



GAHC010065982022

Page No.# 1/12



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

Case No. : WP(C)/2404/2022

CANARA LIGHTING INDUSTRIES PVT LTD AND ANR
HEAD OFFICE AT MULKY-KINNIGOLI, AIRPORT ROAD, MANGALORE,
574150, INDIA, REP. BY SHRI SARATHI BIKASH GHOSH, AGE- 29 YEARS,
ENGINEER MARKETING (NORTH EAST REGION).

2: INTEGRATED DIGITAL SOLUTION PVT. LTD.
OFFICE AT 3RD FLOOR
3 C
GREEN VIEW APARTMENTS
1151/3
WARD NO. 8
MEHRAULI
SOUTH DELHI
PIN-1103

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY CUM CHAIRMAN OF GUWAHATI SMART
CITY LIMITED, DISPUR, GUWAHATI-6, ASSAM

2:THE MANAGING DIRECTOR

GUWAHATI SMART CITY LIMITED

4TH FLOOR
ADITYA TOWER
OPP DOWN TOWN HOSPITAL
G.S. ROAD
GUWAHATI-6
ASSAM

3:PRINCIPAL SECRETARY



DEPARTMENT OF HOUSING AND URBAN AFFAIRS
DISPUR
GUWAHATI-6.

4:THE CHIEF ENGINEER (T)

DEPARTMENT OF HOUSING AND URBAN AFFAIRS
ASSAM
55 RAJGARH ROAD
GUWAHATI-3.

5:INNOVATIVIEW
REP. BY TANKIT AGARWAL
OFFICE AT SECOND FLOOR
37
SHANTI VIHAR
KARKARDOOMA
EASTDELHI
DELHI- 110092

6:RIPPLES ENGINEERING PVT. LTD.
C-119
PHASE- 2
NOIDA
UTTAR PRADESH-20130

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : SC, GUWAHATI SMART CITY LTD.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 27.07.2022.

Date of judgment : 28.07.2022.

JUDGMENT & ORDER (Oral)

Heard Mr. D. Das, learned senior counsel assisted by Mr. K. Talukdar, learned counsel appearing for the writ petitioners. Also heard Mr. D. Saikia, learned Advocate



General, Assam assisted by Mr. S. Bora, learned counsel for the respondent Nos.1 to 4 and Mr. Raj Kamal along with Mr. Anurag Chandra and Ms. P. Baruah, learned counsel appearing for the respondent Nos.5 and 6.

2. The petitioner Nos.1 and 2 have approached this Court assailing the Lol dated 23.03.2022 issued by the respondent authority viz., Guwahati Smart City Limited (GSCL) in favour of the Joint Venture (JV) of respondent Nos.5 and 6 awarding the contract in question. The facts and circumstances of the case giving rise to the filing of this writ petition may be briefly noticed as follows.

3. The GSCL had floated an NIT dated 31.12.2021 inviting bids for awarding the contract viz., "**Concept, Design, Supply, Installation, Testing and Commissioning of Permanent Decorative Lighting, Musical Sprays, Multifaceted Spectacle on Turnkey Basis with Operation & Maintenance for 3 years period at Srimanta Sankardev Kalakshetra, Guwahati (Assam)**". The estimated cost of the project was shown as 12 crores and the date of submission of tender was fixed on 21.01.2022, which was later extended upto 27.01.2022. In response to the NIT dated 31.12.2021 the petitioner Nos.1 and 2 herein, as a Joint Venture, had submitted their bid. Likewise, the respondent Nos.5 and 6 had also formed a Joint Venture and submitted their bid in response to the NIT dated 31.12.2021. The tender was to be considered in two parts viz., technical and financial bid. Upon opening the bids submitted by the parties both the bidders were found to be technically qualified. The financial bid of the JV of the writ petitioners was also found to be the lowest. As such, Letter of Intent (LoI) dated 02.03.2022 was issued in favour of the writ petitioners awarding the contract to them.

However, on the very next day i.e. on 03.03.2022 the respondent No.2 had issued an order keeping the said Lol in abeyance. Subsequently, on 07.03.2022, the NIT was cancelled and thereafter, a re-tender notice for the same work was issued on 08.03.2022. In response to the NIT (re-tender) dated 08.03.2022 the JV of the petitioners as well as the respondent Nos.5 and 6, besides another bidder viz., Modern State Services had submitted their tenders. Upon opening the technical bids, the bid submitted by the writ petitioners JV as well as the JV of the respondent Nos.5 and 6 were both found to be technically valid whereas the technical bid of the 3rd bidder viz. Modern State Services was rejected on technical ground. Thereafter, the financial bids were opened and it was found that the JV of the writ petitioners had quoted an amount of Rs.8,60,01,164/- whereas the JV of the respondent Nos.5 and 6 had quoted an amount of Rs.8,28,21.470/-. Consequently, the price bid of the JV of the respondent Nos.5 and 6 was assessed to be the L₁ bidder and the Lol dated 23.03.2022 was issued in their favour awarding the contract.

