
(2016) 04 GAU CK 0055
In the Gauhati High Court
Case No : W.P. (C) No. 151 (A) of 2016

G. Jebisow Enterprise (M/s)	Vs	APPELLANT
State of Arunachal Pradesh		RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Arunachal Pradesh District Based Entrepreneurs and Professional (Incentives, Development and Promotional) Rules, 2015 — Rule 4(ii)(f)

Citation : (2016) 4 GauLT 230

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : Mr. O. Pada, Advocate, for the Appellant; Ms. G. Deka, Sr. G.A. and Mr. K. Tama, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Suman Shyam, J.—Heard Mr. O. Pada, learned counsel appearing for the petitioner. Also heard Ms. G. Deka, learned Senior Government Advocate, Arunachal Pradesh representing State respondent nos. 1,2,3 and 5 as well as Mr. K. Tama, learned counsel appearing for the private respondent No. 4.

2. Being aggrieved by the impugned decision of the respondent authorities in selecting the respondent No. 4 for awarding the contract in question leading to the impugned work order dated 22.03.2016, the writ petitioner has approached this Court by filing the instant writ petition alleging that the respondent no. 4 not being a domicile within the territorial jurisdiction of the community block, it was not eligible for carrying out the contractual work in view of the bar constituted under the "Arunachal Pradesh District Based Entrepreneurs and Professional (Incentives, Development and Promotional) Act, 2015" (hereinafter referred to as the Act of 2015) and the Rules framed thereunder.

3. Briefly stated, the case of the writ petitioner is that she is the proprietor of the Firm M/s G. Jebisow Enterprise which is engaged in the business of executing contractual works under various departments. The petitioner is a permanent

resident of Lower Bhalukpung area, in the State of Arunachal Pradesh. The respondent No. 3 had earlier floated NIT dated 15.02.2016 inviting bids from intending registered Arunachal Pradesh Schedule Tribe (APST) contractors registered with the CPWD/APPWD/BSNL/MES/Railways, for a number of contractual works. The petitioner being eligible under the said NIT, had submitted her bid in respect of item no. 5 viz. "Construction of Water Supply with Overhead Tank" at Tipi with the estimated cost of Rs. 29.12 lakhs. There were 6 (six) other contractors who had participated in the said NIT for the item No. 5. The respondent authorities had initially accepted the tender submitted by one Khalong Khujuju and Shri Wapon Sangchoju i.e. the constituted attorney of the respondent No. 4, who are not domiciled within the concerned community block nor are their firms registered within the said block. In the wake of a complaint lodged on 17.02.2016 before the Chief Secretary, Government of Arunachal Pradesh by the Panchayat leaders of the Bhalukpung-Jamiri Anchal block followed by a legal notice dated 07.03.2016 issued to the Chairman-cum-DFO, Board of Tender under Silviculture Division, Chimpu, Itanagar the tender of Sri Khalong Khujuju was rejected by the authorities on the ground that he was not a domicile within the jurisdiction of the concerned community block. However, notwithstanding the fact that the respondent No. 4 also did not meet the requirement of the Act of 2015 and the Rules framed there-under in so far as the question of domicile within the community block is concerned, the respondent authorities have illegally nominated the said respondent for awarding the contractual work in question, where after the impugned work order dated 22.03.2016 had been issued in favour of the respondent No. 4.

