



GAHC010180122021

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

Case No. : WP(C)/5728/2021

ANJALA BASUMATARY
W/O. SRI SATHO BASUMATARY, VILL. JYOTINAGAR (WARD NO.2), P.O.
AND P.S. SILAPATHAR, DIST. DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPTT., ASSAM SECRETARIAT, DISPUR,
GUWAHATI-781006, ASSAM.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FORESTS FORCE

ASSAM
(ARANYA BHAWAN)
PANJABARI
GUWAHATI-781037
ASSAM.

3:THE ADDL. PRINCIPAL CHIEF CONSERVATOR OF FORESTS (T)

UPPER ASSAM ZONE
BASISTHA
GUWAHATI-781061.

4:THE DIVISIONAL FOREST OFFICER

DHEMAJI DIVISION
DHEMAJI.

5:SRI BIJU KUMBANG



R/O. VILL. NATUN MISSING GAON SILAPATHAR
DHEMAJI
DIST. DHEMAJI
ASSAM
PIN-787059

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : SC, FOREST

Linked Case : **WP(C)/1609/2022**

SMT. ANJALA BASUMATARY
W/O SRI SATHO BASUMATARY
R/O VILL-JYOTINAGAR (WARD nO. 2)
P.O. AND P.S.-SILAPATHAR
DIST-DHEMAJI
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006
ASSAM

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
ASSAM

ARANYA BHAWAN
PANJABARI
GUWAHATI-78137
ASSAM

3:THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FORESTS (T)
UPPER ASSAM ZONE
BASISTHA

GUWAHATI-781061

4:THE DIVISIONAL FOREST OFFICER
DHEMAJI DIVISION
DHEMAJI

5:BIJU KUMBANG



R/O VILL-NATUN MISSING GAON
SILAPATHAR
DHEMAJI
DIST-DHEMAJI (ASSAM)
PIN-787059
6:ROHINI KUMAR DAS

DIVISIONAL FOREST OFFICER

DHEMAJI DIVISION
DHEMAJI.

Advocate for : MR. T J MAHANTA
Advocate for : SC
FOREST appearing for THE STATE OF ASSAM AND 5 ORS.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner: Shri T. J. Mahanta, Sr. Advocate,
Shri J. Sarmah, Advocate.

Advocates for respondents : Shri D. Gogoi, SC, Environment & Forest Deptt., Shri S.
Borthakur, Advocate for Private Respondent.

Date(s) of hearing : 30.11.2023

Date of judgment : 08 .12.2023

JUDGMENT & ORDER (CAV)

Both these writ petitions being connected and an analogous hearing being conducted, the same are being disposed of by this common judgment and order. While the petitioner who is the same in both the writ petitions have filed the first writ petition- WP(C)/5728/21 against a Speaking Order dated 03.09.2021 by which the representation of the petitioner pertaining to a Notice Inviting Tender dated 11.06.2021 has been rejected and her technical bid has been held to be non

responsive, the second writ petition-WP(C)/1609/2022 has been filed challenging an Work Order dated 01.12.2021 in favour of the respondent no.5. However, before going to the issue involved, it would be convenient if the facts of the case are narrated in brief.

2. The Forest Department had issued an Auction Notice dated 11.06.2021 for settlement of the "Simen Sand & Gravel Mining Concession Area" in the district of Dhemaji for a period of five years (hereinafter Mahal). The petitioner, who claims to be eligible in all respects had participated in the bidding process along with eight other bidders including the respondent no.5. In the technical evaluation, the bids of the petitioner as well as the respondent no. 5 were held to be responsive along with those of few others. It is the case of the petitioner that while her offer was Rs.3,21,00,511/–, that of the respondent no. 5 was Rs.1,06,50,000/–. Since no positive steps were taken for settling the Mahal in favour of the petitioner, she had approached the authorities which vide a Speaking Order dated 03.09.2021 had rejected the bid of the petitioner. The endeavour of the petitioner to procure the details of the impugned action by taking recourse to the Right to Information Act having been failed, the petitioner had filed the first writ petition WP(C)/ 5728/2021.

