GAHC010131472018

2026:GAU-AS:16209

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

Case No. : WP(C)/4005/2018

KIT AND CONSULTANCY SERVICES
REP. BY ITS PROPRIETOR SMTI. PREMLAKSHMI DEVI GAYAN
W/O SRI DIGANTA VIKRAM GAYAN HAVING ITS OFFICE AT ALOKPUR,
MANIK NAGAR, R.G.B. ROAD, GUWAHATI- 781005, KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, DEPARTMENT OF
LABOUR AND EMPLOYMENT, GOVT. OF ASSAM,
ASSAM SECRETARIAT, DISPUR, GUWAHATI - 781005.

2:DIRECTORATE OF EMPLOYMENT AND CRAFTSMEN TRAINING

ASSAM
DEPARTMENT OF LABOUR AD EMPLOYMENT

GOVT. OF ASSAM

REP. BY ITS DIRECTOR HAVING ITS OFFICE AT REHABARI
GUWAHATI- 781008
KAMRUP (M)
ASSAM.

3:THE SR.PRINCIPAL

INDUSTRIAL TRAINING INSTITUTE
JORHAT MARIANI ROAD
SHANKARPUR
JORHAT
DIST. JOHRAT
ASSAM

PIN - 785001.

4:THE SR. PRINCIPAL

INDUSTRIAL TRAINING INSTITUTE
SRIKONA
P.O. SRIKONA
CACHAR
ASSAM- 788026

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. A. Goyal, Advocate
: Mr. A. Choudhury, Advocate

For the Respondent(s) : Mr. G. Bokolial, Government Advocate
: Mr. S. P. Das, Advocate

- Date on which Judgment was reserved : NA
- Date of Pronouncement of Judgment : **04.11.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : NA

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. Goyal, the learned counsel appearing on behalf of the Petitioner and Mr. G. Bokolial, the learned Government Advocate appearing on behalf of the Respondent No.1. I have also heard Mr. S. P. Das, the learned counsel appearing on behalf of the Respondent Nos. 2, 3 and 4.

2. The Petitioner herein is aggrieved by the non-release of the Earnest Money Deposit in the form of National Savings Certificates {Annexures II(A) to II(J)} upon successful completion of the supply work and as such has approached this Court by filing the present writ petition.

3. The records reveal that a Quotation Paper was issued by the Respondent No.2 inviting quotations from reputed manufacturers, dealers or registered firms having experience for supply of tools and equipments. The said Quotation Paper stipulated terms and conditions at Clause B under the heading "Terms & Conditions" and detailing out in Sub-Clauses 1 to 15.

4. From a perusal of the terms and conditions, it is apparently clear that the items were only required to be supplied. There is no whisper in the Quotation Paper that post the supply made of the items, any further commissioning of those items were required. Sub-Clause 9 of Clause B of the said Quotation Paper specifically deals with Earnest Money and the same being relevant for the purpose of the present dispute, is reproduced herein under:

"***9. EARNEST MONEY***

(i) Earnest Money of Rs.1,00,000.00 (Rupees one lakh only) shall have to be

enclosed with the quotation in the form of Bank Draft/Call Deposit/Fixed Deposit/Bank Guarantee issued by the Scheduled Banks only and or NSC, duly pledge in favour of the Director of Employment & Craftsmen Training, Assam, Rehabari, Guwahati.

(ii) In case of failure on the part of the supplier to supply wholly or partly the items ordered by the purchaser as per the terms & conditions of the supply order, the earnest money deposited may be forfeited wholly or proportionately at the discretion of the undersigned."

5. From a perusal of the above quoted Sub-Clause, it would show that the Earnest Money has to be enclosed with the quotation in the form of Bank Draft/Call Deposit/Fixed Deposit/Bank Guarantee issued by the Scheduled Banks only and or NSC duly pledged in favour of the Respondent No.2. It is further mentioned that it is only in the case of failure on the part of the supplier to supply wholly or partly the items ordered by the purchaser as per the terms and conditions of the supply order, the earnest money deposited would be forfeited wholly or proportionately at the discretion of the Respondent No.2.

6. Subsequent thereto, the Petitioner along with various bidders participated. While participating, the Petitioner submitted the Earnest Money Deposit in the form of National Savings Certificates to the tune of Rs.1,00,000/- copies of which have been enclosed as

Annexures II(A) to II(J). The records reveal that the Petitioner's bid was duly accepted and a supply order was issued on 18.09.2012.

7. From a perusal of the supply order, it would show that various terms and conditions have been incorporated. It would include the terms of delivery, inspection, despatch instruction, terms of payment, paying authority, date of delivery, etc.

8. It is of relevance to take note of that there were special instructions which included that the supplier would remain responsible until the entire goods or equipments reach in good condition and after successful commissioning of the goods at the destination.

9. From the materials on record, there is no dispute that the Petitioner duly made the supply and that the Respondent Nos. 2, 3 and 4 made payment for the same. The dispute however, arises between the Petitioner and the Respondent Nos. 2 to 4 is on the question of not refunding the Earnest Money Deposit and it is under such circumstances, the present writ petition has been filed.

10. The Respondents have filed their affidavit-in-opposition contending, inter alia, that the supply order also included the

commissioning of the goods. It was further contended that as no commissioning was carried out, the Petitioner had failed to comply with the terms of the supply order, and accordingly, the Earnest Money Deposit has not been refunded.

11. On the other hand, the Petitioner has contended that the scope of commissioning of the goods is outside the purview of the tender conditions. It is further mentioned that the special instructions which are contained in the supply order, and more particularly at Clause 11(b), in the context of the tender has to be understood that the supplier would be responsible until the entire goods or equipments reach in good condition and after successful commissioning of the goods at the destination. The commissioning of the goods is absolutely within the purview of the respondents.

12. This Court has given anxious consideration to the respective submissions of the learned counsels for the parties. From a perusal of the materials on record, it is apparent that the scope of the tender is only for supply of the goods. The tender conditions which are in the Quotation Paper do not envisage the requirement of commissioning by the tenderer/the bidder. The supply orders and the manner in which the payments are to be made also makes it clear that commissioning is not a part of the supply order. Rather,

the commissioning would be at the instance of the Respondent Nos. 2 to 4 and if at the time of commissioning by the Respondents, any defect is found, the same would be the responsibility of the supplier. The failure on the part of the Respondent Nos. 2 to 4 to commission the goods supplied cannot be a reason to deprive the Petitioner the refund of the Earnest Money inasmuch as depriving so would render the actions of the Respondents arbitrary and unreasonable.

13. Considering the above, it is therefore the opinion of this Court that this is a fit case for passing appropriate directions upon the Respondents to forthwith return the NSCs, copies of which have been enclosed as Annexures II(A) to II(J) to the writ petition.

14. Accordingly, the writ petition therefore stands disposed of with the following observations and directions:

(i) The Respondent Authorities more particularly the Respondent No.2 shall forthwith and not later than 30 days from the date of submission of a certified copy of the present judgment return the NSCs, which were submitted by the Petitioner as Earnest Money.

(ii) This Court is not inclined to impose any interest. However, it is observed that in the circumstance, within the period as directed

above, if the NSCs are not returned, the Respondent No.2 shall be liable to pay interest from the date of passing of the instant judgment at the rate of 9% per annum on the Earnest Money Deposit.

(iii) No costs.

Bijoy Saha

Digitally signed by Bijoy Saha
Date: 2026.11.05 19:32:46 +05'30'

JUDGE

Comparing Assistant