dated 15/11/2023 passed by the learned Single Judge in WP(C) 6508/2023 dismissing the writ petition.

The petitioner-in-person Shri P.K. Bhattacharjee had approached this Court by filing WP(C) 6508/2023 questioning the legitimacy of the NIT No. 28(SMI) 2023-24 dated 11/10/2023 issued by the Chief Engineer, Minor Irrigation Department, Assam, *inter alia*, contending that although the packages included 21 separate groups having distinct estimate for various items, with the sole object of curtailing the competition and depriving the local contractors, different items/projects have been clubbed together in a most arbitrary and illegal manner so as to oust the other bidders from the purview of the contract.

The thrust of the argument of the petitioner-in-person is that had the various packages

not been clubbed together so as to raise the value of the work, the local contractors would have had an opportunity to participate in the tender process. Such assertion of the petitioner, who claims himself to be a contractor, registered under the Irrigation Department, Assam, is apparently based on information received by him in the form of reply to the query made under the RTI Act.

While considering the grievance of the petitioner, the learned Single Judge had held that it was for the authorities to devise the terms and conditions of the contract and merely because a particular contract envisage different estimates, the same would not be a valid ground to presume that the packages have been clubbed so as to extend undue favour to bigger contractors.

By relying upon the decision of the Hon'ble Supreme court in the case of ***Kumari Shrilekha Vidyarthi and others Vs. State of UP and others*** reported in ***(1991) 1 SCC 212*** as well as ***Meerut Development Authority Vs. Association of Management Studies and another*** reported in ***(2009) 6 SCC 171***, Mr. Bhattacharjee has argued that if the action of the authorities is in violation of the Article 14 of the Constitution of India, the same would be a good ground for judicial review. The petitioner has also referred to another decision of the Allahabad High Court rendered in the case of ***Deo Nandan Vs. Chhote*** ***[1981 0 Supreme (All) 556]*** to contend that the respondents have acted in violation of the provisions of section 10,13 and 14 of the Contract Act in issuing the impugned NIT.

The learned departmental counsel, on the other hand, has argued that the petitioner was not an intending bidder and therefore, he cannot enforce any right in this proceeding. Moreover, the NIT issued by the department has already been finalized and Work Orders have

also been issued. As such, nothing survives for adjudication in the present appeal at this point of time.

After considering the submissions made by the contesting parties and upon going through the materials on record, we find that there is no specific assertion on the part of the petitioner that he was an intending bidder. There is also nothing on record to substantiate the claim of the appellant/writ petitioner that the packages were clubbed together only to extend undue favour to some bigger contractors. In other words, the petitioner has not only failed to demonstrate violation of his personal right in the matter but has also failed to establish any *mala fide* on the part of the departmental authorities in floating the impugned NIT. Under the circumstances, the appellant, in our opinion, did not have any *locus* to institute the writ petition.

After the decision of the Supreme Court in the case of ***Tata Cellular Vs. Union of India*** reported in ***(1994) 6 SCC 651***, law is firmly settled that the terms of invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract and it is not open for the bidders to dictate as to what condition(s) should be incorporated in the bid document. Similar view has been expressed by the Supreme Court in the case of ***Airport Authority of India Vs. Centre for Aviation Policy, Safety & Research (CAPSR) & others*** reported in ***(2022) SCC Online SC 1334***. Therefore, we find ourselves in complete agreement with the views expressed by the learned Single Judge that it is not for the writ petitioner/appellant to dictate as to what should be the terms and conditions of the contract.

For the reasons stated herein above and taking note of the submission of the learned

departmental counsel that work orders have already been issued in favour of the successful bidders, who are not parties to the present proceeding, we are of the view that there is no scope for this Court to entertain this writ appeal. The appeal is accordingly, dismissed.

There would be no order as to costs.

JUDGE

CHIEF JUSTICE

sukhamay

Comparing Assistant