4. The respondent Nos. 1, 2, 3 and 5 have filed their counter affidavit, inter-alia, stating that the tender in question was opened on 04.03.2016, where-after it was found that as many as 7 (seven) bids had been submitted against the said item of work. The Tender Opening Committee had scrutinised the documents enclosed with the tender so as to ascertain the eligibility of the bidders, where after the bids submitted by and on behalf of the respondent no. 4 was found to be in order by the Committee based on the document submitted along with the bid including the Permanent Resident Certificate (PRC) submitted by Shri Wapon Sangchoju, the constituted attorney of respondent no. 4, establishing that he was a permanent resident of T.P. under Bhalukpung Circle, P.O. Bhalukpung in the West Kameng District of Arunachal Pradesh. In so far as the complaint against Sri Khalong Khujuju's tender is concerned, the stand of the official respondents has been that the said tender was rejected by the Committee soon after it was detected that he was a Government servant working as a Teacher. In their affidavit, the official respondents have also stated that the petitioner belongs to the category "C" i.e. Class-III grade contractor and therefore, was eligible to participate in the tender with the limit from Rs. 30 lakhs to Rs. 60 lakhs. Since the value of the present tender was less than Rs. 30 lakhs, hence, the writ petitioner was not eligible to participate in the tender and consequently her bid was rejected on such ground.

5. The respondent no. 4 has contested the writ petition by filing counter affidavit inter-alia questioning the maintainability of the writ petition on the ground of the same being barred under the principles of Waiver, Estoppel and Acquiescence. It was alleged that on 04.03.2016, the Tender Committee had openly announced and informed the tenderers and their representatives agents present in the hall that having regard to the limited number of participants in the tender process from the concerned community block, a decision has been taken to accept the tenders from the Power of Attorney holders who are domiciled within the respective territorial jurisdiction of the community block regard less of the place of registration of the principal contractor. Such a decision was taken with a view to encourage the local unemployed in the tender participation. The respondent no. 4 has contended that the writ petitioner being aware of such a decision did not raise any objection as regards participation of the Power of Attorney holders in the tender process but has now approached this Court by filing the instant writ petitioner after the tenders were opened only to cause loss and injury to the respondent no. 4. It has further been stated in the counter affidavit that the writ petitioner firm is not technically qualified to participate in the tender work valued at Rs. 29.12 lakhs which was the only basis for rejection of her bid. Since the petitioner has been found to be ineligible to participate in the bid, hence, she does not have any locus standi to maintain the instant writ petition in the facts and circumstances of the case.

6. By referring to the Schedule under Section 3(i) of the Act of 2015, Mr. Pada, learned counsel for the petitioner submits that the Act itself categorically lays down that in case of contractual works valued up to Rs. 50 lakhs, only the registered contractors in Class-IV and Class-V categories domiciled within the territorial jurisdiction of the community block would be eligible to participate. He submits that Rule 3 of the Rules framed in exercise of powers under Section 5 of the Act of 2015 provides that Rule shall be mandatorily applied to all works undertaken by various agencies and departments under the Government of Arunachal Pradesh which also included the forest Department. As per Rule 4(ii) (f), in the event inadequate response is not received to the tender invited at the Block Level/Assembly Constituency level, the contractors of adjacent Block/Assembly Constituency would alone be eligible to participate in the subsequent call of the tender. He, therefore, submits that since the respondent no. 4 is not from the adjacent Block /Assembly Constituency, hence, the issuance of the work order dated 22/03/2016 in favour of the respondent no. 4 by ignoring the petitioner is in clear violation of the mandate of the Act of 2015 and the Rules framed there-under and hence, the same is liable to be interfered with by this Court.

7. By relying upon the decision of the Apex Court in the case of Ramanna Dayaram Shelly v. International Airport Authority of India & Ors. reported in (1979) 3 SCC 489, the learned counsel for the petitioner submits that the State or its instrumentalities cannot act in an arbitrary manner and in violation of the statutory provisions while accepting the tender submitted by ineligible

candidates. He further submits that the State or its instrumentalities cannot give largesse to any person according to its sweet will and whims of the Officers of the State and that the Public authority must adopt a transparent and fair method for making selection so that all eligible persons get a fair opportunity of competition. Mr. Pada further submitted that the Public Authorities are under a bounden duty to exercise the powers conferred on them in good faith, fairly and for the purpose for which the powers were conferred. As such, the respondent authorities were not competent to act in a manner contrary to the object of the Act of 2015, thereby, denying opportunity to the persons having domicile within the territorial jurisdiction of the community block to participate in the tender. In support of his aforesaid contention, the learned counsel for the petitioner has also relied upon the following decisions:-

i. (2012) 3 SCC 1 (Centre for Public Interest Litigation & Ors. v. Union of India & Ors.

ii. (2014) 3 SCC 502 (Dipak Babaria & Anr. v. State of Gujarat & Ors).

