(2017) 06 GAU CK 0020

In the Gauhati High Court

Case No : 35 of 2017

Sh. Lalfakawma APPELLANT

Vs

The State of Mizoram RESPONDENT

Date of Decision : 16-06-2017

Acts Referred:

Constitution of India, Article 21, Article 19(1)(g) - Amendment of the Schedule - Protection of certain rights regarding freedom of speech, etc

Citation : (2017) 06 GAU CK 0020

Hon'ble Judges : Manash Ranjan Pathak

Bench : SINGLE BENCH

Advocate : Joseph. L. Renthlei, Cindy Lalawmkima, Victor Lalremmawia Rokhum, Mary L. Khiangte, Mizoram, Lalfakawma, T. Lalzekima

Judgement

1. Heard Mr. Joseph Lalchhanhima Renthlei, learned counsel for the petitioner. Also heard Ms. Mary L. Khiangte, learned Government Advocate, Mizoram for the State respondent Nos. 1 to 6, 8 and 9 and Mr. Lalfakawma learned counsel for the private respondent No. 7. 2. The respondent No. 4 Secretary to the Government of Mizoram Horticulture Department on 19.10.2016 issued a Short Tender Notice (STN) inviting Short Sealed Tender from the Manufacture/the Authorised Dealers for supply of Pre-fabricated Geomembrane 750 Micron (650 GSM) laminated HDPE Woven Fabric (Geomembrane) for Water/Canal proving ling with BIS Bureau of Indian Standards of 10,000/- liters capacity for the beneficiaries of NLUP third and fourth Phase and Captive Plantation under NLUP during 2015-2016 informing that tender may be submitted on or before 04.11.2016 upto 12.00 Noon and the same will be opened on the same day at 01:00 PM at Committee Room, Directorate of Horticulture. 3. By the said STN dated 19.10.2016 the bidders were also informed that the complete bid documents should be dropped in the tender box placed at Directorate of Horticulture, Aizawl and the tender form with detail Terms and Conditions can be obtained from the office of Directorate of Horticulture, Aizawl during Office hours

