



GAHC010114372020

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

Case No. : WP(C)/3356/2020

SRI SWADESH RANJAN PAUL AND JAHAR PAUL
(A JOINT VENTURE FIRM, HAVING OFFICE REGD. OFFICE ATLLASHPUR,
P.O. BARAIGRAM, P.S. PATHERKANDI, DIST. KARIMGANJ, ASSAM, PIN-
78873) REP. BY ITS AUTHORISED REPRESENTATIVE SRI JAHAR PAUL.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY., WATER RESOURCES DEPTT., GUWAHATI-
06, ASSAM.

2:THE SECRETARY
WATER RESOURCE DEPTT.
DISPUR
GUWAHATI-06
ASSAM.

3:THE CHIEF ENGINEER
WATER RESOURCES DEPTT.
CHANDMARI
GUWAHATI-781003.

4:THE SUPDT. ENGINEER
WATER RESOURCE (CIRCLE)
HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN-788152.

5:THE EXECUTIVE ENGINEER



WATER RESOURCE DIVISION
KARIMGANJ
DIST. KARIMGANJ
ASAM
PIN-788723.

6:JOYSHREE DEV
W/O. SRI SANJU DEB
LAKHISASHAR
P.O. AND P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM
PIN-788152

Advocate for the Petitioner : MR. JYOTIRMOY ROY

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE

HON'BLE MR JUSTICE PRASANTA KUMAR DEKA

For the petitioner : Mr. J. Roy.
Learned Advocate.

For the respondents : Mr. B. Goswami,
Learned Addl. Adv. General, Assam.
Mr. P. Kakati,
Learned Standing Counsel, WRD, Assam
Mr. J. I. Borbhuiya,
Learned Advocate for the private
respondent No.6.

Date of hearing : 25.03.2021

Date of Order : 25.03.2021

ORDER

25.03.2021.

Heard Mr. J. Roy, the learned counsel for the petitioner. Also heard Mr. J. I. Borbhuiya, the learned counsel for the private respondent No. 6 and Mr. B. Goswami, the learned

Additional Advocate General, Assam assisted by Mr. P. Kakati, the learned Standing Counsel for the Water Resources Department, Assam representing the respondent Nos. 1, 2, 3, 4 and 5.

2. The Chief Engineer, Water Resources Department, Government of Assam published Invitation for Bids under Reference No. KARIMGANJ/2019-20/SOPD-FDR/1 (Retender) for package No. 1 of the Scheme "Reconstruction of Breached embankment at Dullavpur and Mukamerbond along with improvement of Shingla R/B embankment from Phanirbond to Dullavpur including anti-erosion measures at different reaches" with the following tender time schedule:-

"Tender Time Schedule:

Sl No	Item	Start Date & Time
1.	Publication date	18.02.2020 18.00 hrs.
2.	Document sale/download start date	18.02.2020 18.05 hrs.
3.	Bid Submission Start Date	19.02.2020 10.00 hrs.
4.	Bid Submission End Date	25.02.2020 14.00 hrs.
5.	Bid Opening Date	26.02.2020 14.00 hrs.

Note:- In the event of any bandh and Holiday, same time on the next working day shall be taken into account.

Pre-bid meeting will be held one time in a year for a particular category of scheme which has already been held for SOPD-FDR schemes".

3. In the appendix to tender schedule in the note it was mentioned as follows:-

*"2. Submission of Technical Bid along with Earnest Money and Bid document fee on or before 14:00 hrs of **26.02.2020**. In case if any holiday occurs the next working day will be considered".*



4. Section 1 of the bid document which stipulates instructions to bidders (ITB) amongst other includes the following Clauses:-

“ Clause 1: Scope of Bid

(IV): In case of single bidder in a particular package, the employer has full right to accept the single bid if it is within the sanctioned estimated amount as the tenders are widely published in News Papers & Web Site and sufficient time frame of 21 (twenty one) days is provided for bid submission.

Clause 10: Amendment of Bidding Documents.

