(2000) 12 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition (C) No. 245 of 2000

Sudipto Kalita — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

Citation : (2000) 3 GLT 587

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A.K. Phukan, for the Appellant; R. Gogoi and R. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—In this petition the order of settlement for Wholesale Supply of Potable Alcohol/Rectified Spirit (Grade-I) to Excise Warehouse at Tezpur passed by the Government of Assam, Excise Department vide order dated 21st December, 1999 in favour of the Respondent No. 4 is in challenge.

2. I have heard the learned Counsels for the parties in details.

3. Clause-9 of the NIT reads as follows:

Clause-9: The tenderer shall have to quote their rates for supply of country spirit in proof liters both in figures and words break-up against the import price/ transportation cost/Central Sales Tax/Excise Duty and export passes fee payable at exporting states/establishment charges and other charges as related with the import of spirit to the concerned warehouse.

4. Shri A.K. Phukan, learned senior counsel for the Petitioner submitted that the above clause is mandatory, but the Respondent No. 4, M/s Aparajita Exports which has been settled with the contract did not comply with the above mandatory Clause of the NIT. According to him, the Respondent No. 4 quoted the rate at Rs. 10.30 per LPL without furnishing the break-up of different charges

and costs as indicated in the tender notice and, as such, the tender document of Respondent No. 4 being in violation of the mandatory clause ought to have been rejected outright.

5. A bare perusal of Clause-9 would show that the aforesaid provision in the NIT was included to avoid enhancement of rate and it was incorporated obviously in the interest of revenue of the State. Therefore, violation of the aforesaid clause would undoubtedly be an infirmity which the State Authority could not have ignored. For better appreciation of the problem, it would be a matter of convenience to reproduce hereinbelow the different rates quoted by the tenderers including the writ Petitioner:

(1) M/s Oriental Engineers, Guwahati-24 Rs. 14.38 per LPL

(2) Sri Mahur Talukdar, Guwahati-7 Rs. 14.95 per LPL

(3) M/s. V.K. Jasrasaria and Sons, Guwahati-1 Rs. 13.55 per LPL

(4) M/s Aparajita Exports, Guwahati-20 Rs. 10.30 per LPL

(5) M/s Network Travels, Guwahati-8 Rs. 11.26 per LPL

(6) M/s Satya Capital Services (P) Ltd., Guwahati-1 Rs. 14.55 per LPL

(7) M/s Rangpur Trading Co. (P) Ltd., Sibsagar Rs. 14.92 per LPL

(8) M/s Sibsagar Trading Co. (P) Ltd. Rs. 12.00 per LPL

(9) Shri Sudipto Kalita, Tezpur Rs. 13.52 per LPL

(10) M/s Gwalior Distillery Ltd., Gwalior

(M.P.O. Rs. 24.00 per LPL).

6. The State Authorities after scrutiny of the tenders submitted by the parties decided to award the contract with the Respondent No. 4 on the ground that the rate quoted by the Respondent No. 4 Firm is the lowest. This is evident from the letter issued by the Under Secretary to the Government of Assam, Excise Department dated 21st December, 1999 (Annexure-3). The question would, therefore, naturally arise whether the State Authorities have ignored the provisions of Clause-9 in awarding the contract with the Respondent No. 4 and whether the rate quoted by it is not viable in terms of the rate of country spirit at source and other incidental expenses and costs.

7. I have perused the affidavit-in-opposition filed by the Respondent including the affidavit-in-reply. I have also perused the documents produced by the learned State Counsel.

8. The State in their affidavit has stated that the tenderers were required to quote their rates for supply of country spirit showing the break-up, namely, (1) Import price, (2) Transportation cost, (3) Central Sales Tax, (4) Export pass fee, (5) Establishment charge and other charges related with the import of spirit. It is

specifically pleaded that the Respondent No. 4 has clearly quoted the rates showing the break-up of items stipulated in the tender notice and thus it fulfilled the mandatory provisions of the tender notice. According to the State, there is no infirmity in the tender document filed by the Respondent No. 5. It has also been pleaded that Clause-12 of the tender notice provides that the contractor shall provide all equipments and machineries at the Warehouse at his own cost and to the satisfaction of the Commissioner of Excise. This clause nowhere indicated that the tenderers would be required to show the costs of machineries.

