
(2008) 08 GAU CK 0041
In the Gauhati High Court

T.M. Enterprise

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Contract Act, 1872 — Section 10, 23

Citation : AIR 2008 Guw 184 : (2009) 4 GLR 335

Hon'ble Judges : Jasti Chelameswar, C.J;H.N. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—The State respondents having appointed respondent No. 4 as PDS whole sale Nominee-cum-Miller-cum-carriage contractor in respect of PDS wheat for Zone IV in East Siang District of the State of Arunachal Pradesh and thereby rejecting the offer of the petitioner vide order dated 7-3-2008, the appellant unsuccessfully challenged the said order in W. P. (C) No. 157 (AP)/08 which is the subject-matter of the present appeal.

2. We have heard Mr. R. P. Sarma, learned Sr. counsel appearing for the appellant/writ petitioner, Mr. N. Dutta, learned Advocate General, Arunachal Pradesh, assisted by Mr. B. Banerjee, learned Govt. Counsel, Arunachal Pradesh and Mr. M. G. Singh, learned Counsel appearing for the private respondent.

3. To put in short the relevant facts for the disposal of the appeal may be stated as follows:

The State of Arunachal Pradesh issued a NIT on 7-12-2008 inviting application for appointment as PDS Wholesale Nominee-cum-Miller-cum-Carriage Contractor for PDS wheat in respect of Zone IV comprising of East Siang, Upper Siang, West Siang and Upper Subansiri Districts, Arunachal Pradesh. In pursuance to the aforesaid NIT, the appellant/petitioner submitted his offer and participated in the tender process. The petitioner's firm was found to be the lowest and genuine bidder and was recommended for said appointment by the Board so constituted

for selection of the tenders and accordingly, the appellant/petitioner was recommended for such appointment and forwarded the same to the State Government for further necessary action therein. However, the Govt. authority namely, Secretary to the Food & Civil Supplies Department, Arunachal Pradesh instead of appointing the appellant/petitioner's firm as per the recommendation of the Board, passed the impugned order dated 7-3-2008 appointing the respondent No. 4 as PDS Wholesale Nominee-cum-Miller-cum-Carriage Contractor for PDS wheat for Zone IV. Aggrieved by the said action of the respondents, the petitioner challenged the same by filing writ petition.

4. Both the State respondents and private respondent contested the proceeding by filing their respective counters. The contention of the State respondents inter alia is that the offer of the petitioner firm was rejected by the Govt. in view of the adverse comments of the Board in its recommendation to the effect that the petitioner had offered the price bid/revenue below the required minimum of 10% of the profit margin fixed by the Department in terms of paras 8 to 10 of the terms and conditions of the said tender notice. The price bid offered by the private Respondent No. 4 i.e. M/s. Y. Gangkak, Aal''c was 15% of the profit. So instead of accepting the petitioner's firm whose price bid and/or revenue offered is hardly 8.2% and which, in fact, is less than the minimum 10% fixed by the Department, the Govt. accepted the higher bid offered by the private respondent No. 4. Further, in terms of, para 26 of the terms and conditions of the tender notice, final acceptance of any tender lies with the State Government which reserves the right to reject any or all tenders without assigning any reasons whatsoever. It is contended that the mere recommendation of the Board is not binding upon the Govt. and as such, action of the respondents/authorities to accept the tender of the Private respondent No. 4 who fulfils the guidelines contained in terms and conditions of the tender notice and the higher revenue expected, being valid, the contract was allotted to the private respondent No. 4. The further contention of the State respondents is that the Board did not recommend a particular firm but recommended 3 firms with adverse comments against 2 of the firms including the petitioner's firm. Hence, it was left to the State Government to decide the final acceptance after examining the merit of each recommendation as per the laid down principles of law. It is also contended that in pursuance to para 10 of the detailed terms and conditions of the tender notice, the Director, Food and Civil Supplies Department, Government of Arunachal Pradesh had to workout a minimum rate of price bid on the basis of the formula provided under para 8 of the NIT and the bid within such rate was to be accepted and the Director, Food and Civil Supplies Department, worked-out a minimum ceiling of 10% of the profit to be calculated on the basis of a formula provided under para 8 of the NIT and only after following the guidelines as contained in the terms and conditions of the tender notice, the private respondent No. 4 was awarded contract. Accordingly, it is contended that there is no arbitrariness in awarding the contract in favour of the private respondent. Similar is the stand of the private respondent No. 4.

5. The learned single Judge, upon consideration of the pros and cons of the matter and the principles involved in the matter of allotment of the said contract, maintained the impugned order awarding the contract in favour of the respondent No. 4, and dismissed the writ petition.