(I): Before the deadline for submission of bids, the Employer may modify the bidding/ documents by issuing addenda.

Clause 17: Format and Signing of Bid.

*(I): The Bidder shall submit both technical and financial bids through online. One hard copy of technical bid along with supporting documents as per ITB and clearly marked "**HARD COPY of Technical bid**". In the event of discrepancy between on line & manual technical bid, **the bid will be cancelled.***

Clause 18: Submission of Bid (Online mode/ Off line mode)

(I): Only online bids will be accepted. Both technical & financial bids will have to upload through on-line. However, one hard copy of technical bid (supporting documents self attested of the ITB is to be submitted in the office of CE, WRD office (before 16:00 Hrs. of Bid submission end date) for verification & checking authenticity of documents during evaluation.

Clause 20: Deadline for Submission of the Bids.

(I) Complete Bids (including Technical and Financial) must be received by the Employer at the address specified above and not later than the date indicated in appendix. In the event of the specified date for the submission of bids declared a holiday or the office remained closed on extra ordinary circumstances like bandh etc. for the Employer, the Bids will be received up to the appointed time on the next working day.

(II) The Employer may extend the deadline for submission of the bids by issuing an amendment in which case all rights and obligations of the employer and the bidders previously subject to the original deadline will then be subject to the new deadline.



5. The petitioner participated and submitted his bids prior to 25.02.2020, 14.00 hrs which is the bid submission end date. On the basis of the said tender time schedule it was stipulated for opening on 26.02.2020 at 1400 hrs. The respondent published a corrigendum on 25.02.2020 at 02:24 PM thereby extending the bid submission end date up to 27.02.2020 till 02:00 PM. Thereafter, as per the stipulated date after the said amendment there were two bidders in the process, (i) the petitioner and (ii) the private respondent No. 6. After opening of the financial bid, the respondent No. 6 was evaluated as the LI bidder. Later on, the work order was issued to the respondent No. 6 vide order dated 21.05.2020. The petitioner being aggrieved by the manner, in which the bid submission end date was extended filed representation before the concerned authority and as there was no response to the said representation, filed this writ petition in the month of August, 2020.

6. It is submitted by Mr. Roy, the learned counsel for the petitioner that as per Clause 10 of the instruction to bidders, amendment of bidding documents is allowed before the deadline for submission of bids and any addendum thus issued shall be part of the bidding documents and will be uploaded in the website. Admittedly, the bid submission end date was 25.02.2020, 14.00 hrs and the corrigendum extending the bid submission end date was published on 25.02.2020 at 02:24 PM i.e. 14:24 hrs. The said extension was purely with an intention to accommodate the respondent No. 6. The extension ought to have been for more than two days in view of the fact that on earlier two occasions the tender notices were cancelled because of non participation of the bidders first time and defective single bidder in the second time. Moreover, the tender condition authorized the respondent authority to consider a single bidder in a particular package as per Clause-1. Even then without considering the petitioner who was the sole valid bidder as on 25.02.2020 at 14.00 hrs the tender authority with the sole intention to accommodate the respondent No. 6, the said extension/amendment of the bid document was brought in specific violation of the terms of the NIT. Accordingly the whole tender process, not to speak of evaluation process and the corrigendum are liable to be interfered with by this court.

7. The Chief Engineer, Water Resources Department, i.e. the respondent No. 3 filed his affidavit-in-opposition and took the plea that on 25.02.2020 till 02:00 PM no hard copy of the