4. The decision of the respondent No.2 in issuing the Lol dated 23.03.2022 in favour of the JV of respondent Nos.5 and 6 has been assailed in this writ petition primarily on the ground that in respect of Item No.1.75 of the Bill of Quantities (BoQ) in the Request For Proposal (RFP) pertaining to the financial bid the respondent Nos.5 and 6 had not quoted any rate and had left the same blank. According to the writ petitioners, by failing to quote any price against Item No.1.75 of the BoQ and by leaving the space blank, the JV of respondent Nos.5 and 6 have deviated from the standard instructions for submitting financial bid as laid down in RFP. It is the case of



the writ petitioners that due to their failure to quote any figure against Item No.1.75 of BoQ, the financial bid submitted by the JV of respondent Nos.5 and 6 was defective and hence, ought to have been rejected by the respondents. The petitioners have, therefore, approached this Court with a prayer to set aside the Lol dated 23.03.2022 issued in favour of the JV of the respondent Nos.5 and 6 and to issue a writ of mandamus directing the respondent No.2 to issue the Lol in favour of the JV of the writ petitioners.

5. By referring to the materials available on record, more particularly Clause 2.26 read with format of financial bid contained in Annexure-VIII of the RFP, Mr. Das, learned senior counsel for the writ petitioners has strenuously argued that in view of the specific conditions laid down in the RFP it was not permissible for the respondent Nos.5 and 6 to leave the entry against Item No.1.75 of the BoQ blank. According to Mr. Das, by quoting 0.00 against Item No.1.75 the JV of respondent Nos.5 and 6 have failed to indicate any price against the aforesaid Item. In that view of the matter, the financial bid submitted by the JV of respondent Nos.5 and 6 was evidently defective and hence, liable to be rejected. However, instead of doing so, the respondents have arbitrarily and illegally accepted the price bid of the successful bidder which has resulted into serious prejudice to the interest of his client. Mr. Das has further argued that even the representation submitted by his client on 23.03.2022 has not been considered by the respondent No.2 till date.

6. By contending that once the terms and conditions of the NIT is published the same is equally binding upon the employer, Mr. Das has placed reliance on two

decisions of the Supreme Court viz., an unreported decision rendered in the case of **Union of India & Ors. Vs. Mahendra Singh** in **Civil Appeal No.4807/2022** as well as the decision in the case of **Central Coalfields Limited and another vs. SLL-SML (Joint Venture Consortium) and others** reported in **(2016) 8 SCC 622** to submit that the respondent authorities ought to have scrupulously adhered to the terms and conditions of the RFP while assessing the financial bid.

7. Mr. D. Saikia, learned Advocate General, Assam appearing for the official respondents, on the other hand, submits that the JV of the writ petitioners as well as the respondent Nos.5 and 6 having been found to be technically valid and the price quoted by the successful bidder being Rs.31,79,694/- lesser than the price quoted by the JV of the writ petitioners, the bid of the JV of respondent Nos.5 and 6 was accepted as the L₁ bidder. Since the L₁ bidder had the requisite qualification to execute the work and considering the lower price quoted by them a decision was taken by the respondent No.2 in public interest to issue the Lol in favour of the JV of respondent Nos.5 and 6. Mr. Saikia has also pointed out that in the affidavit-in-opposition filed by the official respondents it has been clearly mentioned that the figure mentioned against Item 1.75 of the price bid was not blank but it did contain a numerical figure i.e. 0.00 and therefore, the allegation made in the writ petition is totally baseless. Mr. Saikia further submits that the decision making process leading to the issuance of the Lol in favour of the successful bidder is transparent and based on rationale criteria. As such, there is no scope for this Court to interfere with the said decision in exercise of power of judicial review under Article 226 of the Constitution of



India.

8. Mr. Raj Kamal, learned counsel for the respondent Nos.5 and 6, has supported the arguments advanced by Mr. Saikia and has further argued that the writ petitioners do not have any locus standi to challenge the Lol dated 23.03.2022 issued in favour of his clients as the JV of respondent Nos.5 and 6 were evidently the lowest bidder. By referring to the decision of the Supreme Court rendered in the case of **Bharat Coking Coal Ltd. and others Vs. AMR Dev Prabha and others** reported in 2020 SCC OnLine SC 335 as well as in the case of **Jagdish Mandal vs. State of Orissa** reported in **(2007) 14 SCC 517** Mr. Kamal has argued that in a matter of commercial contracts the Court has to examine the decision making process and not the soundness of the decision itself. Since the decision to issue the Lol in favour of the respondent Nos.5 and 6 is based on reasonable criteria, there is no justifiable ground for this Court to interfere in the matter.

9. I have considered the arguments advanced by the learned counsel for both the sides and have also gone through the materials available on record.

10. In so far as the cancellation of earlier NIT, revocation of Lol dated 02.03.2022 as well as issuance of re-tender notice dated 08.03.2022 is concerned, the same are not under challenge in this proceeding. Therefore, it would not be necessary for this Court to go into said aspects of the matter.

