
(2010) 08 GAU CK 0112
In the Gauhati High Court
Case No : WA 256 of 2010

Muslim Ali

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Citation : (2010) 08 GAU CK 0112

Hon'ble Judges : Madan B. Lokur, C.J.;Hrishikesh Roy, J

Bench : Division Bench

Advocate : A.K. Goswami, P. Sarma, B. Sarma and R. Sarma, for the Appellant;
SC, GMC, D. Saikia, K. Agarwal, D.K. Chomal and S. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, C.J.—The Appellant is aggrieved by an order dated 30th July, 2010 passed by the learned Single Judge in WP (C) No. 3413/2010.

2. The official Respondents had floated a Short Tender Notice on 17th May, 2010. The tender was for construction of a Drain cum Footpath from Ganesh Mandir to Lakhimijan at Hatigaon with culverts/drain for trapping surface water at Kahilipara junction under devolution of fund of 3rd Assam State Finance Commission (Non salary component) for the year 2009-2010.

3. It appears that as many as five bids were received and in so far as the Appellant is concerned, his bid was lowest at Rs. 2,00,49,278.00.

The bid of the private Respondent (Young Construction) was at Rs. 2,22,62,796.00.

Writ Appeal No. 259/2010

4. Notwithstanding the fact that the bid of the Appellant was the lowest, the contract was awarded by the official Respondents to the private Respondent i.e. Young Construction.

5. Feeling aggrieved by this, the Appellant preferred a writ petition which came to be dismissed by the learned Single Judge by the order under appeal. The learned Single Judge noted that the only one reason given by the official Respondents for not accepting the bid of the Appellant was that the Appellant had no experience of working in Guwahati, even though in all other respects, the Appellant fully met the requirements of the tender notice. On the other hand, the only reason why the private Respondent (Young Construction) was given the contract was because its experience of working in Guwahati. No other reason was mentioned.

6. The learned Single Judge took this fact into consideration to come to the conclusion that the experience of Young Construction was good enough reason for the award of the contract and accordingly, the writ petition filed by the Appellant was rejected. Under these circumstances, the Appellant is before us in a writ appeal.

7. The law on the subject is no longer *res integra*. It has been held by the Supreme Court that the decision making process, while awarding a contract by the State, should be transparent, fair and open. In *Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others*, the Supreme Court reiterated in paragraph 7 of the Report that whatever procedure the Government proposes to follow in accepting a tender must be clearly stated in the tender notice. The considerations of the tenders received and the procedure to be followed in the matter of acceptance of a tender should be transparent, fair and open.

8. From a perusal of the Short Tender Notice, we find that there is absolutely no mention that preference would be given to a bidder who has experience of working in Guwahati. In other words, while awarding the contract to the private Respondent (Young Construction), the official Respondents have taken into consideration a factor which was not mentioned in the Short Tender Notice. The requirement of experience of working in Guwahati should have been disclosed in the Short Tender Notice to make the bidding process transparent, fair and open.

9. On the contrary, the Short Tender Notice mentions in Clause 10 that the lowest quoted price amongst the qualified tenderers shall be considered as the preferred tenderer, subject to the price quoted of the tenderer being nearest to the minimum benchmark price fixed by the evaluation committee formed for evaluating the tenderers. There is no doubt that the bid of the Appellant was the lowest quoted price and that there is no error in the evaluation in so far as the minimum benchmark price is concerned. Consequently, in terms of Clause 10 of the Short Tender Notice, the bid of the Appellant should have been accepted.

10. Learned Counsel for the Respondents submits that Clause 15 of the Short Tender Notice is equally important. This reads as follows:

15. Experience in Similar Nature of Work

The tenderer must submit the details of work complete RELEVANT TO SIMILAR

NATURE OF WORK. As per

Form-1 of tender document. As a proof, copied of work order of completion certificate indicating actual executed value and actual date of completion shall be submitted by the bidders. If necessary additional sheet may be enclosed.

Similar nature means experience in civil construction of roads/drains/embankment etc.

A perusal of the aforesaid Clause 15 clearly shows that the tenderer must have experience of civil construction of roads/drains/embankment etc. which is similar to the nature of work postulated by the Short Tender Notice.

11. The official Respondents have admitted in their affidavit in opposition, and this was also noted by the learned Single Judge, that there is no doubt that the Appellant had the requisite experience in constructing drains etc. Therefore, it is clear that the Appellant met even this parameter laid down in the Short Tender Notice. Therefore, it is more than obvious that the bid of the Appellant was not accepted because it had no working experience in Guwahati which, we have already noted, is an extraneous consideration not mentioned in the Short Tender Notice.

12. For this reason alone, we have no option but to set aside the decision of the official Respondents in awarding the contract to the private Respondent (Young Construction).

13. Learned Counsel for the private Respondent (Young Construction) pointed out that his client has already invested a substantial amount in the work and therefore, we should interfere with the award of the tender.

14. We find that the bid of the private Respondent (Young Construction) was for Rs. 2,22,62,796.00. The work was to be completed within a period of six months. The learned Single Judge noticed in the order under appeal that the private Respondent (Young Construction) had worked only from 6th June, 2010 till 18th June, 2010 i.e. for a period of 12 days or so. During this period, the private Respondent (Young Construction) executed the work only for Rs. 5,70,694/- and mustered materials worth Rs. 15,00,000/- for the construction work. It is not clear whether the material was available at the construction site or not, but the fact remains that the private Respondent (Young Construction) executed the works only for Rs. 5,70,694/- against his bid amount of Rs. 2,22,62,796/-.

15. The judgment under appeal was delivered on 30th July, 2010 and soon thereafter, the present appeal was filed. We had directed maintenance of status quo on 11th August, 2010. Therefore, it is possible that the private Respondent (Young Construction) may have executed some further works during this period of 10 days, making a total of about 22 days of work for a contract to be executed in six months.

16. We find that the time and money invested by the private Respondent (Young

construction) are not adequate enough to warrant our interference in its favour. Furthermore, there is a substantial difference between the bid of the private Respondent (Young Construction) and the Appellant. We also find from the facts presented before us that it is not case where the situation is irredeemable or irreversible.

17. Under the circumstances, we set aside the order of the learned Single Judge, allow the writ petition and this appeal and quash the award of the contract to the private Respondent (Young Construction). The official Respondents should now take necessary remedial steps keeping in mind the fact that the project is a time bound one which needs to be completed as expeditiously as possible. No costs.