technical bid of any bidder was found to be submitted. The submission of hard copy is mandatory as per Clause 20(I) of the Bid Document. The petitioner did not submit his hard copy of the technical bid on 25.02.2020. As there was no submission of any hard copy of the technical bid accordingly it was decided to extend the period of submission of bid up to 02:00 PM of 27.02.2020. Clause 1(IV) of the bid document was not invoked and the online bid was not opened as there was no hard copy of the technical bid received. It is also stated in the affidavit that the extension notice could be issued at any time before the bid opening time i.e. 02:00 PM on 26.02.2020 and in that view, there was no illegality and / or arbitrariness in extending 2 (two) days. It is stated in the affidavit that the petitioner submitted hard copy of the technical bid along with the private respondent No. 6 on 26.02.2020. Further it is also stated that the execution of the scheme in question was of urgent nature as there was breached embankment portion which had to be repaired immediately before the onset of monsoon for preventing flood. Inordinate delay in tender process may hamper timely completion of the scheme before the flood. This scheme was already tendered twice due to non-receipt of sufficient number of bidders on earlier two occasions. It is also stated in the affidavit that normally extension is given for 2 (two) days from the date of closing. Accordingly, 2:00 PM of 27.02.2020 was fixed as last date for submission of bid in the extension notice.

8. The respondent No. 3 filed another additional affidavit-in-opposition wherein it is stated that the closing time and date for submission of bid against the scheme was at 02:00 PM on 25.02.2020 and there was no dispute to that effect. A new plea is also taken on the ground that the server used for the particular scheme does not accept any bids beyond 25.02.2020 after 02:00 PM unless the time is extended by a valid notification. For the said reason the time period was extended so that subsequent bidders may participate in the bidding process and moreover, there was a typographical error in the appendix to Tender Schedule where it was stipulated 14:00 hrs of 26.02.2020 as the date for submission of technical bid along with earnest Money and bid document fee instead of 14.00 hrs of 25.02.2020. It is also reiterated that the petitioner did not submit the hard copy of the technical bid before 16.00 hrs of bid submission end date. It is admitted that the petitioner submitted his online bid on 24.02.2020 and the respondent No. 6 submitted her online bid on



26.02.2020.

9. On the basis of the said stand taken in the affidavit-in-opposition, Mr. Goswami, the learned Additional Advocate General, Assam wanted to project that Clause 10(I) amendment of bidding documents and the one stipulated in Clause 20(II) the deadline for submission of the bids are on two different footings. In order to support his stand, Mr. Goswami submits that the employer has the power to extend the deadline for submission of the bids by issuing an amendment, in which case all rights and obligations of the employer and the bidders previously subject to the original deadline will then be subject to the new deadline and on the other hand Clause 10(I) stipulates amendment of only bidding documents. It is the contention of Mr. Goswami that the petitioner himself was not the valid bidder due to non submission of hard copy of the technical bid before the stipulated period. In support of the said fact that the petitioner defaulted in submitting the hard copy within the stipulated time period, he produced the hard copy receipt Register for the year 2020-21. Though Mr. Goswami produced the register, however, there was no reference of the said entry in the register in the affidavit-in-opposition of the respondent No. 3. nor there is any denial to the said fact by Mr. Roy. Accordingly the submission of Mr. Goswami is two pronged (i) the petitioner failed to submit his complete bid including hard copy of the technical bid as stipulated in the tender notice and on the other hand, (ii), there was no bar in extending the time limit beyond the end date of submission of bid documents. The respondent No. 6 being the valid L1 bidder as such the selection and issuance of the work order to her is proper.

10. Mr. J. I. Borbhuiya, the learned counsel for the private respondent No. 6 objected to the submission of Mr. Roy, the learned counsel for the petitioner mainly on the ground that the writ petition is not maintainable inasmuch as the petitioner failed to seek for the relief of setting aside the work order issued to the private respondent No. 6 which was much prior to the filing of the writ petition. On the basis of the work order, the private respondent No. 6 had altered her position thereby completing more or less 15% of the total work as on 30.09.2020. There is an inordinate delay on the part of the petitioner in coming to this court challenging the tender process. In the affidavit-in-opposition of the respondent No. 6, it is submitted that as per the norms the authority finally allotted the work in question to the



respondent No. 6 vide work order dated 21.05.2020 and thereafter the respondent No. 6 deposited the Performance Security amounting Rs. 19 Lakh 54 thousands and had taken all necessary steps for execution which is in progress. But in the affidavit of the respondent No. 6 the overall physical progress of the said work has been shown as 10% and the contractor-wise progress has been shown as "work just started". The respondent No. 6 further stated in the affidavit that after the interim order dated 15.09.2020 passed in the writ petition the deponent could not proceed further with the work in question. In view of the submission, Mr. Borbhuiya urged this court that this writ petition required to be dismissed because of delay on the part of the writ petitioner in filing the same.

