



GAHC010046602020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1427/2020

M/S. R.S. ENTERPRISE

A PARTNERSHIP FIRM REP. BY ITS PARTNER SHRI RITURAJ BORAH, AGED ABOUT 44 YEARS, S/O- LT. ANIL KUMAR BORAH, R/O- NANDANPUR, JAIL RAOD, P.O. AND DIST.- JORHAT, ASSAM- 785001.

VERSUS

THE STATE OF ASSAM AND ANR.

REP. BY THE COMM. AND SECY., URBAN DEVELOPMENT DEPTT., DISPUR, GHY.-06.

2:JORHAT MUNICIPAL BOARD

REP. BY ITS CHAIRMAN

DIST.- JORHAT

ASSAM- 785001.

3:THE EXECUTIVE OFFICER

JORHAT MUNICIPAL BOARD

JORHAT

ASSAM-785001

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI



Advocates for the petitioner : Shri SK Goswami

Advocates for the respondents : Ms. S. Sarma, GA, Assam
Shri BD Das, Sr. Adv., JMB
Ms. R. Deka

Date of hearing & Judgment : **30.01.2023**

JUDGMENT & ORDER

The issue in this writ petition pertains to a Notice Inviting Tender (NIT) floated by the Jorhat Municipal Board for construction of various roads and drains.

2. The case of the petitioner is that its bid was found to be the lowest in spite of which, the work was not allotted to it and on the other hand, a re-tender notice dated 20.02.2020 was issued which is the subject matter of challenge.

3. At the outset, a brief narration of the facts would be beneficial. The Jorhat Municipal Board (Board) had issued an NIT on 24.01.2020 calling for bids for 39 numbers of civil works under the Board. The work under Sl. No. 29, namely, "Improvement of Borada Phukon Path in Ward No. 14 providing ICBP" is connected with this writ petition.

4. The petitioner contends that amongst others, it had submitted its bids for the aforesaid work along with all required documents. There were four numbers of bids found to be valid and out of which, according to the petitioner, the bid offered by it was the lowest. However, instead of allotting the work to the petitioner, a re-tender notice was issued for four numbers of works, including the aforesaid work at Sl. No. 29.

5. I have heard Shri SK Goswami, learned counsel for the petitioner whereas the respondent no. 1 is represented by Ms. S Sarma, learned State Counsel. The respondent nos. 2 and 3, namely, Jorhat Municipal Board and its Executive Officer, respectively are represented by Shri BD Das, learned Senior Counsel assisted by Ms. R

Deka, learned counsel.

6. Shri Goswami, learned counsel for the petitioner has drawn the attention of this Court to the relevant conditions of the tender. He submits that as per Clause 5, rates are to be clearly quoted both in figures and words legibly and clearly. He further adds that the Clause 5 has to be read with Clause 4 which lays down that the rate should be quoted flat percentage basis i.e., Above/Below/at par schedule rate for the year 2017-18 under PWD, Assam. By referring to the documents submitted by the petitioner in respect of the said work, Shri Goswami, learned counsel has demonstrated that there is no ambiguity with the rate offered which has been given both in figures and words. The learned counsel has also referred to the comparative statement annexed to the affidavit-in-opposition of the Board wherein the alleged reason for declaring the petitioner's bid invalid has been stated as "not written the rate in figures and words". The learned counsel for the petitioner has submitted that the aforesaid remark which is the so called reason for declaring the petitioner's bid as invalid is absolutely unreasonable, arbitrary and palpably erroneous, inasmuch as, the bid of the petitioner was given absolutely in terms of the clauses of the NIT, namely, Clause 4 and 5. He submits that amongst the four bids, the bid of the petitioner being found the lowest which was 5% below, the work in question, should have been allotted to him and there was no reason at all to take another view and go for fresh tender process.

7. Shri Das, learned Senior Counsel representing the Board, does not agree with the proposal advanced on behalf of the petitioner. The learned Senior Counsel submits that the requirement of the NIT to mention the rate has not been done in accordance with the same and therefore, the decision of the Board that the bid of the petitioner is not valid does not suffer from any error. He further submits that a consistent stand has been taken in respect of the other bidders and it is not a case that there was any bias or *mala fide* in taking the decision. Shri Das, however fairly submits that the work is of urgent in nature and any further delay would cause more harassment to the

people as it is in connection with improvement of a road.

8. Ms. Sarma, learned State Counsel submits that the dispute being one between the petitioner and the Board, the State would only take a stand which is in accordance with law.

9. The relevant clauses of the aforesaid NIT which are required to be considered for adjudication of the dispute are Clause 4 and 5. Whereas Clause 5 requires that the rate should be quoted both in figures and words legibly and clearly, clause 4 states that the rate should be quoted flat percentage basis i.e., Above/Below/at par schedule rate for the year 2017-18 under PWD, Assam. The tender document submitted by the petitioner in fifth column contains the rate which is as follows:

“5% (Five Percent) Below at par schedule rate for the year 2017-18 under P.W.D. Assam.”

10. A reading of the rate quoted does not appear to this Court to have any ambiguity in understanding. The requirement of quoting the rate both in figures and words are fully met and the entire objective of such a condition to have clarity in the rates appears to have been fulfilled. This Court finds force in the contention of Shri Goswami, learned counsel for the petitioner that Clause 5 has to be read with Clause 4 while the rates are to be quoted in a particular manner which has been done and the comparative statement itself would show that it was the common understanding of the other bidders also who had quoted in the same pattern.

11. With regard to the aspect of exercise of writ jurisdiction, a Constitution Bench of the Hon'ble Supreme Court in the case of **Nagendra Nath Bora Vs. Commr. of Hills Division and Appeals**, reported in **1958 SCR 1240 : AIR 1958 SC 398** has laid down as follows:

“**30.** That leads us to a consideration of the nature of the error which can be said to be an error apparent on the face of the record which would be one of the

grounds to attract the supervisory jurisdiction of the High Court under Article 226 of the Constitution. ...

“The Court issuing a writ certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous.”

“It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error: it must be one which must be manifest on the face of the record.”

12. It is a settled law that in exercise of powers of judicial review it is the decision making process and not the decisions which is the subject matter of scrutiny. While examining the decision making process, a Writ Court may look into the following aspects:

- i. Whether there is any jurisdictional error in passing of the order?
- ii. Whether the relevant factors have been taken into consideration?
- iii. Whether the decision is based on irrelevant and extraneous factors?
- iv. Whether the decision is palpably erroneous?
- v. Whether the decision is such that it does not appeal to the mind of a reasonable person of ordinary prudence?

13. A perusal of the comparative statement would indicate that the only reason for rejection of the bid of the petitioner is on the ground “rate not written in figures and words” does not appear to be correct and therefore, this Court does not have any hesitation in interfering with the decision of the Board in declaring the petitioner’s bid as invalid on the said ground. Consequently, the tender notice dated 20.02.2022 also stands set aside.



14. Shri Das, learned Senior Counsel for the Board, however, has expressed urgency in the matter and therefore, in the interest of justice, it is directed that the work under Sl. 29 of the NIT dated 24.01.2020 be allotted to the L1 bidder which is the petitioner in the instant case expeditiously so that the work can be completed within the time frame.

15. The writ petition, accordingly stands allowed.

JUDGE

Comparing Assistant