(2005) 05 GAU CK 0056

In the Gauhati High Court

Case No : WP (C) No. 6346 of 2004

Sailen Kumar Sarma APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2006) 1 GLR 716

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : S.K. Das and B. Devi, for the Appellant; I. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The challenge in the present writ application is in respect of grant of the contract relating to "Construction of Approach and protection work of RCC Bridge over River Nunai on Tangla Bhergaon Road, Bhergaon side under RIDF-V (Balance work)" in favour of the respondent No. 4. In view of the fact that by the interim order dated 31.8.2004 passed by this Court, the execution of the said work has been held up and as the learned departmental counsel had mentioned the urgency involved in deciding the case at the earliest and further as counter-affidavit of the official respondents has been filed, this Court had considered it appropriate to dispose of the case finally at the motion stage itself.

2. The case pleaded and argued on behalf of the writ petitioner as against the award of the aforesaid contract in favour of the respondent No. 4 is short and precise. The writ petitioner had offered an amount of Rs. 11,30,390.00 in the tender submitted by him and though the amount offered was lower than what was offered by the respondent No.4, the respondent authorities had settled the contract with the respondent No. 4 at his offered amount of Rs. 13,12,099.00. Contending that the lower offer made by the petitioner has been by passed and ignored and the higher offer of the respondent No. 4 has been accepted the

instant writ application has been filed.

3. In the counter-affidavit filed by the official respondents it has been stated that in order to prevent exceptionally low offers from intending bidders which, in the long run, affect the quality of the work, the department has been following a procedure of working out the approximate value of the contract work offered and of not accepting any bid which is more than 10 per cent less than the estimated value of work as may be mentioned in the NIT. The aforesaid estimated value of the work is worked out by the department on the basis of the materials that would be required for execution of the same, the cost being calculated as per the scheduled rate of the Public Works Department. A 10 per cent variation is permissible and allowable keeping in mind that a Contractor may obtain the materials at a lower price than the scheduled rate, which lower price, in the opinion of the department, however, cannot be less than 10 per cent of the scheduled rate. That apart, the profit margin of the contractor is also taken into account in the aforesaid 10 per cent component and the department is conscious of the fact that all contractors may not opt for the same profit margin. This, is the basis on which the department has taken the decision to accept offers which are upto 10 per cent less than the estimated value of the work. In the affidavit filed, it has been mentioned that the aforesaid decision of the department has also been incorporated in an Office Memorandum dated 14.3.2001 and further that payment of sales tax being the liability of the contractor, the aforesaid amount should be included alongwith the estimated value of the work at the time of making of bids by intending contractors.

Insofar as the present case is concerned, the official respondents, in the affidavit filed, have stated that the estimated value of the work as mentioned in the NIT is Rs. 12.6 lakh and the A.G.S.T. component being 6.8 per cent, the total value of the work as computed by the department Rs. 13,41,408. Three tenderers offered their bids and on the tenders being opened it was found that the lowest offer made by one Girin Deka as well as the offer made by the writ petitioner were over 15 per cent less than the estimated value of the work inclusive of A.G.S.T., whereas, the offer made by the respondent No. 4 at Rs. 13,12,099 was 2.18 per cent less than the estimated value of the work alongwith the A.G.S.T. component. It is on the aforesaid basis that the decision to ignore the lower offer of the petitioner and to accept the higher offer of the respondent No. 4 was taken by the respondents.

4. Ordinarily, in a tender process involving the execution of a work, the lowest offer is to be accepted by the department unless there are good and substantial reasons for making a departure The power to ignore a lower offer and opt for a higher offer is always therewith the department or the accepting authority but recourse to such a course of action will be justified only if good and sufficient reasons exist for the same. In the present case, the department has taken a decision, based on the exigencies of work, not to accept bids which are more than 10 per cent less than the estimated value of the work. The allowance of 10

per cent is on account of the reasons already noted. In terms of the bid document made available to the tenderers, in the present case, the liability to pay the A.G.S.T. component is on the contractor. In such circumstances, the A.G.S.T. element which is payable by the contractor must be added to the estimated value of the contract work. If the department has taken the view that any offer which is more than 10 per cent less, than the estimated value of the work alongwith A.G.S.T. component should not be accepted in the interest of the work and such an offer should be considered to be an exceptionally low offer, and the said fact has been duly published by issuing the Office Memorandum dated 14.3.2001, no fault can be found in the aforesaid actions. The decision taken having been duly published, and applied to the present case in letter and spirit, rejection of the offer of the petitioner is in conformity with the principles laid down and followed by the department. The lower offer of the petitioner having been rejected on the basis of the norms in force, the department was left with the offer of the respondent No. 4 which, being 2.18 per cent less than the estimated value of the work alongwith the A.G.S.T. component, was found fit for acceptance in accordance with the principles prevailing. The acceptance of the said offer of the respondent No. 4, therefore, also, cannot be faulted.

5. In the above circumstances and in view of the foregoing discussions, I do not consider the present to be a fit case for interference in exercise of my power under Article 226 of the Constitution. The writ petition, accordingly, has to fail. It is, therefore, dismissed. However, having regard to the facts and circumstances of the case there shall be no order as to cost.