11. Mr. Roy on the other hand objected vehemently to the submissions made by both Mr. Goswami and Mr. Borbhuiya. There cannot be any variation of the intent and scope of Clause 10(I) and the one stipulated in Clause 20(II) stipulating the right of the employer to change the deadline for submission of bids. It is the contention of Mr. Roy that any changes in the NIT amounts to amendment of bid documents and Clause 20(II) stipulates that employer may extend the deadline for submission of bids by issuing an amendment, in which case all rights and obligations of the employer and the bidders previously subject to the original deadline will then be subject to the new deadline and such changes must be brought before the deadline for submission of the bid expiry as stipulated in Clause 10(I). Against the submission of Mr. Borbhuiya in respect of maintainability of this writ petition Mr. Roy refers to the prayer made in the writ petition more specifically it is the contention that the petitioner had challenged the action of the authorities in issuing the corrigendum and extension dated 25.02.2020 after expiry of the deadline for submission of bid. On the other hand, the petitioner also prayed for cancellation of the impugned Notice Inviting Bid dated 18.02.2020 in respect of the same package of work and in view of the same as the petitioner had challenged the tender process itself under such circumstances there is no point in challenging the work order issued to the respondent No. 6.

12. Countering the submission of Mr. Goswami, Mr. Roy relied the case of ***G. K. Transport Company –Vs- Western Coalfields Ltd.*** downloaded from ***2014 SCC Online Bom 1030*** which as per the contention of Mr. Roy under similar factual matrix the tender process which



was the subject matter in the said case reported in **2014 SCC Online Bom 1030** (supra) held that there was violation in following the tender condition stipulated in the NIT and directed the respondents to follow the conditions and Clauses in the tender document and consider the sole tender of the petitioner in accordance with law. Mr. Roy also pointed out that in the first affidavit there was no mention in respect of any typographical error in the appendix to the tender schedule wherein it is stipulated that the date for submission of technical bid along with earnest money and bid documents fee as "on or before 14 hours of 26.02.2020". In the subsequent affidavit the respondent No. 3 admitted that there was an error in the appendix to tender schedule in notifying the date for submission of technical bid along with earnest money and bid document fee as on or before "14 hours of 26.02.2020" instead of "14 hours of 25.02.2020". It is submitted further that the stand of typographical error taken in the subsequent affidavit cannot be accepted inasmuch as the same was typed in bold letter indicating an emphasis on the said date and time for submission of the bid. In view of the same, even if the hard copy of the technical bid was submitted on 26.02.2020 by the petitioner, the same was within the terms and conditions of the tender notice.

13. Mr. Borbhuiya on the other hand relied the case of Raj Kumar Soni and Another –Vs- State of U.P. and Another reported in **(2007) 10 SCC 635** where it was held that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinize the nature and content of the right alleged to have been violated by the authority. The petitioner utterly failed to make his pleadings that the work order was issued nor he sought for any relief against the issuance of the work order or its cancellation thereto. The petitioner was fully aware of issuance of the work order but the same was intentionally not pleaded in the writ petition inasmuch as this writ petition was filed in the month of August, 2020 and the work order was issued in the month of May, 2020.

14. I have considered the submissions made by the learned counsel. The tender time schedule in a notice inviting tender is mandatorily required to be informed to the prospective

participants. Let me take note of Section 2(d) of the Contract Act, 1872 which is extracted hereinbelow:-

“2(d): When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise”.

15. On its plain reading it can be concluded that the act or abstinence or promise referred therein is the consideration for promise but not for a contract. The promise includes an offer made against a tender notice and the consideration for acceptance of the said offer. This consideration is before the finalization of the contract.