3. This Court vide order dated 02.11.2021 while issuing notice of motion, had passed an interim order.

4. It is the case of the petitioner that in spite of such interim order passed by this Court, a Work Order dated 01.12.2021 was issued in favour of the respondent no. 5 in spite of the clear direction of this Court. The petitioner had accordingly filed the second writ petition, WP(C)/1609/2022.



5. This Court in the aforesaid WP(C)/1609/2022 vide order dated 07.03.2022 while issuing notice of motion had passed an interim order of stay. This Court had also made many other observations and passed directions which would be discussed later in this judgment.

6. I have heard Shri T. J. Mahanta, learned Senior Counsel assisted by Shri J. Sarmah, learned counsel for the petitioner. I have also heard Shri D. Gogoi, learned Standing Counsel, Forest Department and Shri S. Borthakur, learned counsel for the respondent no. 5.

7. Shri Mahanta, the learned Senior Counsel for the petitioner has submitted that the bids received from the various bidders were scrutinized by a Three Member Technical Evaluation Committee in which the technical bid of the petitioner was found responsive. In view of the same, the impugned Speaking Order dated 03.09.2021 could not have been subsequently passed by the Divisional Forest Officer, Dhemaji (hereinafter DFO) rejecting the bid of the petitioner on technical responsiveness. It is submitted that during the proceedings in this Court, the petitioner could know that the impugned Speaking Order was passed on certain complaints lodged by persons who are stranger to the proceedings. It is submitted that it also reveals that the reason for passing the impugned order was that the stamp paper of Court Fee was not crossed and the affidavit accompanying the bid was not digitally signed and both these aspects were factually erroneous. It is submitted that the impugned action is bad in law as the same was taken without giving any opportunity to the petitioner. It is also submitted that copies of such complaints were not given to the petitioner and action was taken adverse to her interest.

8. By referring to the additional affidavit of the respondent no. 6 filed on

09.05.2022, it is submitted that the same reveals that on 07.08.2021, certain complaints were received based upon which, the Conservator of Forest had issued a communication to the DFO to examine the matter. In reply thereto, the DFO had issued a communication dated 26.08.2021 to the Principal Chief Conservator of Forests (hereinafter PCCF), Assam in which, it was stated that the complaint against the petitioner regarding GISTN was found to be baseless as such GISTN was still active. With regard to the allegation of police case, those were found to be against the husband of the petitioner in which he was also granted bail and there were no substantial materials. The learned Senior Counsel for the petitioner accordingly submits that the impugned action is wholly arbitrary and vitiated by *mala fide*.

9. In support of his submission, the learned Senior Counsel has relied upon the decision of ***Central Coal Fields Ltd. and Anr. Vs SLL-SML (Joint Venture Consortium) and Ors.*** reported in ***(2016) 8 SCC 622***. By referring to paragraph 43 thereof, it is submitted that a Court exercising powers of judicial review can intervene when the decision made by the authority is *mala fide* or intended to favour someone. Such intervention can also be made when the same is arbitrary and irrational where public interest is also affected. It is reiterated that the bid of the petitioner is much higher than that of the respondent no. 5.

10. References also been made to the decision of this Court in the case of ***M/s Trident Enterprise Vs Union of India & Ors.*** reported in ***2022 (5) GLJ (NOC) 637*** wherein it has been held that second evaluation of technical bid is not permissible under the law.

11. *Per contra*, Shri D. Gogoi, learned Standing Counsel, Forest Department has submitted that in tender matters, there is no scope of adherence to the principles of

natural justice and therefore refutes the contention of the petitioner regarding non furnishing of the copies of the complaints. He further submits that the impugned order contains reasons and therefore there is hardly any scope of this Court to interfere.

12. By referring to the records produced, the learned Standing Counsel has submitted that there were defects in the documents of the petitioner to the extent that the stamp papers were not crossed and the affidavit was not digitally signed. It has further been argued that the petitioner had given a wrong name of the Mahal in question.