9. There is no dispute with regard to the provisions of Clause-9. The authorities also after scrutiny of the tender documents was satisfied that the requirements of Clause-9 was fulfilled.

10. It would appear from the document submitted by the learned State Counsel that the Commissioner of Excise did not find the tender document of Respondent No. 4 as viable on the ground that they have not quoted the amount of investments in their tender document for installation of plants and machineries. On this ground the tender document of Respondent No. 4 was declared unfit for consideration. There was no whisper in the report of the Commissioner of Excise that the break-up as required under Clause-9 was not given. The Commissioner and Secretary to the Government of Assam in the Excise Department vide his note dated 12.11.1999 placed before the Chief Minister (Excise) clearly indicated that the views of the Excise Commissioner was not acceptable as the rate quoted by the Respondent No. 4 was reasonable and just and that particulars of investment for installation of various machineries are not relevant in deciding the matter. The views of the Commissioner and Secretary as is available from the documents submitted by the learned State Counsel is reproduced below:

Commissioner, Excise has submitted his comments and views in respect of each tender which are placed at 122/C, 129/C and 135/C. In all the three cases Commissioner, Excise has considered two aspects namely, the rate of import price and investment for installation of various items in the warehouse in arriving his conclusions. While the aspect relating to price is reasonable and just, the second aspect considered by the Commissioner relating to investment etc. is not relevant in deciding the contract. Commissioner has referred to clauses 12, 13, 14 and 15 of the tender in support of his argument for considering investment aspect in deciding the matter. These clauses may be seen at Flag-A. These clauses provide that the contractor shall provide all equipments and machines in the Warehouse at his own cost and to the satisfaction of the Commissioner of Excise. Obviously these clauses do not ask for any investment. The essence of these clauses in that the contractor shall operate and maintain the warehouse in all respect at his own cost and to the satisfaction of the authorities. As such, it cannot be presumed that the tenderer must indicate his investment in the warehouse in pursuance of these clauses. The contention of the Commissioner, Excise, therefore, is not correct as far as he has taken the investment aspect in account for deciding the matter of settlement. As a result of this we have to go by the consideration of price only in deciding the contract. This is also very important because settlement of tender at higher rate would not only cost the consumers but also affect the sales and the resultant loss of revenue. In view of this it is proposed that the lowest tenderer shall be selected for award of contract unless there is any other important infirmity in the lowest tender.

In view of this, the following suggestions may be accepted-

1. M/s Aparajita Exports have offered the lowest rate of Rs. 10.30 per LPL for operating the Tezpur Warehouse. Incidentally the same party has also offered the lowest rate for Guwahati and Bongaigaon Warehouses also but have indicated their unwillingness to operate these Warehouses. We may therefore, accept this tender @ Rs. 10.30 per LPL for Tezpur Warehouse.

11. 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 deficiant in any respect. The break-up is also available atpage- 258 of the relevant office file which is quoted below:

Rs. per LPL

per LPL.

12. Although the Excise Commissioner observed in his report that the Respondent No. 4 did not quoted the amount of investment in their tender documents, this will have no impact in view of the fact that Clause-12 of the NIT does not make it mandatory on the part of the tenderers to furnish details of investment A bare reading of Clause-12 would show that the contractor shall be bound to provide different machineries required for storage etc. Therefore, the observation of the Excise Commissioner about the tender t document of Respondent No. 4 with regard to Clause-12 was rightly superseded by the Commissioner and Secretary, Excise.

13. The relevant excerpts from the note of the Commissioner and Secretary, Excise as reproduced above shows that the decision to settle the contract with the Respondent No. 4 was taken after proper application of mind giving utmost importance to the interest of the State revenue. Since the tender document of Respondent No. 4 was not in firm in any respect and that it was the lowest bidder in the tender process, this Court is unable to find fault with the decision of the Government to award the contract with the Respondent No. 4.

14. In the result, the writ petition is dismissed. No order as to costs.