16. In ***Tata Cellular –Vs- Union of India***, reported in ***AIR 1996 SC 11***, the Apex Court broadly outlined the requirements of a valid tender as follows:-

“84. A Tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:-

- 1. It must be unconditional.*
- 2. Must be made at the proper place.*
- 3. Must conform to the terms of obligation.*
- 4. Must be made at the proper time.*
- 5. Must be made in the proper form.*
- 6. The person by whom the tender is made must be able and willing to perform his obligations.*
- 7. There must be reasonable opportunity for inspection.*
- 8. Tender must be made to the proper person.*
- 9. It must be full amount”.*

17. Notice inviting tender thus is a notice seeking for offer from the prospective bidders by the employer who issued such notice. For consideration of the promise so offered certain

criteria are stipulated by the employer in the notice itself. In the present case in hand the gist of important dates of bids are extracted hereinbelow:-

“List of Important Dates of Bids:

- *Name of Work: Reconstruction of Breached embankment at Dullavpur and Mukanerbond along with improvement of Shingla R/B embankment from Phanirbond to Dullavpur including anti-erosion measures at different reaches,*
- *Completion Period for construction:120 days.*
- *Date and Venue of Pre Bid Meeting: Conference Room of Chief Engineer, W.R. Department.*
- *Time, Date and Place of submission of bid: Time & Date as per the Tender Schedule time.*
- *Place of opening Bids: E-Tendering Cell, O/O the Chief Engineer, WRD.*
- *Last Date of Bid Validity: 180 days from the Last date of online submission of Bid (Bid Submission end date).*
- *Officer inviting Bids: Chief Engineer Water Resources Department”.*

18. The aforesaid time and place etc in the gist are the necessary ingredients forming the consideration of the communication, acceptance and revocation of proposals and/or offers which also are the requisites for a valid tender as held in Tata Cellular (supra). Before taking a decision by the employer with whom to enter into the contract for the scheme or work covered by a notice inviting tender, the employer is required to examine the offers/ promises and in order to take a decision there must be some criteria which are required to apply to each of the participants. The laid down criteria in the notice like time, place etc, for making the offer are the considerations from the point of view of the employer in deciding the party with whom it to contract. The said process of evaluation in selecting the person with whom to enter into the contract by the employer must be fair and without any arbitrariness. As such the tender time schedule plays an important role at the preliminary stage of tender evaluation process.

19. In the present case in hand the bid submission end date was notified as 25.02.2020 at



02:00 PM which is the deadline for submissions of the bids which has its significance as the end date forms the cut-off-date for assessment of the technical criteria. Beyond the said end date and time the employer cannot consider any qualifying criteria which any prospective bidders failed to satisfy prior to the said cut off end date and time. Clause 20(II) of the ITB authorizes the employer, respondent No. 3, the Chief Engineer, WRD to extend the deadline of submission of the bids by issuing amendment and the consequence thereof is also stipulated in the said clause. Though the employer is authorized to go for amendment but vide clause 10(1) of the ITB the employer is prohibited to cause such amendment beyond the period stipulated as deadline for submission of bids.

20. The respondent No. 3, the Chief Engineer, WRD published 'corrigendum I' with the title "extension notice" on 25.02.2020 at 02:24 PM. As per the said corrigendum I, the bid submission end date and time was extended to 27.02.2020 upto 02:00 PM from its original date 25.02.2020 of 02:00 PM. Admittedly the petitioner submitted the bids including the technical one on 24.02.2020. The explanation of the respondent No. 3 for such an amendment beyond the deadline for submission of bids was that the petitioner failed to submit the hard copy of the technical bid as per the stipulated time i.e. before 16:00 hrs of bid submission end date. Due to the said lapse on the part of the petitioner, the respondent No. 3 as the employer was upon the impression that none had participated in the bidding process and as such question of invoking Clause I(IV) of ITB authorizing single valid bidder to take into consideration by the employer doesnot arise for which the employer extended the deadline for bid submission to 02:00 PM of 27.02.2020. The amendment was required because of the fact that without making any changes in the bid submission end date no prospective bidder/bidders could submit the bid online as the server would remain not responsive until extension is done.

