

(2001) 01 GAU CK 0030

In the Gauhati High Court

Case No : W.A. No. 2 of 2001 in WP (C) No. 245 of 2000

Sudipta Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 01 GAU CK 0030

Hon'ble Judges : N.C. Jain, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : Mr. A.R. Barthakur, Mr. P. Barthakur and Mr. T.N. Srinivasan, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. A.R. Barthakur, learned Senior Counsel for the appellant and learned Govt. Advocate.

2. This writ appeal is directed against the judgment and order dated 1.12.2000 passed in Writ Petition (C) No. 245/2000. Pursuant to tender notice dated 7.6.1999 the competent authority settle the Excise Warehouse at Tezpur for wholesale supply of Potable Alcohol/Rectified Spirit Grade-I in favour of the respondent No. 4 M/s. Aparajita Exports. The petitioner was one of tenderers and he challenged the order of settlement on the ground that the tender submitted by the Respondent No. 4 was not in accordance with the requirements of the said tender. Learned Single Judge by the impugned order dated 1.12.2000 dismissed the said writ petition holding that there was no violation of the conditions of tender. Hence the present appeal.

3. Learned counsel for the appellant has submitted that the condition No. 12 was not complied with by the private respondent. The condition No. 12 reads as follows :

"The contractor shall be bound to provide vats, pumps, weighing machines,

measures etc. required for storage reduction of spirit at his own cost. The Commissioner of Excise, Assam may direct the contractor to provide additional requirements of these items from time to time and such directions shall be bound to follow by the contractors."

4. It is submitted on behalf of the appellant that the respondent No. 4 did not mention about the investment he was going to make in respect of the above accessories and requirements to be provided by him. The tender notice does not require such statement. It only proved that the successful tender is required to provide the above facilities. The learned Single Judge also considered the above submission of the appellant and correctly held that the question of investment does not arise and the tenderer is not required to submit the same.

5. Counsel for the appellant further submits that the private respondent did not give the break up of the rates as required under the NIT. The relevant records were produced before the learned Single Judge and para 11 of the impugned judgment reads as follows :

"The reports of the Excise Commissioner and the Commissioner and Secretary of the Excise Department clearly indicate that the tender document of Respondent No. 4 is not deficient in any respect. The break up is also available at page 258 of the relevant office file which is quoted below :

Rs. per LPL

- (1) Basic Cost 7.27
- (2) Export Pass fee in the exporting State 1.21
- (3) Central Sales Tax @ 4% 0.29
- (4) Transportation charge upto destination. 0.90
- (5) Transit and Warehouse loss 0.15
- (6) Establishment charge 0.48

Total =

10.32"

6. In view of the above finding it can not be said that the respondent No. 4 did not provide the break up of the tender document submitted by the private respondent and it was deficient in any manner.

7. During the course of the argument Shri Barthakur, learned Senior Counsel for the appellant has further submitted that the private respondent was required to affix the Court fee of Rs. 24.75 P. but the said respondent has affixed the Court fee of Rs. 23 only and, as such, the offer made by him is required to be rejected on that count. It seems that no such plea was raised by the petitioner in his writ petition. Shri Barthakur has submitted that it came to the knowledge of the

petitioner when the relevant records were produced before the Court. However, no such plea was raised before the learned Single Judge and, as such, the learned Single Judge had no occasion to consider the same and give his finding in the matter. The appellant could have filed an application taking up the above plea. A plea, on facts, which was never raised before the Court on earlier occasion can not be raised for the first time before the appellate court.

8. In view of the above, we find that there is no infirmity or illegality in the order passed by the learned Single Judge and the appeal is liable to be dismissed at the stage of admission hearing itself. This Writ Appeal therefore stands dismissed.