

(2001) 05 GAU CK 0041

In the Gauhati High Court

Case No : Writ Appeal No. 136 of 2001 in WP (C) No. 2115 of 2001

Siddharta Kalita and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

Assam Financial Rules, 1954 — Rule 254, 285

Citation : AIR 2001 Guw 131 : (2001) 1 GLT 677

Hon'ble Judges : H.K. Sema, Acting C.J.; P.G. Agarwal, J

Bench : Division Bench

Advocate : K.N. Choudhury, N. Saikia, A. Bora and D.K. Das, for the Appellant;
D.K. Mishra, J. Roy and S. Sangama, for the Respondent

Judgement

H.K. Sema, CJ(Actg)

1. Heard Mr. K.N. Choudhury, learned counsel for the appellant as well as Mr. D.K. Mishra, learned counsel for the respondents and Mr. C. Choudhury, learned Sr. Govt. Advocate, Assam.

2. This writ appeal has been filed against the judgment and order dated 12.04.2001 passed by the learned Single Judge in WP(C)N. 2115/2001.

3. The dispute relates to repairing and improvement of Kamalpur Morrowa Road under the Chief Engineer, PWD. The undisputed fact is that a tender notice was issued on 15.02.2001 and the same was published in the "News Front", a daily in its issue dated 04.03.2001. The preliminary work order was issued in favour of the respondents on 19.03.2001 and the formal work orders were issued on 26.03.2001. A grievance has been raised by the writ appellants that the said tender has not been issued in accordance with Rule 254 of the Assam Financial Rules, 1954. The admitted position is that pursuant to the short tender notice there were only 7 tenderers and the work in question has been distributed to 5 tenderers.

4. At this stage we would like to point out that the fact that only 7 tenders have

been received pursuant to the Notice inviting tenders itself shows that the tender notice was short and it could not attract many tenderers who are otherwise eligible for submitting tenders. It is a well settled principle of law by now that the purpose of inviting tender is to attract more tenderers and to select the best amongst the tenderers. More the number of tenderers better is the opportunity for the respondent to select the best one from amongst many tenderers. This can only be done if the tender is published in a paper which is having wide circulation in the State and given sufficient time for submitting the tender. In the instant case, admittedly, pursuant to the short tender notice which we may safely termed it as "table tender", only 7 tenderers had submitted their tenders and amongst the 7 tenderers the work was distributed to 5 tenderers, which would clearly show that the decision making-process has not been transparent.

5. This fact has been contested by Mr. D.K. Mishra, learned counsel for the respondents who submits that there were 5 groups of work and in each group 7 tenderers applied. Be that as it may, the fact to which we are concerned in the present appeal is the time limit mentioned in the tender and the manner in which the tender was published.

6. Rule 254 of the Assam Financial Rules mandated that a tender should be invited in the most open and public manner possible. It reads -

"254. Sealed tenders should invariably be invited in the most open and public manner possible, by advertisement in the Government Gazette or the Press, or by public notice in English and vernacular, tenders should have free access to the contract documents. The notice should state -

(1) The place where, the time when, the contract documents can be seen, and blank forms offender obtained;

(2) The place where, and the time and date on which, tenders are to be submitted and are to be opened.

(3) The amount of earnest money to accompany the tenders and the amount and nature of the security deposit required in the case of the accepted tender. The earnest money required should either be forwarded with the tender in currency, notes or deposited in the treasury, the duplicate copy of the challan being attached to the tender, cheques on banks should not be accepted for this purposes.

(National Savings Certificates standing in the name of the tenderer and duly endorsed in favour of competent authority for acceptance of tender may also be accepted as earnest money).

(4) With whom, or with what authority the acceptance of the tender will rest."

7. Rule 254 of the Rules, clearly provides that there must be transparency in issuing tender. The rule further shows that a tender must be invariably invited by advertisement in the Government Gazette or by Press or by public notice in

English and vernacular. In the instant case the notice inviting tenders was not published as per mandate of Rule 254 of the Assam Financial Rules, 1954 and there was also no publication in vernacular. The tender was published only in English that also in the news paper called "News Front", which admittedly has no wide circulation in the State of Assam. The language of Rule 254 being what it is, we have no doubt in our mind that the procedure prescribed under Rule 254 of the Rules has to be followed in letter and spirit and it is mandatory. To this extent the findings of the learned Single Judge that there is no mandate that tender notice should be published by way of advertisement in the Press is quashed, being contrary to the provisions of the Rules. The learned Single Judge has also observed that the tender notice was placed in the notice board inviting tender and it was published in the news paper and in terms of the tender notice large number of persons submitted tender, is also not based on facts. As already observed by us that tender notice was not only in violation of the prescribed Rules which provides for wide publication by publishing in English as well as vernacular news papers having wide circulation in the State, but also the time for submission of tender was too short and it cannot be reasonably expected that the tender notice published in the "News Front", which does not have wide circulation in the State, on 04.03.2001 fixing last date as 2 P.M. of 14.03.2001 and thereafter followed by preliminary work orders issued on 19.03.2001 and formal work order dated 26.03.2001. The admitted fact is that only 7 tenderers submitted tenders pursuant to the short tender notice. Can tender notice involving crores of rupees would attract only seven tenderers if it is widely published with sufficient time? This is a mockery of tender process.

8. A public authority vested with public power are required to act not only honestly, bonafidely and continuously but they are also required to act justly, fairly and rationally. In the case at hand, the manner in which the tender having public element is sought to be done in the manner in which it has been done, no person properly instructed in law would have done this. There was a clear absence of transparency.

9. Despite our finding as recorded above, one thing is clear that in the work order itself the period of completion of work has been stipulated within 60 days. By now the time is running out. From the judgment of the learned Single Judge it clearly appears that more than 30% of the work has been completed pursuant to the issuance of work order. If at this stage, we interfere with the work order, the progress of work would be stalled and it may ultimately affect public interest as work order is for repairing and improvement of the public road. Now the monsoon is fast approaching and if fresh tender is directed to be issued that may take long time and ultimately the completion of the repairing of public road will get delayed. Keeping this view in our mind, despite of the reason that we have recorded above, we do not want to interfere with the work order issued in favour of the respondents solely because of the circumstances as recited above. The respondents may be allowed to complete the work pursuant to the work order, but in future the respondents while calling tender must adhere strictly to the

procedure prescribed under Rule 254 of the Assam Financial Rules 1954 and Rule 285 of the Assam Public Works Department Manual as well as the observations made by us.

10. With the aforesaid directions, the appeal is disposed of.