21. Clause 20 (I) of the ITB referred hereinabove specifically stipulates that complete bids (including Technical and Financial) must be received by the employer at the address specified not later than the date indicated in appendix. The referred appendix required submission of technical bid along with earnest money and bid document fee on or before 14:00 hrs of 26.02.2020. The petitioner submitted his online technical bid admittedly on 24.02.2020 and



the hard copy of the technical bid on 26.02.2020. The requirement of the hard copy is for verification and checking authenticity of documents during evaluation. The bid opening date was stipulated on 26.02.2020 at 14:00 hrs. Thus upon consideration of the said stipulation as submitted by Mr. Roy, the petitioner submitted his bids along with the hard copy of technical bid within the stipulated time and the appendix as per Clause 20(I) of the ITB.

22. The respondent No. 3 took the plea that the date mentioned in the appendix was wrongly shown as 26.02.2020 due to typographical error. In order to decide the said issue the intent of the employer has to be examined at the stage when the press notice for bid dated 15.02.2020 which included the present package of work was published by the respondent No.

3. The relevant condition in the said notice is extracted hereinbelow:-

“2. The Contractor/bidder must be registered with the Electronic Tendering System (ETS) of the Govt. of Assam (website <http://assamtenders.gov.in> Contractors can download documents free of cost. Contractors have to necessarily down load the bidding document from the ETS using their own ID (Digital Signature Certificate). Bid documents not procured (downloaded) through the ETS/not using the contractor’s own user ID will be considered invalid and summarily rejected. Contractors submitting bids online have to submit copy of the documents of technical bid required to be submitted manually before the expiry of the sequence ‘Online Bid Preparation & Submission’ in the tender schedule. The last date and time for submission of the Technical Bids manually is the same as the expiry of the sequence ‘Online Bid Preparation & Submission’ in the tender schedule. Bid will be rejected/cancelled if Financial Bid submitted off-line/hard copy”.

23. From the intent of the employer it can very well be inferred that the hard copy of the technical bid was required to be submitted before expiry of the sequence ‘Online Bid Preparation & Submission’ which in my considered opinion meant before the deadline for submission of bid. So the stand taken by the respondent No. 3 that the date mentioned in the appendix was typographical error is acceptable inasmuch as there is no variation in the time schedule for submission of hard copy of the technical bid as stipulated in Clause 18(I) of the ITB which is before 16:00 hrs of bid submission end date i.e. before expiry of the sequence “Online Bid Preparation & Submission”. Accordingly as the petitioner failed to submit the hard copy of the technical bid before the stipulated time that amounts to violation of Clause 18 (I) which required the petitioner to submit the hard copy before 16:00 hrs of the bid submission

end date. But the petitioner submitted the same on 26.02.2020.

24. Clause 20(II) of the ITB authorizes the employer for extension of the deadline for submission of the bids by issuing an amendment. Clause 10(I) of ITB authorizes the employer to modify the bidding documents before the deadline for submission of bids which is 02:00 PM of 25.02.2020. The deadline for submission of bids covers only the online bids both technical and financial only but not the date and time for submission of hard copy of technical bid as the requirement of hard copy is for verification and checking authenticity of documents during evaluation and for that purpose there is a specific stipulation in Clause 18(I) of the ITB extracted above. But as there was violation of Clause 10(I) while issuing the 'corrigendum I' for extension of end date for submission of bid which was published beyond the time period stipulated accordingly the amendment so introduced was invalid and void-ab-initio. The extension of the bid submission end date would have been valid had the same was notified prior to the expiry of the deadline for bid submission which is 02:00 PM of 25.02.2020. The respondent No. 6 though participated in the tender process and was evaluated as L1 bidder, but her entry into the field of competition was inherently defective. The date of submission of technical bid on or before 14:00 hrs of 26.02.2020 as stipulated in the appendix is held to be a typographical error for the reasons stated above. Now a valid tenderer must offer his/her bid at proper time and place as held in *Tata Cellular –Vs- Union of India (Supra)*. The respondent No. 6 submitted her bids on 26.02.2020 on an invalid amendment caused by the employer, respondent No. 3 as such the extension of bid submission date is void-ab-initio and the offer of the respondent No. 6 doesnot fall within the term "valid offer" and beyond the scope for consideration of the offer. The respondent No. 3 failed to take note of the importance of tender time schedule causing an inherent defect in the extension period through corrigendum I.