13. The learned Standing Counsel has relied upon the decision of ***Bharat Coking Coal Ltd. and Ors. Vs. AMR Dev Prabha and Ors.*** reported in **(2020) 16 SCC 759**. It is submitted that constitutional avenues for enforcement of contractual obligations should not be encouraged. Reliance has also been made of the case of ***Silppi Constructions Contractors Vs Union of India and Anr.*** reported in **(2020) 16 SCC 489**. In the said case the Hon'ble Supreme Court has laid down the necessity of an exercise of restraint and caution on the part of the Court in interfering in contractual matters.

14. Shri S. Borthakur, learned counsel for the respondent no. 5 while endorsing the submissions of the Department has also strenuously opposed the writ petition. He has submitted that the defects in the bid of the petitioner were major in nature and therefore the impugned action of the respondent authorities is fully justified.

15. By referring to the e-auction notice dated 11.06.2021, the learned counsel for the respondent no. 5 has submitted that under Clause-5, the eligibility criteria has been laid down. Under Clause-8, the e-auction process has been laid down. By

referring to the Clause A(a)(ii) it is submitted that the bids are to be submitted electronically which is also reiterated in Clause-A(b)(iii) which also refers to Schedule-II. Referring to the Heading "Rejection of Bids", it is submitted that under Clause (b), bids not conforming to Clause-8 are to be rejected. Reference has also been made Schedule-I regarding format of technical bid and under Clause-(vi), there is a requirement of submission of Court fees stamp of Rs. 100/- which is required to be pasted, cancelled, crossed and digitally signed. Under Heading D concerning the affidavit to accompany the bid, the format of the affidavit has been given in Clause-(2). It is submitted that in the affidavit of the petitioner the name of the Mahal was wrongly given and it was not digitally signed.

16. With regard to the contention of the petitioner on the issue of her bid being the highest, Shri Borthakur, the learned counsel for the respondent no. 5 submits that the said ground is factually erroneous as there is no concept of highest bid in the present process. He submits that the present process involves a live auction wherein the initial price offered has to be equal or more than the reserved price and it is only during the live auction that the bids of the respective parties would be ascertained.

17. In support of his submission, Shri Barthakur, the learned counsel relies upon the following decisions:-

- i. ***W. B. State Electricity Board Vs. Patel Engineering Co. Ltd. and Ors.*** reported in ***(2001) 2 SCC 451.***
- ii. ***Central Coal Fields Ltd. and Anr. Vs SLL-SML (Joint Venture Consortium) and Ors.*** reported in ***(2016) 8 SCC 622.***
- iii. ***M/s N. G. Projects Ltd. Vs. M/s Vinod Kumar Jain & Ors.***

reported in **2022 Live Law (SC) 302**

iv. ***J. K. Trade and Commerce Silver Square Building (M/s) Vs National Thermal Power Corporation Ltd. & Ors*** reported in **2022 (2) GLT 947**.

18. In the case of ***Patel Engineering*** (supra) the Hon'ble Supreme Court has laid down that while the principle of awarding contract to the lowest tenderer applies when all things are equal, public interest should also required adherence to the rules and conditions subject to which the bids are invited. The case of ***Central Coal Fields Ltd.*** (supra) has been cited to bring home the contentions that it is the lawfulness of decision in a contractual decision which can be the subject matter of judicial review and not the soundness of such decision. In the case of ***M/s N. G. Projects*** (supra), it has been laid down that the satisfaction whether a bidder fulfills the conditions of the tender notice is primarily upon the authority inviting the bids. It has further been laid down that it is the prerogative of the employer to take the decision and Courts should refrain from interfering with such decision. In the case of ***J. K. Trade*** (supra), this Court has laid down that in cases of commercial activities of the State, it should be given sufficient leeway. In the said decision, by referring to another decision of the Hon'ble Supreme Court, it was held that it is not necessary to observe the principles of natural justice in taking a decision to terminate a tender process.