11. Coming to the basic challenge made in the writ petition, a plain reading of the RFP makes it very clear that it was a composite contract which was required to be executed by the successful bidder on turnkey basis and even the operational



maintenance for a period of three years was to be taken care of under the same contract agreement. The NIT evidently did not envisage quoting of item-wise rate of each component of work. Under the scheme of the tender, the price quoted by the bidders was to be considered on the total amount quoted and not on the basis of each item. There is no dispute in this case that the price quoted by the JV of respondent Nos.5 and 6 was lower than that quoted by the JV of petitioner Nos.1 and 2. Therefore, the JV of respondent Nos.5 and 6 was the L₁ bidder. Since both these bidders have been adjudged to be technically qualified, hence, this Court is of the opinion that the authorities were fully justified in issuing the LoI in favour of the L₁ bidder i.e. the JV of respondent Nos.5 and 6 in this case.

12. Coming to the arguments advanced by Mr. Das, it is to be noted herein that the JV of respondent Nos.5 and 6 has mentioned 0.00 against Item 1.75 of the BoQ. According to the successful bidder, Item 1.75 was the heading whereas Item 1.76 to 1.92 are the individual items in respect of which separate rates had been quoted. Since the learned counsel for the petitioners has placed heavy reliance on Clause 2.26 of the RFP to argue that the financial bid of the JV of respondent Nos.5 and 6 was defective, I deem it appropriate to extract the said clause herein below for ready reference :-

“2.26 All rates shall be quoted in tender form and shall include all material, labor, transportation; all taxes, duties, testing, commissioning, supervision, tools, plants, wastage, sundries, scaffoldings, as required mobilization, demobilization, transportation etc. and nothing extra shall be payable on any account.”



13. Further, Section 14 contained in Part-III (Financial Bid) in Clause (f) lays down that the bidders have to indicate the price of individual component as listed in the Annexure VIII of financial bid for evaluation of post project cost in case of any deviation during the execution of the contract. Annexure-VIII of the document further indicates that all bidders should indicate the total cost "inclusive of all taxes" etc. A conjoint reading of the aforementioned stipulations contained in the RFP clearly indicates that unless the price is quoted by the bidder in the financial bid, which should be inclusive of all taxes, it cannot claim such amount after execution of the contract. There is nothing in the RFQ which mandates that the bidder must quote the rates in a particular form.

14. It is to be borne in mind that the bidders in a contract of this nature are accomplished business people and are well versed with the criteria for quoting a price in the financial bids. Therefore, rival party cannot dictate as to how a particular bid document is to be filled up by a bidder. Once a tender document lays down the criteria to be followed while submission of bid, the same would have to be strictly adhered to by the employer. However, it would be upto the employer to decide and arrive at a satisfaction if all the requisite information has been furnished by the bidder as called for by the tender document and it is not for the Court to decide on such matters. Assuming that the JV of respondent Nos.5 and 6 have failed to quote any rate as against Item 1.75 by mentioning 0.00 against the said entry, even then, the worst consequence that may ensue upon them as per the relevant clause of RFP would be that the contractor cannot claim any amount against the said item after the execution of the work and no further. However, the same cannot, in the opinion

of this Court, lead to the conclusion that the financial bid submitted by the JV of respondent Nos.5 and 6 was defective warranting rejection of the same.

15. In the case of **Jagdish Mandal** (supra) the Hon'ble Supreme Court has elaborately dealt with the scope of judicial review of administrative action of the State in matter of awarding a contract. The observations made in paragraph 22 of the said decision would be relevant in this case and therefore, is reproduced herein below for ready reference :-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. a contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power is judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interference, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase

the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

16. By following the decision in the case of **Jagdish Mandal** (supra) the Supreme Court in the case of **Central Coalfields Limited and another** (supra) has laid down the principles which would be applicable in case of deviation from the essential terms of NIT. That was a case where one of bidders had failed to furnish a bank guarantee as per the prescribed format which was one of the essential condition for submission of bid. In the said decision the Supreme Court has observed that the essential conditions of the NIT must be adhered to and it is for the employer to decide as to whether a term of the NIT is essential or not. By placing heavy reliance on the aforesaid decision Mr. Das has prayed for interference by this Court in the present case. It must be noted herein that the above was a case where there was a deviation from the essential



conditions of the contract which relates to the eligibility criteria. It was in such fact situation the observations were made by the Apex Court. In the present case, this Court does not find any deviation from the essential conditions of the NIT.

17. Applying the law laid down in the case of **Jagdish Mandal** (supra) and **Central Coalfields Limited and another** (supra) I do not find any deviation in the tender conditions laid down in the RFP which can be treated to be sufficient so as to hold that the financial bid of respondent Nos.5 and 6 was defective.

18. For the reasons stated above, I am of the view that there is no merit in this writ petition. The same is accordingly dismissed.

The interim order passed earlier shall stand vacated.

The parties to bear their own costs.

JUDGE

T U Choudhury

Comparing Assistant