(2017) 07 GAU CK 0008

In the Gauhati High Court

Case No : 13 of 2017

SH LALFAKAWMA APPELLANT

Vs

STATE OF MIZORAM RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

Citation : (2017) 07 GAU CK 0008

Hon'ble Judges : Michael Zothankhuma, N Sailo

Bench : DIVISION BENCH

Advocate : Joseph L Renthlei, Victor L Rokhum, Cyndy Lallawmzuali, Mary L Khiangte, Lalfakawma, T Lalzekima

Final Decision : Dismissed

Judgement

1. Heard Mr. Joseph L. Renthlei, learned counsel for the appellant/writ petitioner. Also heard Ms. Mary L. Khiangte, learned counsel for the State Government and Mr. Lalfakawma, learned counsel for the respondent No. 7.

2. This appeal has been filed against the Judgment & Order dated 16.06.2017 passed by the learned Single Judge, wherein WP(C) No. 35/2017 was dismissed.

3. The matter pertains to a Short Tender Notice (STN in short) dated 19.10.2016, inviting tenders from manufacturers/Authorised Dealers for Pre-fabricated Geomembrane 750 micron (650 GSM) Laminated HDPE Woven Fabric (Geomembrane) for water/canal proofing lining with BIS standards.

4. The appellant/writ petitioner and the respondent No. 7 were amongst the tenderers who submitted their bids for supply of the Pre-fabricated Geomembrane. The bid of the appellant was the lowest. However, the appellant''s bid was rejected by the State respondents on the ground that besides the appellant having not complied with Clause-6 & 18 of the STN dated 19.10.2016, the appellant''s MVAT certificate did not allow the appellant to deal with pre-fabricated geomembrane. Clause- 6 & 18 of the STN dated 19.10.2016 are reproduced below:- "Short Tender Notice

6. The tender should be enclosed with attested copy of National Sanitation Foundation (NSF) certificate.

18. The Firm should enclosed attested TAX Identification No. (TIN), and original TAX/VAT Clearance Certificate for clearing/collecting local taxes."

5. The tender was allotted to the respondent No. 7. Being aggrieved, the appellant filed WP(C) No. 35/2017 challenging the allotment of the contract to the respondent No. 7 on the ground that the sample of the Geomembrane submitted by the respondent No. 7 was of Indian Standard Specification IS 15351:2008, but as per the Gazette Notification dated 01.04.2016, the same should have been IS 15351:2015. The further ground taken by the appellant was that the non-submission of the Tax/Vat Clearance Certificate by the appellant along with his tender documents should not have come in the way of the appellant''s bid being considered by the respondents, as the appellant was a registered Tax/Vat Registered Dealer.

6. The State Government on the other hand, have taken the stand that the appellant''s firm could not be selected due to the fact that he had not enclosed Tax/Mizoram Vat Clearance Certificate, National Sanitation Foundation Certificate and on scrutiny of the appellant''s Tax Registration Certificate, it was found that his certificate did not cover Geomembrane. The further stand of the State respondents is that the sample of geomembrane submitted by the respondent No. 7 was tested and found to conform to the Indian Standard Specification IS 15351:2015.

7. The stand of the respondent No. 7 is the same as the stand taken by the State respondents. However, the respondent No. 7 has further taken the stand that the appellant is not a registered dealer of geomembrane as per appellant''s MVAT registration certificate.

8. The learned Single Judge thereafter passed the impugned Judgment & Order dated 16.06.2017, dismissing WP(C) No. 35/2017, on the ground that there was no arbitrariness or unfairness in awarding the tender to the respondent No. 7 as the sample submitted by the respondent No. 7 was equivalent to the IS 15351:2015.

9. The appellant has thus approached this Court for setting aside the impugned Judgment & Order dated 16.06.2017 passed in WP(C) No. 35/2017. Though the appellant has taken us through the same arguments that he had put forth before the learned Single Judge, we are limiting our scrutiny to only three points. Firstly, whether the appellant had complied with Clause-18 of the STN dated 19.10.2016 and whether it was an essential condition of eligibility. Secondly, whether the Geomembrane to be supplied as per the STN dated 19.10.2016 could be said to be agricultural equipment, as the appellant''s Vat Registration Certificate had registered him only as a dealer for agricultural equipments. Thirdly, whether Clause-6 of the STN dated 19.10.2016 was adhered to by the parties herein.