19. Shri Mahanta, the learned Senior Counsel for the petitioner in his rejoinder has submitted that in both the writ petitions there is a specific statement that all the documents submitted with the bid are valid and such statements have not been denied in the affidavits filed by the respondents. The attention of this Court has also been drawn to paragraph-6 of the affidavit-in-opposition filed on 16.03.2022 by the Department in WP(C)/ 5728 of 2021 wherein it has been stated that the petitioner's

bid was found to be technically responsive. It is accordingly submitted that when the comparative statement clearly reflects that the bid of the petitioner was technically responsive and in the instant proceedings also such assertion of the petitioner is admitted, the impugned action is wholly unsustainable in law. The learned Senior Counsel submits that even the defects alleged are not factually sustainable. While it is a fact that in the first affidavit submitted with the bid document the name of the Mahal has been stated to be "Simen Quarry", in the second affidavit, the full name has been given i.e. "Simen Sand and Gravel MCA". As regards the Court Fees, the concerned document has been referred to which shows that such Court Fee has been crossed and digitally signed.

20. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

21. Before going into the rival submissions there is another aspect of the matter which is no less important. The same is in connection with the apparent violation of the order dated 02.11.2021 passed in the first writ petition i.e. WP(C)/ 5728 of 2021. In fact, the petitioner had to institute the second writ petition i.e. WP(C)/ 1609 of 2022 whereby the petitioner has put to challenge the Work Order dated 01.12.2021 in favour of the respondent no. 5 which was issued in spite of the interim order dated 02.11.2021 passed in the first writ petition. This Court in the second writ petition WP(C)/ 1609 of 2022 vide order dated 07.03.2022 has directed that the respondent no. 4 DFO, Dhemaji would personally appear on the next date and explain as to why appropriate orders under the Contempt of Courts Act should not be passed against him. Further, the PCCF & HoFF was also to apprise as to why consequential order should not be passed against the erring officer. This aspect of this matter would be

dealt with in the later part of this judgment.

22. The challenge in the impugned action is primarily based on two grounds- firstly, the bid of the petitioner was held to be technically responsive by the duly constituted Three Member Committee and therefore could not have been rejected subsequently. Secondly, the reasons of the rejection of the bid of the petitioner are contended to be perverse and otherwise also untenable in law as well as on facts. It is also contended that the financial bid of the petitioner was the highest.

23. Before dealing with the principal contentions, so far as the submission of the petitioner that her bid was the highest, this Court has noted that the process involved was a process of live auction and therefore the quantum of the price bid initially offered would not have much relevance for determining the highest bid. It has been noted that the initial price offered by a bidder has to be equal or more than the reserved price. In that view of the matter, this Court is of the opinion that the contention of the petitioner that her bid was the highest would not be a relevant consideration for the adjudication of the present *lis*.

24. This leads this Court to test the principal contentions raised on behalf of the petitioner. The tender process in question notified on 11.06.2021 was responded by nine numbers of bidders. A technical evaluation of the bids was done by a Three Member Committee constituted of amongst others, the DFO, Dhemaji and the In-charge of the Range. In the said evaluation done on 21.07.2021, the bid of the petitioner was found to be technically responsive and accordingly approved for the financial evaluation. The impugned Speaking Order dated 03.09.2021 however has been passed by the DFO, Dhemaji whereby the evaluation is deemed to be re-done. Even without going into the reasons assigned in the order dated 03.09.2021, this

jurisdiction of the DFO, Dhemaji to pass the impugned order who himself was a part of the Technical Committee becomes highly questionable.

25. Even ignoring the aspect of jurisdiction and authority of the DFO to issue the order dated 03.09.2021, the said order has been passed apparently without giving any opportunity to the petitioner. It was contended on behalf of the respondents that the principles of natural justice are not required to be followed in tender matters. In this connection, the case of **J. K. Trade** (supra) was also cited. The aforesaid contention however does not appear to be acceptable in the present case as by the impugned Speaking Order, the petitioner's interest has been adversely affected, more so, when her technical bid was already found responsive by a duly constituted three member Technical Evaluation Committee. In the aforesaid case of **J. K. Trade** (supra), this Court had relied upon the case of **State of Gujarat Vs Meghji Pethraj Shah Charitable Trust** reported in **(1994) 3 SCC 552**. However, the Hon'ble Supreme Court in the aforesaid case of **Meghji Pethraj** (supra) was examining the termination of a tender process and under those circumstances, the said observation has been made. Juxtaposed, in the present case it is not the tender process as such which has been cancelled but only the bid of the petitioner which has been held to be technically non-responsive by the DFO, Dhemaji without any authority of law.