or all working days which may be downloaded from its website. 4. The terms and conditions of said STN dated 19.10.2016 amongst others includes that (i) the manufacturing company should have at least working experience of 750 microns under BIS certification which may be supported by relevant document(s), the tender should be enclosed with attested copy of National Sanitation Foundation (NSF) Certificate, (ii) sample bearing ISI mark specified by BIS license should be submitted during the time of opening the tender along with company broacher or leaflet, (iii) the farms should enclosed attested Tax identification No. (TIN) and original TAX/VAT Clearance Certificate for clearing/collecting local taxes, (v) the issuing authority of said STN dated 19.10.2016 reserves the right to reject any or all quotation without assigning any reason thereof and is not bound to accept the lowest rate, and (vi) in case of discrepancy in the documents furnished by the Tenderer, the security deposit will be forfeited and cancelled all the contract/ order 5. The petitioner along with five others including the respondent No. 7 submitted their respective tenders pursuant to STN dated 19.10.2016. It is stated by the petitioner that though he was found to be the lowest bidder with regard to said STN dated 19.10.2016 by the respondent authorities, but his bid was rejected for committing minor discrepancies, whereas the respondent authorities in the Directorate of Horticulture after approval of the State Government issued the supply order dated 16.03.2017 to the respondent No. 7 though he has failed to comply with some of the necessary terms and conditions that were specified in the STN dated 19.10.2016. 6. It is stated by the petitioner that though he had made several representations, thereafter, successive meetings were held by the State respondents in which his position was supported by the meeting of the State Purchase Advisory Board on 20.12.2016 and the NLUP Implementing Board Mizoram Aizawl on 17.07.2017 the petitioner submits that in spite of all this he was not considered the respondent No. 7 who failed with the terms and conditions was considered and thereafter the State respondents in giving the supply order pursuant to the STN dated 19.10.2016 by the impugned supply order dated 16.03.2017 of the Directorate of Horticulture Mizoram i.e respondent No. 5 is illegal and is in violation of Article 14, Article 19 (1)(g) and Article 21 of the Constitution. 7. Mr. Joseph L. Renthlei, learned counsel for the petitioner also submits that the sample of Geomembrane submitted by the respondent No. 7 was of the Indian Standard Specification IS 15351:2008 and but as per Gazette Notification dated 01.04.2016 such specification of Laminated High Density Polyethylene (HDPE) Woven Geomembrane for Waterproof lining has been revised as IS 15351:2015 in place of IS 15351:2008 and such HDPE Woven Geomembrane with standard IS 15351:2008 was permitted upto 01.10.2016 and thereafter it is the IS standard 15351:2015 should is the standard for such Laminated High Density Polyethylene (HDPE) Woven Geomembrane for Waterproof lining and since the respondent No. 7 failed to provide any sample of such tender of IS standard 15351:2015, the action of the state respondents in accepting his tenderer and issuing the impugned supply order dated 16.03.2016 is bad in law and therefore should be set aside and quashed. 8. Mr. Joseph L. Renthlei, learned counsel for the petitioner submits that for a small mistake of not furnishing tax clearance certificate at the time of filing of the tender documents on 04.11.2016 his case was rejected being the lowest bidder of the said STN dated 19.10.2016 but considered the case of the respondent No. 7 though he could not provide the sample of Geomembrane ISI 15351.2015 the petitioner also contended that the sampled supplied by the res pendent No. 7 was only of Type-II Laminated High Density Polyethylene (HDPE) Woven Geomembrane IS 15351:2008 and was not on Pre-fabricate Geomembrane 750 micron (650) GSM which is IS Type-III 15351:2015 specification. 9. For all these petitioner submitted that the decision of the State respondents in accepting the tender of the respondent No. 7 pursuant to the STN dated 19.10.2016 and in issuing the impugned supply order dated 16.03.2016 is arbitrary, illegal and as such need to be quashed and the petitioner being the lowest bidder should be considered for supply of the matter in terms of the STN dated 19.10.2016 the State respondents filed their affidavit in the matter and also produce the relevant records. 10. Ms. Mary L. Khiangte, learned Govt. Advocate representing the State respondents submitted that the purpose of the supply of Pre-fabricate Geomembrane 750 micron (650) GSM Laminated Woven HDPE Fabric (Geomembrane) for Water/Canal providing with BIS Bureau of Indian Standards of 10,000/- liters capacity was meant for beneficiary of NLUP 3rd and 4th Phase and Captive Plantation under NLUP during 2015-2016 under the Flagship Programme which has a limited and fixed schedule. It is submitted by the State respondents that the as per the terms and conditions of the STN dated 19.10.2016 it is the Type-III High Density Polyethylene (HDPE) Fabric with 0.05 MM /750 micron and mass of 650 G/M2, minimum was the standard sought for to be supplied for by the STN dated 19.10.2016 after the necessary enquiry made department through BIS it is found (i) it is only International Packaging products private limited, Dadra and Nagar Havli and to Aadinath Polyfab Pvt. Ltd. Maharashtra are the only two BIS licensees for manufacturing such Type-III 750 micron fitness Pre-fabricated Geomembrane. 11. It is submitted by the State respondents that the SPAD/NLUP input purchase board in its meeting held on 10.01.2017 though found that the petitioners'' firm at enterprise was the lowest bidder and was not selected due to non fulfilment of various conditions set forth by the tender terms and conditions one of which that it did not enclosed TAX/Mizoram VAT clearance certificate, National Sanitation Foundation Certificate and more over on due scrutiny of Tax Registration of the said is its enterprise it was found that its registration do not cover Geomembrane it is pointed out by the State respondents that non-compliance of any terms and conditions in a tender normally resulted in summary rejection of the quotation at fault whether the said non-compliance is substantial of not subject to the opinion of said SPAB. It is also brought to the notice of the count by the State respondents that the petitioner submitted three pages documents in respect of TAX/VAT clearance certificate, wherein, the first two page relates to the form of filing details of the applicant and the third page of clearance certificate was completely blank, for reasons best known to the petitioner which results in non-conformity of one of the terms and conditions of the STN dated 19.10.2016 and non submission of such tax clearance certificate cannot be considered as a minor discrepancy as stated by the petitioner. Moreover, all the grievances raised by the petitioner as placed before the concerned SPAB which dealt with every aspect of the grievances raised by the petitioner. 