

(2012) 04 GAU CK 0019
In the Gauhati High Court
Case No : W.A. No. 80 of 2012

Sri. Arup Kumar Mazumdar and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : (2012) 3 GLD 100

Hon'ble Judges : Indira Shah, J;Biplab Kumar Sharma, J

Bench : Division Bench

Advocate : A.M. Buzarbaruah, Mr. M. Barman, Mr. M. Islam, Mr. D. Ghosh and M. Bhuyan, for the Appellant; I. Choudhury, SC, PWD and Mr. A.D. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. M. Bhuyan, learned counsel for the appellants as well as Mr. A.D. Choudhury, learned counsel, representing the respondents No. 5 and 6. We have also heard Mr. I. Choudhury, learned Standing Counsel, PW D. This appeal is directed against the judgment and order dated 13.3.2012 passed by the learned Single Judge in WP(C) No. 4960/2011, by which the writ petition filed by the present two appellants along with one Sri Subrat Hazarika assailing the Short Notice Inviting Quotation (SNIQ) dated 25.7.2011 issued by the Superintending Engineer of Public Works Department, Lower Assam Mechanical Circle, Guwahati has been dismissed.

2. According to the appellants, learned Single Judge, while dismissing the writ petition, by the impugned judgment and order dated 13.3.2012 has committed manifest error of fact and law requiring interference of the same exercising the appellate jurisdiction. It is the case of the appellant that the SNIQ was not floated in the manner and method in which the same was required to be floated keen in mind the provision of Rule 254 of the Assam Financial Rules. For a ready reference the said Rule is quoted below: "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."

3. For convenience, the SNIQ in question is also quoted below :

Short Notice Inviting Quotation Sealed Quotations are invited by the undersigned affixing non-refundable Court fee stamp of Rs. 8.25 (Rupees eight and paise twenty-five) only from bona fide parties for purchase of old and unserviceable/BER State Govt. Machinery/ Vehicle/Equipments and dead stock/numerical/T&P/ Site a/c scrape materials lying under various Assam PW D Division in "As is where is basis/condition". Quotation should be super scribed "The Superintending Engineer, PW D, LAMC, Fancy Bazar, Guwahati-1." And will be received the undersigned on 08th August, 2011 upto 1 p.m. The Quotations will be opened at 1.30 p.m. on the same date. Quotationer or their representative may be present at the time of opening. Detailed Quotation documents can be obtained during working hours from the office of the Superintending Engineer, PW D, Lower Assam mechanical Circle, Guwahati-1 from 25th July, 2011 to 6th August, 2011 upto 2 p.m. against payment of Rs. 100/- (Rupees one hundred) only in the form of IPO/Demand Draft pledged in favour of Executive Engineer, PWD, Mechanical Division, Ulubari, Guwahati, Guwahati-7 against written application addressed to the Superintending Engineer, PWD, Lower Assam Mechanical Circle, Guwahati-1 along with production of attested copy of PAN card and VAT registration card.

A.K. Das Superintending Engineer, PWD Lower Assam Mechanical Circle, Guwahati-1 Memo No. MISC/LAMC/14-15/331 dated 25.7.11

4. There is no dispute that the SNIQ apart from being affixed in the official notice board was also uploaded in the website for access to all. That apart the same was also published in the issue of the English daily "Eastern Chronicle" dated 26.7.2011.

5. According to the petitioners, they were not aware of the publication of the SNIQ in the said newspaper inasmuch as the same does not have wide circulation. As stated in the writ petition (paragraph-6), the petitioners having interest in participating in the tender process had visited the office of the respondent No. 3 on 29.7.2011 to know as to when the NIT for purchase of the particular materials i.e. scrape materials would be issued. It is alleged by the petitioners that they were informed in the office of the respondent No. 3 that no such tender was issued for sale of scrape materials and that as and when the same is issued, the petitioner would come to know about the same.

6. If we go by the aforesaid statement made in paragraph-6 of the writ petition/ the petitioners were interested to participate in the tender process for sale of scrape materials. However/ as per their own admission in the writ petition, they kept on waiting till September/ 2011, when they allegedly come to know on 12.9.2012 from reliable source that NIT was in fact issued and that the process had been finalized. Thus, according to the petitioners, they had no knowledge

about finalization of the tender process till 12.9.2011.

