
(2018) 04 GAU CK 0100
In the Gauhati High Court
Case No : WA 95 of 2018

M/S RADHIKA TRADERS

APPELLANT

Vs

THE STATE OF ASSAM AND 8 ORS

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 04 GAU CK 0100

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nelson Sailo, J.

Heard Mr. M Choudhury, learned senior counsel assisted by Mr. S Bora, learned counsel for the appellant. Also heard Mr. R Dhar, learned

Government Advocate, Assam. This writ appeal is directed against the order dated 27.02.2018 passed by the learned Single Judge in WP (C) No.

1009 of 2018 dismissing the writ petition filed by the appellant. The case of the appellant may be noted at the outset.

Appellant is a proprietorship firm and is aggrieved by the NIT dated 01.02.2018 issued by the Director of Animal Husbandry and Veterinary

Department, Government of Assam (respondent No.5) whereby bids were invited for awarding various works towards implementation of schemes

under the Veterinary Department. Tender was to be opened on 09.02.2018 and the intending bidders were to submit their bids on or before 15:00 hrs

on 09.02.2018. Appellant as the writ petitioner challenged the NIT dated 01.02.2018 on the ground that it was ab-initio illegal, vague, ambiguous,

tainted and without any specification as to the requirement of goods which was otherwise required for quoting meaningful bids. Appellant also

contended that the NIT was issued in contravention of the provisions of the General Financial Rules, 2017 as well as the Central Vigilance

Commission Guidelines, applicable to Government tenders.

Learned Single Judge by taking the view that the terms of contract cannot be made a subject matter of judicial review as was held by the Supreme

Court in the case of Tata Cellular vs- Union of India reported in (1994) 6 SCC 651 dismissed the writ petition vide the impugned order dated

27.02.2018. Learned Single Judge also took the view that the petitioner had no locus standi to challenge the NIT dated 01.02.2018 when it had not

even participated in the tender process. Relevant portion of the impugned order may be abstracted as below:

“It appears from the record that the NIT in question was issued on 01.02.2018 fixing 09.02.2018 as the last date of submission of the bids. It is the

admitted position of fact that the writ petitioner did not submit its bid in response to the NIT dated 01.02.2018. Instead, it has approached this Court

by filing the present writ petition on 20.02.2018 which was also after the expiry of the last date of submission of bids.

After the decision of the Supreme Court in Tata Cellular vs. Union of India & others, reported in (1994) 6 SCC 651 it is no more res integra that the

terms and conditions of a tender cannot be made the subject matter of judicial review. It has been held by the Supreme Court that the public

authorities must be given the freedom to decide the terms of the tender and as long as the decision making process is found to be consonance with

the principles of Article 14 of the Constitution of India, there would be no scope for judicial review in such matters.

In the present case, I find that although the petitioner has challenged the terms and conditions of the tender, it has not even made any attempt to

participate in the tender process. In view of the above, I am not inclined to recognize any locus in favour of the petitioner to maintain this writ petition.

Moreover, the petitioner has also failed to explain as to why it could not approach this Court before the last date of submission of the tender. Under

the circumstances, I am of the view that this writ petition cannot be entertained at the instance of the petitioner. Consequently, the same stands

dismissed.â??

This writ appeal was moved on 23.04.2018 wherein the following order was passed: â?? We have heard learned counsel for the parties at some

length. Before we pass appropriate order(s), we would like to know from the learned State Counsel as to how many bidders have responded to the

NIT dated 01.02.2018 for Group-A to Group-F, along with the present status of the tender process. List on 27.04.2018.â? The appeal thereafter has

been listed today i.e. 27.04.2018 as was directed. Learned Government Advocate on instructions submits that pursuant to the NIT dated 01.02.2018,

437 bidders had participated. The NIT was published in two local dailies i.e. â?? Sentinalâ?? as well as â??Agradootâ?? on 02.02.2018. After the

tender documents were opened on 09.02.2018 as per schedule, successful bidders were shortlisted and thereafter, work orders were issued on

23.04.2018. He has also produced the record.

Mr. M Choudhury, learned senior counsel for the appellant submits that the NIT was issued on 01.02.2018 and the intending bidders were to submit

their tenders within seven days i.e. by 09.02.2018. Therefore it was too short a time for submitting any meaningful bids. Moreover, NIT itself was

without specification for quoting a meaningful price and the manner in which the NIT was floated indicated lack of transparency and was meant to

favour the blue eyed persons. We have heard learned counsel for the parties and have perused the materials available on record, including the record

produced by the learned Government Advocate.

As can be noticed, pursuant to the NIT, there were as many as 437 bidders who had participated in the tender process. It only goes to show that there

was adequate time for the intending bidders to participate in the tender including the appellant. NIT was published in two local dailies on 02.02.2018

and after the opening of the tender documents on 09.02.2018, work orders have already been issued to the successful bidders on 23.04.2018. The

appellant did not participate in the tender process.

It is well settled position in law that unless there is arbitrariness or unfairness or malafides vitiating the decision making process, Court would refrain

from interfering especially in the realm of contract. As rightly observed by the learned Single Judge, the scope of judicial review in matters relating to

tender is limited and the public authorities should be given the freedom to decide

the terms of the tender so long as these are found to be in consonance with Article 14 of the Constitution of India. Upon giving due consideration to the facts and circumstances of the case, we do not find any merit in the appeal. Writ appeal is accordingly dismissed.