12. It is submitted by Ms. Mary L. Khiangte, learned Govt. Advocate that while issuing the impugned supply order dated 16.02.2017 of the materials in terms of the STN dated 19.10.2016 to the respondent No. 7. The State respondents under took and observed a fair and transparent procedure allowing the petitioner to participate fairly before the SPAB and because of his failure to furnished the required an essential documents along with his tender at the time of filing the same on 04.11.2016 pursuant to the STN dated 19.10.2016 for which the tender of the petitioner was not considered, such decision of the Government is no way arbitrary and illegal. The State respondents also submitted that it is only when the respondent No. 7 could provide necessary test report that the sample placed before the state respondents with regard to the Geomembrane to be supplied by him fulfils the criteria and the ISI 15351..2015 satisfaction. It is then only the authority concerned decided to issue the supply order to the said respondents moreover before taking any such decision in favour of the respondent No. 7 to issue the impugned supply order dated 16.03.2017 pursuant to the STN dated 19.10.2016. The respondent No. 7 could place before the authority concerned that the BIS on 21.10.2016 have given attachment license No. CM/L-799682 in favour of International Packaging Products Private Limited with regard to the IS 15351.2015 IS standard. 13. On behalf of the respondent No. 7 the North East Consultancy Services the successful tenderer who obtained this supply order dated 16.03.2017 pursuant to the STN dated 19.10.2016 placed before the Court that it is the authorised distributor for Rhino Mat which is a Laminated High Density Polyethylene Woven Fabric Geomembrane Pond with ISI mark 15351:2008/IS 15351:2015 which includes Type-I, II and III manufactured by M/S. International Packaging Products Private Limited. The respondent No. 7 on 04.11.2016 at the time of submission of his tender pursuant to the STN dated 19.10.2016 dated 03.10.2016 in respect of its product Rhino Mat 750 and 2550 denier tape was furnished that was issued by the Central Institute of Plastic Engineer and Technology Bhopal (CIOET) which conducted the test report as per 15351:2015 and the said test report reveals that sample was tested as early as on 18.08.2016. The respondent No. 7 also that submitted it has the proper license to produce Type-I and Type-III laminated high density polyethylene fabric for canal lining and the BIS after proper testing issued a fresh license vide No. CM/L 7988682 on 21.10.2016 with revised IS 15351:2015 and as the said license was received y the respondent No. 7 only after last date of submission 04.11.2016 the respondent No. 7 submitted a computer generated print out of its new license Cm/L 7988682 as per the revised IS 15351:2015 from the official website of the BIS the respondent No. 7 submits non furnishing of tax/vat clearance certificate by the petitioner is a discrepancy and non fulfilment of terms and conditions of the STN dated 19.10.2016. The petitioner submitted his affidavit-in-reply to the bother the affidavit of both the respondents as well as the private respondent No. 7. 14. The Official respondents have produced the records in original with regard to the said tender process dated 19.10.2016. 15. From the record it is seen that with regard to STN dated 19.10.2016, the tenders were open on 04.11.2016 and the meeting of SPAB/ NLUP Input Purchase Board was held on 07.12.2016 which recommended the North-East Consultancy Services, the respondent No. 7''s tender as the lowest valid bid for supply of Pre-Fabricated Geomembrane 750 micron (650 GSM) laminated high density Polyethylene (HDPE Woven) Fabric (Geomembrane) for water/cannel proof in lining with DIS Standards but as the petitioner on 07.12.2016 submitted representation the recommendation of the SPAB/NLUP Input Purchase Board on 07.12.2016 was kept pending and by way of abundant precaution another meeting of SPAB/NLUP Input Purchase Board was held on 20.12.2016. In the said meeting on 20.12.2016, the said Purchase Board finally considered the case of the petitioner and held that the said bidder, AZ Enterprise represented by the petitioner was not selected due to non-fulfilment of many condition set forth by the said tenderer as per the terms and conditions of the STN dated 19.10.2016 which are (i) did not enclosed TAX/Mizoram VAT clearance certificate not enclosed National Sanitation Foundation (NSF) Certificate and (iii) on scrutiny of TAX registration, it was found that the petitioner''s registration do not cover Geomembrane. 16. In the said meeting dated 20.12.2016 the Purchase Board made a indebt scrutiny of the documents and observed that samples submitted by the respondent No. 7 appears to be no longer valid as IS 15351:2008 has been replaced by new version of IS 15351:2015 with effect from 01.10.2016 and therefore, the said Purchase Board on 20.12.2016 almost came to a conclusion recommending the cancellation of STN dated 19.10.2016 and decided to recommend to issue fresh short sealed tender to be invited by the Horticulture Department and that the terms and conditions of the tender may be issued with the approval of the Chief Secretary/Chairman, SPAB, NLUP Implementing Board, Finance and Law & Judicial Department. However, before the minutes of the said meeting of the Purchase Board dated 20.12.2016 was finalized. The Chief Managing Director of North East Consultancy Services, the respondent No. 7 on 20.12.2016 itself made a request to convene another meeting of SPAB/NLUP Input Purchase Board to arrive at the right and legitimate decision in the line with the true letters and spirit of the terms of the tender. Accordingly the next meeting was fixe on 10.01.2017. It is seen that both the petitioner and the respondent No. 7 submitted detail points of clarifications for consideration of the Purchase Board in the meeting held on 10.01.2017 and after considering all the points of the parties at length in the said meeting and after examining the documents submitted by the parties along with the comparative statements, the Purchase Board concerned in its meeting dated 10.01.2017 observed that the sample submitted along with its tender by the respondent No. 7 on 04.11.2016 bearing IS 15351:2008 confirms to the revised version i.e. IS 15351:2015 and the relevant columns to the scheduled bearing the IS 15351:2008 attached to the Licence No. CM/L-7911682 granted to the manufacturing Company of the said sample namely M/S. International Packaging