8. Ms. G. Deka, learned Senior Government Advocate, Arunachal Pradesh on the other hand contended that the tender of Khalong Khujuju was rejected by the Tender Evaluation Committee immediately having come to know about his status of being a Government servant. As such, the same has nothing to do with the question of domicile. She submits that the petitioner's case was rejected as she was found to be ineligible to participate in the tender process, being a contractor falling in Class-III category. In so far as the decision to allow the Power of Attorney holders domiciled in the community block to participate in the tender process, Ms. Deka has produced the records showing the minutes of the Tender Opening Committee recorded on 04.03.2016 at 1530 Hrs. whereby a decision was taken to allow the domicile of a community block to submit bid on proper Power of Attorney from a Class-IV and Class-V registered contractor. The said decision, according to Ms. Deka, was taken due to shortage of registered contractors in some of the community block so as to ensure that the development fund which was available for the work meant for the benefit of the public did not lapse due to non-availability of eligible contractors. Since the said decision was taken in presence of all the bidders including the writ petitioner herein and considering the fact that the respondent no. 4 was duly represented by a proper power of attorney from a registered contractor who was a domicile of the community block, there was no arbitrariness in the decision making process. Ms. Deka has also emphatically argued that the writ petitioner being herself ineligible to participate in the said tender process, she cannot maintain this writ petition challenging the work order issued in favour of an eligible bidder.

9. Joining issues with the learned Government counsel, Mr. K. Tama, learned counsel representing the respondent no. 4 submits that pursuant to the issuance of the work order, the respondent no. 4 has mobilised the resources for commencing the work and the work has already been started. He submits that a number of work orders had been issued in favour of beneficiaries following the

same principle as decided in the Tender Committee meeting held on 04.03.2016. Since, it is not in dispute regarding the eligibility of the respondent no. 4 nor there being any doubt as regards the domicile status of the constituted attorney of the respondent no. 4, viz. Wapon Sangchoju hence, there is no justifiable ground to interfere with the work order issued in favour of the respondent no. 4.

10. I have considered the submissions made by and on behalf of the learned counsels for the parties and have also gone through the record produced by the learned Government Advocate.

11. The Act of 2015, as enacted by the Amnachal Pradesh Legislative Assembly, was notified in the official gazette on 13.04.2015. The object of the said Act is to provide an incentive to ensure greater participation by district based entrepreneurs and professionals as a part of Government policy so as to facilitate decentralisation of developmental activities with greater participation of people from the nook and corners of the State of Arunachal Pradesh so as to build a society of people with uniform social and economical status in the State and matters connected therewith and incidental thereto. A proper examination of the different provisions of the Act of 2015 as well as the Rules framed there-under goes to show that the true legislative intent behind the aforesaid enactment was to ensure that entrepreneurs belonging to a particular block was provided with proper opportunity to participate in the process of development of the society by ensuring their participation in such activity with the object of promotion of uniform social and economic status in the State. In other words, the idea behind the aforesaid enactment appears to be to protect the interest of the local entrepreneur right up to the community block level with a view to ensure equitable distribution of the State largesse in a fair and transparent manner. The avowed objective of the Act would become further apparent from a reading of the Rule 4(ii)(f) of the Rules framed under the Act of 2015 which reads as follows :-

"4.(ii)(f) In the event of inadequate response to a tender invited at Block Level/ Assembly Constituency level, the eligible contractor of adjacent Block/Assembly Constituency within the district shall be eligible to participate in tin subsequent call of that tender."

12. The petitioner has placed heavy reliance on the aforesaid provisions to contend that even if it was found that there was no eligible tenderer within the community block, even in that case only the contractors from the adjacent Block/ Assembly Constituency would have been eligible to participate in the subsequent call of the tender.