6. The State respondents have produced the connected record i.e. File No. SCS-130/2006(PD) pertaining to the appointment of the PDS Wholesale Nominee-cum-Miller-Carriage Contractor for Wheat for Zone IV. We have perused the same.

7. There is no statutory Rule available for awarding the contract in question. However, there is a set of guidelines which holds the field. In order to select and appoint the Nominee in terms of the tender notice, the Secretary Food and Civil Supplies of the State constituted a Board with five official Members of which the Director, Food and Civil Supplies, Arunachal Pradesh is the Chairman vide order dated 24-1-2008. The said Board was invested with the power to examine the tenders and submit their findings and recommendation to the Govt. for further action. Thus, the said Board is constituted as a fact finding and recommendatory authority and to furnish its findings and recommendation for consideration by the Govt. The Board assembled and considered the tenders on 31-1-2008, the findings in respect of the tenderers who submitted the tender for Zone-IV is as follows:

Zone-IV

Four Nos. of tenders were received in respect of Zone IV out of which one tender was rejected as their technical bid did not fulfill the terms and conditions of the tender. A comparative statement of the technical bids are enclosed at Annexure-"E". Following three tenderers qualified in the technical bid and their price bids were opened and the price bid offered are shown against each:

A comparative statement of price bids are enclosed at Annexure-"D".

The Government had worked out minimum amount of price bid against each Zone in terms of the terms and conditions of the condition which are kept in a sealed cover. It was opened and the rates fixed is as under:

Zone-IV - Rs. 2,51,916/- to Rs. 3,02,299/-.

The price bid and supporting rate analysis offered by different qualifying tenderers were examined and the following observations/recommendations are made:

Zone-IV

RECOMMENDATIONS:

In terms of price bid offered, M/s. T. M. Enterprises, Pasighat is recommended, although the bid offered by the firm is 8.2% which is less than 1.8% fixed by the department. Whereas the rate offered by M/s. Y. Gangkak is Rs. 4,19,451/- only which is 15% of the profit i.e. more than 3% fixed by the department. On the

other hand, the bid offered by M/s. Ramie Enterprises is Rs. 6,70,020/- which is much beyond the workable rate fixed by the department. In case of their failure to accept the contract, M/s. Y. Gangkak, Aalo may be considered/ followed by M/s. Ramie Enterprises, Pasighat in case of failure by M/s. Y. Gangkak.

8. On receipt of the aforesaid report from the Board, the Government considered the same and having found that the appellant/petitioner having offered price bid/ revenue only 8.2% which less than the minimum 10% fixed by the department as per the information incorporated in Clauses 8, 9 and 10 of the NIT, his tender was rejected. The respondent No. 4 having offered price bid/revenue at 15% i.e. 5% more than the minimum ceiling of 10% and the other firm having offered much higher price bid which is beyond the workable rate, the Govt. accepted his rate and appointed him as PDS Nominee. The petitioner has not challenged the principles and criteria adopted for acceptance of the offer as visualized in clauses 8, 9 and 10 of the NIT on the basis of which minimum rate mentioned above has been calculated by the authorities. Applying the aforesaid criteria and principle, the rate offered by the petitioner having found to be lower than what was fixed, the respondents did not accept the offer of the petitioner. The authority acted as per the norms preferred by it.

9. Admittedly, the NIT in question was issued to augment Govt. revenue. It is in the nature of quasi contract, even if not an ordinary contract. Whether, the State authorities are authorized by law to collect the money in the name of revenue by awarding a Whole Sale Nominee-cum-Miller-Carriage Contractor in the State, is another aspect of the matter. Apparently, such a contract appears to be barred under Sections 10 and 23 of the Indian Contract Act, according to which in order to be a valid contract, the consideration and object must be lawful. The consideration or object of an agreement is lawful (i) unless it is forbidden by law or (ii) if it is of such nature, if permitted, it would defeat the provision of any law or (iii) is fraudulent or (iv) it involves or implies injury to the person or property of another or (v) the Court regards it as immoral or is opposed to public policy. Whether appointing a person as Wholesale Nominee the State authorities can demand any money from such person or conversely whether in lieu of such appointment, the State can accept money as consideration is a matter to be decided on the touchstone of the doctrine of public policy.

10. However, this is nobody's case in the instant petition and accordingly we refrain from expressing our final opinion in this regard.

11. In view of what have been discussed above we do not find that the appellant could make out a case for interference with the impugned order and accordingly, the appeal stands dismissed, affirming the order passed by the learned single Judge.

12. No costs.