Products Private Limited by the Bureau of Indian Standards (BIS) has also been accordingly revised w.e.f. 21.10.2016 as IS No. 15351:2015 by the test Report dated 03.10.2016 issued by the Central Institute of Plastic Engineering & Technology under the Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers, Government of India along with the Endorsement Nos. dated 21.10.2016 issued by the BIS with regard to the attachment CM/ L-7911682 granted to the International Packaging Products Private Limited. 17. The said Purchase Board after its said finding and considering the imperative need to avoid further unwarranted delay in the said project that falls under NLUP, Flagship Programme of the Government which was already delayed for almost a year and after taking into account all the opinion and the lowest bidder, the petitioner herein which was already found to be ineligible to be considered, due to non compliance of the various terms and conditions STN dated 19.10.2016 the said State Purchase Advisory Board (SPAB) decided to hold that the sample submitted by the respondent No. 7 North-East Consultancy Services on 04.11.2016 as valid and that as the said respondent No. 7 also complied with all other conditions of the terms and conditions of the STN dated 19.10.2016 and finding the respondent No. 7 as the lowest bidder, accordingly recommended purchaser of eh tendered item dated 19.10.2016 from and at the quoted rate of the North-East Consultancy Services the respondent No. 7. It is also seen that while taking said decision of the North-East Consultancy Services the respondent No.7 the SPB on 10.01.2017 considered the test certificate issued by Central Institute of Plastic Engineering & Technology in favour of International Packaging Products Private Limited dated 03.10.2016 regarding the product of the said International Packaging Products Private Limited to be inconformity to the IS 15351..2015, the certificate issued by the BSI dated 24.10.2016 with attachment to License No CM/L-7911682 in favour of said International Packaging Products Private Limited with BIS IS 15351:2015 with regard to its product-laminated High Density Polyethylene (HDPE) Woven Geomembrane for water proof lining. The records also revealed that the last page of the TAX/M-VAT certificate of the petitioner is totally blank without any signature and seal. The original TAX/MVAT Form-II certificate with TIN 15500146019 in favor of AZ Enterprise reflects that the petitioner is not a registered supplier of Geomembrane. 18. In the case of Maa Binda Express Carrier v. North-East Frontier Railway, (2014) 3 SCC 760, the Hon''ble Apex Court have observed that - "The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest." 19. It is settled that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism and to see whether such decision is unfair or arbitrary or not. 20. In the case of Sorath Builders v. Shreejikrupa Buildcon Ltd., reported in (2009) 11 SCC 9, the Hon''ble supreme Court have held that - "The terms and conditions of the tender are required to be adhered to strictly. When the bidder is negligent and was not sincere in submitting his pre-qualification documents within the time schedule laid down despite the fact that he had information that there is a time schedule attached to the notice inviting tenders, despite being aware of the said stipulation he did not submit the required documents within the stipulated date, no grievance could be made with tender settling authority for rejection of such tender/bid, as lapse was due to the own fault of the bidder." 21. It is seen that the after considering all the points of the parties at length, including the petitioner, after examining the documents submitted by the parties along with the comparative statements, after making a indebt scrutiny of the documents, the Purchase Board came to the finding that the samples submitted by the respondent No. 7 is equivalent to the new version of IS 15351:2015 and as the entire program of supply of said Geomembrane, said respondent No. 7 found to be valid lowest bidder. In the said exercise made by the Purchase Board, no such arbitrariness or unfairness found in their part in taking the decision in rejecting the tender of the petitioner. Further, the impugned Sale Order dated 16.03.2017 also clearly reflects that the respondent No. 7 has to supply the concerned Geomembrane product, clearly mentioning ISI 15351:2015 standard. 22. Considering all these, this Court does not see any illegality or infirmity with the decision of the official respondents and in issuing the impugned Supply Order dated 16.03.2017 to the respondent No. 7. 23. Accordingly, this writ petition, being devoid of merit, stands dismissed. 24. The interim passed earlier on 24.03.2017 stands vacated.