13. As has been noted above, the writ petitioner has been held to be ineligible to participate in the tender in question by the Tender 1 valuation Committee. A perusal of the minutes of the Scrutiny Committee goes to show that the bid submitted by the petitioner was disqualified on the following grounds :-

i. Upgraded from Class "D" to Class "C" i.e. Class IV to III.

ii. Overwriting of SI. No. 25/27.

iii. No sign in all pages of BOG

iv. No witness in undertaking.

Based on the aforesaid observations, the tender submitted by the writ petitioner was disqualified by the Scrutiny Committee. Curiously enough, the writ petitioner has not challenged such disqualification of the bid submitted by her by the Tender Committee.

14. A reading of the provisions of the Act of 2015 as well as the Rules framed thereunder, no doubt indicates that the very purpose and object of the Act is to promote the interest of the local entrepreneurs at the community block level by ensuring their participation in such tender process. However, the Act does not impose a ban on the authorities to award contractual work to the members of the Arunachal Pradesh Schedule Tribe (APST) community, if no eligible registered contractors are found within the concerned community block. Although, Mr. Pada has relied upon the provisions of Rule 4(ii)(f) of the Rules in support of his case, the said provision, however, does not constitute a bar in awarding contractual work to persons outside the Community Block/Legislative Assembly Constituency, if eligible contractors are not found within the block. In fact, there is nothing in the Act or the Rules so as to indicate as to what recourse would be required to be followed by the tendering authorities, if no eligible candidate is found within the concerned Community Block/Legislative Assembly Constituency or the adjacent Block/Assembly Constituency.

15. As has been noted above, a perusal of the minutes of the Tender Committee recorded on 04.03.2016 clearly goes to show that a consensus was evolved in presence of all the tenderers to allow the proper Power of Attorney holders of registered Class-IV and V contractors to participate in the tender process, if the principal contractor is not registered within the community block. The writ petitioner has neither denied her participation in the said meeting nor assailed the aforesaid decision of the Tender Committee arrived at in the meeting held on 04.03.2016. Since the petitioner has been held to be ineligible to participate in the tender and considering the fact that there were no other eligible tenderers from the community block to whom the work could have been awarded, the respondent authorities have taken a decision in public interest to award the work in favour of the respondent No. 4 so as to ensure that the funds allocated for the work did not lapse due to non-availability of suitable contractors, the decision of the Tender Committee, therefore, cannot be held to be arbitrary or unreasonable warranting interference nor can the decision making process be adjudged as unfair or non-transparent in the present facts. Since, the Constituted Attorney of the Respondent No. 4 is a domicile of the community block hence, the recourse adopted by the tender Committee in awarding the work order in favour of the respondent No. 4, in the opinion of this court does not militate against the provisions of the Act of 2015. The decision of the Tender Committee cannot be

said to have resulted in to any prejudice being caused to the interest of the petitioner. As such, the decisions relied upon by the learned counsel for the petitioner would not be of any assistance to him in the facts and circumstances of the present case.

16. The learned counsel for the petitioner has made an attempt to canvass before this Court that the petitioner had been wrongly adjudged as ineligible to participate in the tender. However, he has failed to substantiate the aforesaid argument during the course of hearing. In the absence of any pleaded impeachment of the decision of the authorities to adjudge the petitioner as ineligible to participate in the tender, this Court is not inclined to go into the said aspect of the matter. Once it is held that the petitioner was herself not eligible to participate in the tender, the petitioner would not be entitled to press the provisions of the Act of 2015 to assail the work order issued in favour of the Respondent no. 4. The position, however, would have been entirely different had the challenge to the work order been made by a similarly situated technically qualified contractor domiciled in the Community Block having been denied the work in question under similar circumstances.

17. For the foregoing reasons, this Court is of the opinion that the writ petition is devoid of any merit and the same is accordingly dismissed.

18. There would be no order as to costs.