26. Having held that there is jurisdictional error in issuing the impugned order dated 03.02.2021, though this Court may not be required to go to the other aspects of the challenge, in view of the developments which had taken place during the pendency of the first writ petition which necessitated filing of the second writ petition i.e. WP(C)/1609 of 2022, it would be necessary to deal with those aspects also. This Court is reminded that there is a specific order in these proceedings passed by this Court directing the DFO, Dhemaji to show cause as to why action under the Contempt of



Courts Act, 1971 should not be taken against him.

27. The reasons cited in the impugned Speaking Order dated 03.09.2021 are as follows:-

- i. The petitioner did not digitally sign the Court Fee Stamp of Rs.100/-.
- ii. There was non-compliance of Clause-B (1) (d) (vi) which relates to the first reason.
- iii. In the affidavit dated 01.07.2021 submitted with the bid the name of the Mahal was written as "Simen Quarry" and not as "Simen Sand and Gravel Mining Concession Area" and therefore such affidavit was rejected.
- iv. In the affidavit dated 08.07.2021 submitted additionally, the documents against Sl. No. (r) and (s) were not found to be uploaded and therefore the affidavit was held to be false and misleading.

28. Before examining the validity of the aforesaid reasons, the basis of such a course adopted for re-evaluation of the bid of the petitioner is to be examined. In the additional affidavit filed by the respondent no. 6 on 09.05.2022 in WP(C)/ 1609 of 2022, reference has been made to a communication dated 07.08.2021 by the Conservator of Forests, Northern Assam Circle to the DFO, Dhemaji regarding complaints received against some of the bidders including that of the petitioner. By the said communication, the DFO has been asked to re-visit the technical bid process.

29. Pursuant thereto, it appears from the communication dated 26.08.2021 that the DFO, Dhemaji had examined the matter. It appears that the complaint against the petitioner was by one Shri Tilok Doley, General Secretary All Assam Mising Students



Union regarding the GISTN documents of the petitioner. However, on a confirmation exercise, the Assistant Commissioner of Taxes, Dhemaji had issued a communication dated 04.08.2021 whereby it was mentioned that the GISTN of the petitioner was "active". Another complaint was there that the husband of the petitioner had encroached land in Arunachal Pradesh. The said complaint was also found out to be baseless as per the report dated 02.08.2021 of the Range Officer, Dhemaji. Regarding a criminal case against the husband of the petitioner, there was no record available in the State of Arunachal Pradesh. In fact, the complaints against two other bidders were also found to be incorrect.

30. The aforesaid communications dated 07.08.2021 and 26.08.2021 would make it clear that the re-verification exercise, even if it is presumed to be permissible under the law was on the aspect of certain complaints which were found to be without any basis. Under those circumstances, the aspect upon which the impugned Speaking Order has treaded appears to be wholly outside the ambit of the complaints.

31. In any event, the first reason cited is that the Court Fee Stamp was not digitally signed by the petitioner. This Court has already noted above that paragraph 8 of both the writ petitions contains a specific statement that the all the documents submitted by the petitioner were valid. The aforesaid statement has not been denied in both the writ petitions. To the contrary, in WP(C)/5728/2021 an affidavit-in-opposition has been filed on 16.03.2022 and in paragraph 6 thereof the respondent authorities had stated that the bid of the petitioner was found to be technically responsive.

