Serial No.23
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 318 of 2020 Date of Order: 08.12.2020

Shri. Phransis Swer **Vs**. State of Meghalaya & 7 Ors.

Coram:

Hon'ble Mr. Justice Ranjit More, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H. L. Shangreiso, Adv.

For the Respondent(s) : Mr. A. Kumar. AG. With
Mr. K. P. Bhattacharjee, GA.

1. Heard Mr. H. L. Shangreiso, learned counsel for the petitioner and Mr. A. Kumar, learned Advocate General along with Mr. K. P. Bhattacharjee, learned GA for respondents.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 11-09-2020 issued by the respondent No.2 (Commissioner and Secretary, Transport Department), Government of Meghalaya. By this order, the respondent No.2 scrapped the earlier tender process and it was decided to start *de novo* the tender process for setting up of weighbridge cum checkpoint at Ratacherra, East Jaintia Hills District.

3. By the notice dated 13-08-2019, the respondent No.3 (Transport Commissioner to the Government of Meghalaya, Transport Department, Shillong-1) invited the Tenders under two Bid System from the Manufacturers/Contractors/Individual/Firms for setting up of weighbridge cum checkpoint at Ratacherra, East Jaintia Hills District. It is the case of the petitioner that 4 (four) persons including him and respondent No.8 (Fourning Siangshai) submitted their bids. It is further the case of the petitioner that the Technical Bid of respondent No.8 was not qualified as his

minimum turn over was less than Rs. 10,000,000/- (one crore). It is also the case of the petitioner that he and one Shri. Hameki Pariat were held to be in order and qualified for opening of the Financial Bids. The Bid of Shri. Hameki Pariat was, however, lower than the minimum stipulated amount and, therefore, his Financial Bids was rejected. Consequently, the petitioner's Financial Bids being highest, the tender committee accepted his Bid in the meeting dated 31-10-2019.

4. The respondent No.8 on the very next date i.e. 01-11-2019 gave an application to respondent No.2 with a grievance that his Technical Bid was wrongly rejected as his annual turn over was more than rupees one crore during the last three years. In pursuant to this request, the earlier tender process was scrapped and it was decided to start *de novo* tender process for setting up of weighbridge cum checkpoint at Ratacherra, East Jaintia Hills District.

5. Mr. H. L. Shangreiso, learned counsel for the petitioner invited my attention to special instructions to the tenderers annexed with tender notice. He specifically relied upon the instruction 4 and instruction 8, which reads as follows: -

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> *"4. Any corrections made in the tender by the tenderer shall be supported by his signatures there-against. Modification of the tender document is not permissible and tenderers shall not put any condition and conditional tender shall be rejected.*
>
> *8. Should a tenderer find discrepancies or omissions from the tender documents or should additional information or clarification be required, he shall at once notify the Commissioner of Transport, Meghalaya, Shillong-Sawlad Madanryting-793021 in writing, who will then issue an addendum in that regard to all the tenderers if considered necessary. Such information shall be submitted immediately but not later than 10 days before the date fixed for opening of tenders. No oral interpretations shall be made or be considered binding and all addenda shall be listed in the tender form and become part of the contract documents."*

6. Relying upon this instructions Mr. H. L. Shangreiso, learned counsel for the petitioner submits that the respondent No.8's application making the grievance that his Technical Bid was wrongly rejected, could not have been entertained. Mr. H. L. Shangreiso also submited that the respondent No.8 along with the letter dated 01-11-2019 gave a fresh Balance Sheet for the Financial Year of 2016-17, 2017-18 and 2018-19. He submitted that this is not permissible in the light of clauses 4 and 5 of instructions to the tenderers. He also submitted that the decision to scrap earlier tender process and to start *de novo* tender process is illegal and contrary to Tender conditions.