10. The appellant''s counsel submits that the appellant had submitted the Tax Clearance Form along with his tender documents and the very fact that the appellant had a Mizoram VAT registration certificate implies that all taxes were cleared. He also submits that though Clause-18 of the STN dated 19.10.2016 is an essential condition of eligibility, the appellant had submitted his duly filled up tax clearance certificate on 07.11.2016, i.e. after the tenders were opened and comparative statement made on 04.11.2016. He submits that the rejection of the appellant''s tender was unfair as the same has resulted in a great financial loss to the State Exchequer, as the appellant''s bid was the lowest.

11. The counsels appearing for the respondents have submitted that the appellant had not enclosed (1) Tax/Mizoram Vat Clearance Certificate, (2) National Sanitation Foundation (NSF) Certificate along with his bid and (3) that the appellant was not a registered supplier of the Geomembrane as per the Tax/ Mizoram Vat Certificate issued to him. They thus submit that there is no infirmity with the decision of the learned Single Judge in dismissing the writ petition.

12. In the case of Poddar Steel Corporation Vs. Ganesh Engineering Works & Ors., 1991 3 SCC 273, the Apex Court has held that the requirements in a tender notice can be classified into two categories those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of condition in appropriate cases.

13. In the case of Central Coalfields Limited & Anr. Vs. SLL-SML (Joint Venture Consortium) & Ors., 2016 8 SCC 622, the Apex Court has held at para-48 as follows:- "48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

14. In the present case, not only the State respondents, but also the appellant have taken the stand that Clause-18 of the STN is an essential condition of eligibility. On perusing the Mizoram Vat Clearance Certificate submitted by the appellant, we find that the same is a blank form. Neither is the name of the appellant mentioned in the said form nor is there any signature or seal of any authority. As the said document is a blank form, we cannot accept the same to be the original Tax/Vat Clearance Certificate, as required under Clause-18 of the STN dated 19.10.2016.

15. In respect of the question of whether the appellant''s Vat Registration covers Geomembrane and whether the same comes under the agricultural equipments, the appellant has submitted notification No. J.11020/1/2012-TAX dated 18.12.2012 issued by the Tax Department, Government of Mizoram. A perusal of Schedule-II, Part-C at Serial No. 64 of the Notification dated 18.12.2012 read with Serial No. 72 of the Industrial Inputs goes to show that the Geomembrane mentioned in the STN dated 19.10.2016 comes within the heading "Industrial Input" and not under "agricultural equipment". Moreover, the Vat Registration Certificate of the respondent No. 7, while clearly reflecting the fact that the respondent No. 7 deals with agricultural equipment, the certificate also clearly reflects the words ''Geomembrane''. However, the words Geomembrane are absent in the appellant''s Mizoram Vat Registration Certificate. With regard to the question whether the appellant and the respondent No. 7 have enclosed attested copies of NSF Certificates as required as per Clause-6 of the STN dated 19.10.2016, the comparative statement made by the State respondents on 04.11.2016 shows that the appellant did not comply with Clause-6 of the STN, while the respondent No. 7 complied with the same.

16. In the present case, the appellant not having complied with an essential condition of eligibility, as required under Clause-18 of the STN dated 19.10.2016, we find that the State respondents have made no infirmity in rejecting the appellant''s tender documents. Though the appellant''s counsel has submitted that the respondent No. 7 could not have been selected as the successful tenderer as the respondent No. 7 had not complied with the essential conditions of the tender notice, we find that as the appellant himself has not complied with the terms and conditions of the tender, the appellant has got no locus standii to challenge the selection of the respondent No. 7 by the State respondents. On this aspect, we take recourse to the observation and law laid down by the Apex Court in Raunaq International Ltd. Vs. I.V.R Construction Ltd. & Ors., 1999 1 SCC 492, where it held that giving judicial relief at the instance of a party who does not fulfill the requisite criteria of a tender is misplaced. In view of the above reasons, the appeal is dismissed.