32. The allegation of not crossing the Court Fee has been specifically denied and the copy of the Court Fee Stamp submitted has been annexed as Annexure-21 in the affidavit-in-reply filed by the petitioner on 21.06.2022 which would demonstrate that it

was both crossed and digitally signed. Therefore, both the alleged grounds concerning Clause-5 regarding eligibility and Clause B (1) (d) (vi) do not appear to be correct. As regards the allegation of not writing the name of the Mahal properly, this Court has noted that the NIT in question dated 11.06.2021 was concerning only one Mahal, namely, "Simen Sand and Gravel Mining Concession Area". There was no other Mahal connected with the said NIT. The reason assigned is that the name of the Mahal has been written as "Simen Quarry" in an affidavit submitted along with the bid. Apart from the fact that the full name of the Mahal has admittedly been written in all other documents including a second affidavit submitted with the bid, such reasons assigned not only appears to be wholly arbitrary but also smacks of *mala fide* intention on the part of the decision making authority. In the opinion of this Court, there cannot be any manner of doubt to come to a conclusion that the name mentioned by the petitioner as "Simen Quarry" cannot mean any other Mahal but the Mahal in question which was notified as "Simen Sand and Gravel Mining Concession Area". The dictionary meaning of the term "Quarry" is "a place, typically a large, deep pit, from which stone or other materials are or have been extracted". When the name "Simen" is clearly written in only one of the affidavit accompanied by the term "Quarry" and in view of all the contemporaneous documents, the rejection on the aforesaid issue is otherwise wholly unsustainable in law.

33. In the case of ***Central Coal Fields*** (supra), the Hon'ble Supreme Court while discouraged the intervention of a Writ Court in contractual matters had clearly mentioned about at least three situations where such intervention may be made which are *mala fide* exercise of powers, arbitrary action and adverse affect to the public interest. In the instant case, all the three elements are present and therefore the instant case is a fit case for interference by this Court.

34. Though it appears that in spite of the interim order dated 02.11.2021 passed in



WP(C)/5728/2021 a Work Order was issued in favour of the respondent no. 5 on 01.12.2021, subsequently, this Court had passed another interim order on 07.03.2022 in the second writ petition WP(C)/1608/2022 by which such work order has been stayed.

35. In view of the above, both the writ petitions stand allowed and the impugned Speaking Order dated 03.09.2021 passed by the DFO, Dhemaji as well as the Work Order 01.12.2021 in favour of the respondent no. 5 for the Mahal in question are set aside. Accordingly, the e-auction for adjudging the highest financial bid is to be re-done by allowing the petitioner to participate in the same and consider her bid in accordance with law and thereafter settle the Mahal in question with the highest price that may be fetched. The aforesaid exercise may be undertaken and completed expeditiously as public interest is also involved.

36. Though both the writ petitions are disposed of with the present order, the aspect of the issue of violation of the order dated 02.11.2021 in WP(C)/ 5728/2021 by the then DFO, Dhemaji one Shri Rohini Kumar Das cannot be obliterated, more so, when the violation is apparent. This Court has further noted that in spite of a specific order passed by this Court on 07.03.2022 in WP(C)/1608/2022 directing the said incumbent to show cause as to why action under the Contempt of Courts Act should not be taken against him, till now no cause has been shown by the said incumbent. Though an affidavit has been filed by the said incumbent on 16.03.2022, the affidavit was only to tender an apology and no cause has been shown at all in response to the order of the Court. There is also no order passed by this Court accepting such apology. This Court has also noticed that the PCCF & HoFF was also directed to apprise the Court as to why consequential orders should not be passed against the erring respondents of the Forest Department. However, till now there is no response to the said directions contained in the order dated 07.03.2022.



37. Accordingly, Registry is directed to register a separate *suo moto* contempt proceedings against Shri Rohini Kumar Das, the then DFO, Dhemaji and issue notice to him. Such notice is to be sent through the PCCF & HoFF, Assam, Aranya Bhawan, Panjabari, Guwahati-781037, Assam for onward transmission to the alleged contemnor. The order dated 07.03.2022 passed in WP(C)/1609/2022 is also required to be made part of the said contempt proceedings. The returnable date in the said notice may be given as 12.01.2024.

JUDGE

Comparing Assistant