7. Mr. A. Kumar, learned AG appearing for the respondents No.1-7 vehemently opposed the petition on behalf of the respondents, by filing affidavit-in-reply of the Commissioner & Secretary, Transport Department, Government of Meghalaya. It is the specific case of the respondents No.1 – 7 that the Technical Bid of the respondent No.8 was rejected as the Tender Committee took into consideration his net profit and not annual turn over. It is also the specific case of the respondents No.1 – 7 that the Balance Sheet submitted by respondent No.8 along with the letter dated 01-11-2019 were indeed the copies of the Balance Sheet submitted by him along with the Bid. It is also the contention of the Advocate General that the Tender Committee when found that Technical Bids of the respondent No.8 was rejected inadvertently, the petitioner was called and told that the Financial Bids of the respondent No.8 was also deserves to be reopened, however, the petitioner opposed the opening of the Financial Bid of the respondent No.8 and, therefore, there was no alternative but to scrap the entire Tender process and accordingly decided to start *de novo* Tender process.

8. Mr. A. Kumar, learned AG also submitted that the tender process was scrapped in public interest as it has been more than one year of the previous Tender process and the petitioner was the only bidder whose bid was responsive and in essence it is the case of the single bidder only and, therefore, in public interest invited fresh Bids.

9. I have gone through the minutes of the meeting of the Tender Committee dated 31-10-2019. The minutes shows that the petitioner and

Shri. Hameki Pariat's Technical Bids were in order. The Bids of the respondent No.8 and one Shri. Tiberius Shylla were held to be not in order. The minutes further shows that the Financial Bids was also opened on the same date. The Financial Bids of the petitioner was for an amount of Rs. 2,16,00,000/- (two crores sixteen lakhs rupees) and the Financial Bids of Shri. Hameki Pariat was for an amount of Rs. 1,11,11,111/- (One crore eleven lakh eleven thousand one hundred and eleven rupees). The Financial Bids of Shri. Hameki Pariat was below prescribed amount. The petitioner being the only bidder, his bid was found to be responsive.

10. On the very next day i.e., 01-11-2019, the respondent No.1 filed a complaint with the respondent No.2. The copy of the complaint is at Page-141. The Respondent No.8 pointed to the respondent No.2 that his Technical Bids was rejected wrongly inasmuch as what the Tender Committee took into consideration was his net profit and not gross turn over.

11. The Tender Committee thereafter, held a meeting on 11-09-2019, copy of the minutes is annexed at Page-154 (Annexure-16). In that meeting, the petitioner himself was present but he refused to sign on the minutes of the meeting. The Technical Committee in that meeting came to the conclusion that gross turn over of the respondent No.8 was more than one crore and, therefore, his Technical Bids was rejected inadvertently. The Technical Committee also came to the conclusion that respondents No. 8's Financial Bids is deserved to be opened. The Technical Committee thereafter, apprised the petitioner about this decision. However, the petitioner opposed the opening of the Financial Bid of the Respondent No.8. From the affidavit-in-reply filed by the respondents No.1 – 7 it is clear that the Balance Sheet submitted along with the letter dated 01-11-2019 by the respondent No.8 are indeed the copies of the Balance Sheet submitted along with his Bid. The respondent No.8 has not submitted new documents along with letter dated 01-11-2019. The respondent No.8 merely pointed out the inadvertent mistake committed by the Tender Committee. This inadvertent mistake is accepted and decision was rectified by the tender committee. In this facts and circumstances, the reference of Mr. H. L. Shangreiso learned

counsel for the petitioner to instructions 4 and 8 referred above, in my opinion is misplaced.

12. Be that as it may, in pursuant to the decision impugned in the petition, the respondents have already started *de novo* Tender process. It is worthwhile to mention that 3 (three) bidders have responded to this fresh Tender including the petitioner. I am also of the opinion that respondents were justified in starting *de novo* Tender process in public interest, inasmuch as, earlier the petitioner was the only bidder whose bid was responsive.

13. Taking into consideration the totality of the facts and circumstances of the case, I am not inclined to interfere with the petition in exercise of my jurisdiction under Article 226 of the Constitution of India. The petition accordingly is dismissed. Interim order, if any, stands vacated.



Judge

Meghalaya
08.12.2020
"Biswarup PS"