7. Mr. Bhuyan, learned counsel for the appellants referring to the aforesaid provisions of Rule 254 and the judgment reported in Siddharta Kalita and Others Vs. State of Assam and Others, , submits that the respondents having violated the mandate of Rule 254 requiring to float the tender in a particular manner and method, learned Single Judge could not have held that there was sufficient compliance of Rule 254.

8. Countering the above argument, Mr. I. Choudhury, learned Standing Counsel, PW D submits that there being sufficient compliance of the provisions of Rule 254 alleging deviation of which the petitioner had filed the writ petition, learned Single Judge has rightly dismissed the writ petition appreciating the relevant facts and in accordance with law. According to him, the particular observation made in Siddharta Kalita (supra) has no application in the present case.

9. Mr. A.D. Choudhury, learned counsel, representing the respondents No. 5 and 6, who are the successful bidders submits that pursuant to the tender process, work order has already been issued to them on 26.3.2012. He further submits that in response to the said work order, and upon acceptance of the same, the private respondents have already lifted majority of scrape materials.

10. Mr. I. Choudhury, learned Standing Counsel, PW D in addition to his aforesaid submission has also raised the question of maintainability of the writ petition and the writ appeal in absence of any challenge to the work order dated 26.3.2012.

11. We have given our anxious consideration to the submissions advanced by the learned counsel for the rival parties and have also gone through the entire materials on record.

12. Although according to the appellants, the particular newspaper, in which, the SNIQ was published has no wide circulation, but the finding recorded by the learned Single Judge based on the information furnished by the Directorate of Information and Public Relation through an affidavit has held that the said newspaper having had circulation to the tune of 55,969 duly conforms to the requirement to the advertisement policy, in terms of which, daily newspaper should have minimum circulation of 20,000 per issue. There is no dispute that the newspaper "English Chronicle" is the approved newspaper for publication of the Government tender notice and the said newspaper is under the approved list of the State Government.

13. As per the requirement of Rule 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. In the instant case, apart from publication of SNIQ in the aforesaid newspaper, same was also hanged in the office notice board. Further the same was also uploaded in the website for access to all. In fact as stated in the writ petition, the petitioners downloaded the same from the website and by the time same was

done, the last date for submission of tender was over.

14. Although Mr. Bhuyan, learned counsel for the appellants in reference to the aforesaid decision in Siddharta Kalita has submitted that the SNIQ having not being published in vernacular newspaper, there was violation of the mandate envisaged in Rule 254 of the Rules, but on perusal of the writ petition, we do not find any emphasis on that. The whole emphasis in the writ petition was that the SNIQ was not circulated in the widely published newspaper and that there was no proper notice period in respect of the same.

15. Dealing with both the aforesaid pleas, learned Single Judge while rejecting the said two pleas has dealt with all the relevant aspects of the matter. As noted above, it is on record that the newspaper "English Chronicle" has wide circulation and the same cannot be said to be a newspaper with limited circulation. The said newspaper is in the approved list of the Government and conforms to the requirement for getting Government advertisement as per the advertising policy of the Government of Assam, 2008.

16. The period given for procuring the documents and submissions of quotation within 26.7.2011 to 8.8.2011, in our considered opinion is quite reasonable and adequate considering the nature of the contract. It is not definite and/or pleaded case of the petitioners that because of non-publication of the SNIQ in vernacular newspaper, they were precluded from participating in the tender process. As noted above, their whole emphasis was on non-publication of the SNIQ in widely circulated newspaper. The fact of the matter is that the NIT was published in the approved newspaper coupled with the fact that the same was also uploaded in website. If the petitioners are Class-I contractors, they must have experience of access to the NITs by down loading the same from the website.

17. Another aspect, which has been dealt with by the learned Single Judge is that the petitioners did not disclose anything in the writ petition about their experience in the particular tender process relating scrape materials. We have perused the writ petition, in which (paragraph-4) only a bald statement has been made that they were engaged in various forms of contractual works with various State authorities and that they were also engaged in the business of lifting scrape materials like old vehicles, machineries etc.

18. As observed by the learned Single Judge in the impugned judgment and order, the petitioners did not place anything on record to substantiate the said plea and in fact did not furnish sufficient information about their previous participation in the tender of similar nature or they were awarded a contract relating to lifting of scrape materials. For all the aforesaid reasons, we are not inclined to admit this writ appeal for further hearing and accordingly the same is dismissed. There shall be no order as to costs. Appeal dismissed.