25. The submission of Mr. Borbhuiya that the writ petition is not maintainable for non seeking of the relief for cancellation of the work order issued to the respondent No. 6 and there was delay in approaching the court is considered. On close scrutiny of the relief portion in the writ petition the petitioner prayed for holding the issuance of the corrigendum and extension dated 25.02.2020 after expiry of the deadline for submission of bid as illegal



and for writ of certiorari cancelling the NIT dated 18.02.2020. In my considered opinion if a declaration is given holding the corrigendum and extension dated 25.02.2020 as illegal then the entry of the respondent No. 6 into the field of competition stands illegal and the consequential relief is the cancellation of the work order. In view of the same I donot find any force in the submission of Mr. Borbhuiya. The delay factor has nothing much to do inasmuch as an action which is void-ab-initio can be challenged at any stage. But the delay must be within a reasonable limit. Here in this writ petition the petitioner is a person aggrieved and as such has the locus standi to file the writ petition. There was an interim order passed by this court and there is an admission by the respondent No. 6 in the affidavit-in-opposition that she stopped the work after passing of the interim order by this court. For the said reason the delay factor doesnot have much to affect the merit of the writ petition.

26. The respondent No. 3 stipulated the terms in the notice inviting tender wherein it is specifically stipulated that if any amendment of bid is required the same should be done before the deadline for submission of bid. Admittedly there was violation of the said stipulation as the corrigendum was published after the deadline for submission of the bid was over the deadline being 02:00 PM and the 'Corrigendum I' was published at 02:24 PM of 25.02.2020, the end date for submission of bid. The terms of NIT cannot be ignored as superfluous. The same must be followed by the employer also. If not then there would be unequal treatment meted to the participants in the tender process. The said extension of bid submission end date is irrational and perverse due to specific violation of the terms of the NIT and also gives an indication that the same was extended with the intent to favour the respondent No. 6 who submitted her bid immediately on 26.02.2020. The decision making process adopted by the tender authority in my opinion is liable to be interfered which I accordingly do thereby holding that act of issuance of the 'corrigendum I' published on 25.02.2020 at 02:24 PM extending the end date for submission of the bid to 02:00 PM of 27.02.2020 is in clear violation of the Clause 10(1) of the ITB of the NIT under Reference No. KARIMGANJ/2019-20/SOPD-FDR/1 (Retender) for package No. 1 of the Scheme "Reconstruction of Breached embankment at Dullavpur and Mukamerbond along with improvement of Shingla R/B embankment from Phanirbond to Dullavpur including anti-erosion measures at different reaches" is irrational and illegal and the consequent evaluation



process of the tender and the act of issuance of the work order to respondent No. 6 is illegal which is set aside and quashed. There is no scope for directing the respondent No. 3 for consideration of the bids of the petitioner as he also failed to fulfill the requisite criteria while submitting the hard copy of the technical bid. In view of the same the respondent No. 3 is directed to retender the subject work against the said package (scheme) and process the same at the earliest. Further the respondent No. 6 shall have the appropriate remedy in a civil court for compensation against the action of the respondent No. 3 in violation of the terms stipulated in the NIT.

27. The writ petition accordingly stands disposed of with the aforesaid finding and direction. Interim order stands vacated. Send back the records.

JUDGE

Comparing Assistant