

(2022) 10 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6410 Of 2022

Ananta Borgohain

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 27-10-2022

Acts Referred:

Citation : (2022) 10 GAU CK 0018

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : B Chowdhury

Final Decision : Allowed

Judgement

1. Heard Ms. B Choudhury, learned counsel for the petitioner and Nr. N Goswami, learned Junior Government Advocate for the respondents No. 1, 2, 3 and 4 respectively being the authorities under the Town and Urban Development Department, the Director of Municipal Administration, the Deputy Commissioner, Lakhimpur and the Executive Officer, Dhakuakhana Municipal Board. Although notice was issued to the respondent No. 5 as per the office note dated 21.10.2022, but no further information is available as to whether notice has been served or not.

2. The petitioner participated in a NIT dated 24.08.2022 for the work of construction of Community Toilet at Dhakuakhana Public Bus Stand Campus under 15th Finance Commission (Tied Fund) under Dhakuakhana Municipal Board. The value of the work as per the tender notice is provided to be Rs. 17, 45, 000/-. As per the comparative statement, the respondent No. 5 Sri Pranabjyoti Das quoted a rate at par the estimate i.e. the Government value provided in the NIT itself, whereas the petitioner Sri Ananta Borgohain submitted a tender bid of 10% below the estimated Government rate. By the order impugned dated 08.09.2022, the work had been allotted to the respondent No. 5. Being aggrieved, this writ petition is instituted on the ground that the rate

quoted by the petitioner being lower, it was arbitrary on the part of the respondent authorities to allot the work to the respondent No. 5.

3. When the matter was taken up on 29.09.2022, it was informed by the learned counsel for the State authorities that the respondent No. 5 had already commenced the work and completed nearly 13% work till date. In the circumstance, no interim order was passed.

4. The respondents in the meantime have filed their affidavit in opposition and refers to a notification dated 12.07.2018 of the Commissioner and Special Secretary to the Government of Assam in the PWRD, which inter-alia provides that it came to the notice of the authorities that in the matter of the civil works, the contractors either quoted unreasonably a lower rate in comparison with the approved estimated cost or unreasonably a higher rate. According to the authorities, both the situations were unacceptable inasmuch as quotation of an unreasonably lower rate may lead to an inferior quality of the work. At the same time, quoting of an unreasonably higher rate may have an adverse affect on the State exchequer. Consequently, the notification provides for a principle for award of civil work contracts under the Assam PWRD. The principle provided in the notification is extracted as below:-

"No. RBPC.85/2017/25.-It has been observed that unreasonably lower rates quoted by some of the civil works contractor vis-a-vis the approved estimated cost, has been adversely affecting the quality of works as well as timely completion of the works and on the other hand, unreasonable higher rates quoted by some of the civil works contractors' puts undue pressure on the State's exchequer and therefore in the interests of public service, the Governor of Assam is pleased to notify the following principle for award of all the Civil Works contracts under the Assam PWRD, whereby "variation of the quoted price upto 5% (positive or negative) over the approved estimated cost of a Civil Work may be ignored; and variation of the quoted price up to 10% (positive or negative) may be allowed for peculiar situations and in special circumstances, and the reasons for allowing to do so shall be placed on record by the officer(s) responsible for accepting the tenders/bids; tenders/bids beyond this limit shall not be accepted". The above principle shall come into force with effect from 15th July 2018 and shall prevail until further orders."

5. The respondents by referring to the said principle incorporated in the notification dated 12.07.2018 seeks to justify that as the rate quoted by the petitioner was 10% below the estimated rate, therefore it stood rejected and on the other hand the rate quoted by the respondent No. 5 being at par with the estimated rate, the work was accordingly allotted.

6. In view of the stand of the respondents in the P&RD by means of their affidavit in opposition, we are now faced with the situation to either issue notice and stay the impugned work order to the respondent No. 5 or issue notice without a stay order. If we issue notice with a stay order, the construction of a

public work will suffer and on the other hand if we issue notice without any stay order, the claim of the writ petitioner may become infructuous in the meantime, as a stand had already been taken by the respondent that the respondent No. 5 had completed 13% of the work.

7. But at the same time we also take note of that the stand of the respondents in the P&RD that the bid of the petitioner at the quoted rate of 10% below the estimated rate was rejected and the quoted bid of the respondent No. 5 at par with the estimated rate was accepted was by following the principle provided in the notification dated 12.07.2018. In other words, we are required to examine as to whether the principle provided in the notification dated 12.07.2018 will justify such a procedure being adopted by the respondents in awarding the work to the respondent No. 5.

8. The principle incorporated in the notification dated 12.07.2018 provides that if the variation of the quoted price over the approved estimated cost of a civil work is up to 5% either positive or negative, such variation may be ignored, meaning thereby that such tender bid would be acceptable and the award of the work would be determined accordingly. The principle incorporated further provides that if there is a variation of the quoted price up to 10% which has to be understood to be inclusive of 10% either positive or negative over the approved estimated rate, such bids may also be allowed for peculiar situation and in special circumstance. In other words, going by the principle provided in the notification dated 12.07.2018, a legal duty is also cast on the authorities conducting the tender process to consider and give an application of mind as to the rate quoted by a bidder up to 10% either positive or negative over the approved rate would satisfy any peculiar situation and any special circumstance so as to make it acceptable.

9. In the circumstance, we have taken note of that without any such consideration as to whether the quoted rate of the petitioner, which was below 10% of the estimated cost did satisfy any peculiar situation or any special circumstance, was not gone into by the authorities meaning thereby that the legal duties required as per the principle incorporated in the notification dated 12.07.2018 had not been duly complied with.

10. In the circumstance, without waiting for the notice to be served on the respondent No. 5 which may lead to a requirement of either passing an interim order restraining the work wherein again public interest may suffer or without any interim order wherein there is a likelihood of the writ petition become infructuous, we are of the view that the interest of justice would be met on a direction being issued to the respondent No. 4 being the Chief Executive Officer, Dhakuakhana Municipal Board to give a hearing to the petitioner and allow him to explain as to whether his quoted rate of 10% below the estimated rate do satisfy any peculiar circumstance or any special circumstance which may justify the respondents in accepting such tender bid. In other words, the writ petitioner may explain to the concerned authority that even at the rate of 10% below the

estimated rate, the required work can still be executed without compromising the quality in any manner. Upon such hearing be given, the Chief Executive Officer may pass a reasoned order. If the conclusion that may be arrived in the reasoned order would be against the petitioner, the petitioner be informed accordingly and if on the other hand the conclusion would be in favour of the petitioner, necessary consequential action be taken by strictly following the due procedure of law i.e. if the respondent No. 5 is to be adversely affected in any manner, due opportunity of hearing be also given to the respondent No. 5.

11. The requirement be done within a period of fifteen days from the date of receipt of a certified copy of this order.

The writ petition is allowed as indicated above.