



GAHC010160452023

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

Case No. : WP(C)/4246/2023

SALESWAR DAIMARY
S/O LATE HAREN DAIMARYI, R/O VILL- BALISIHA JANGHAL, P.O.-
BHALUKMARI, DIST-UDALGURI, BTR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT,
DISPUR, GUWAHATI-06

2:BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
KOKRAJHAR (BTC)
PIN-783370

3:THE JOINT SECRETARY OF BODOLAND TERRITORIAL COUNCIL (BTC)
KOKRAJHAR
PIN-783370

4:BLOCK DIVISIONAL OFFICER
ROWTA DEV BLOCK
ROWTA
DIST- UDALGURI
ASSAM (BTC)
PIN-784509

5:JANATA DAIMARI
S/O LATE KARNOM DAIMARY
R/O VILL- ROWTA PATHAR
P.O.-BHALUKMARI
DIST - UDALGURI



BTR
ASSAM
PIN-78450

Advocate for the Petitioner : MR. N D SARMA

Advocate for the Respondent : SC, P AND R.D.

BEFORE
THE HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri D Mahanta, Advocate.

For the Respondents : Shri SR Rabha, SC, BTC; &
Shri B Barman, P&RD Department.

Date of Hearing : 14.12.2023.

Date of Judgment : 14.12.2023.

14.12.2023.

Judgment & Order

The culmination of a tender process in the shape of an order dated 04.07.2023 is the subject matter of challenge in this writ petition.

- 2.** The brief facts of the case may be narrated as follows.
- 3.** A Notice Inviting Tender (NIT) was issued by the BTC on 20.05.2023 for settlement of various markets, parking, parghats etc. The subject connected



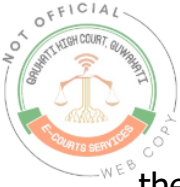
with this present writ petition is with regard to the Rowta Non-Government Bus Parking which was against Sl. No. 5 of the aforesaid NIT.

4. According to the petitioner, there are 7 numbers of bidders, including the petitioner. The government value fixed for the said item was Rs. 2,29,651/-. It is the case of the petitioner that he had submitted his bid offering an amount of Rs. 6,03,971/- and in this regard, a demand draft of the State Bank of India was submitted. Juxtaposed, the amount offered by the respondent no.5 is Rs. 5,80,000/-. The petitioner contends that in spite of the fact that the offer given by him was higher than that of the respondent no. 5 and his bid being eligible in all respects, vide the impugned order dated 04.07.2023, the settlement was given in favour of the respondent no. 5.

5. I have heard Shri D Mahanta, learned counsel for the petitioner whereas the BTC is represented by its learned Standing Counsel, Shri SR Rabha. Shri B Barman, learned counsel appears on behalf of Shri S Dutta, learned Standing Counsel, Panchayat and Rural Development (P&RD) Department, Assam.

6. Shri Mahanta, learned counsel for the petitioner has submitted that though in the remarks column of comparative statement, there are some observations which, however, are not legible. Accordingly, the petitioner tried to obtain the reason for the impugned action by filing a representation dated 19.07.2023. However, no reasons have been made known to the petitioner.

7. It is submitted on behalf of the petitioner that Clause 12 of the aforesaid NIT states that the tender value has to be above the schedule rate for the year 2023-24 and in absence of that, the same shall be rejected. It is contended that



the bid offered by the petitioner was much above than the tender value and therefore, there was no reason for rejection of his bid and accordingly, the order of settlement dated 04.07.2023 made in favour of the respondent no. 5 is not sustainable in law. In support of his submissions, Shri Mahanta, learned counsel for the petitioner relies upon the following case laws:

- i) M/s. GJ Fernandez Vs. State of Karnataka & Ors, (1990) 2 SCC 488; and
- ii) Poddar Steel Corporation Vs. Ganesh Engineering Works & Ors., (1991) 3 SCC 273.

8. In both the aforesaid cases, the Hon'ble Supreme Court has carved out a distinction between curable and non-curable defects in a tender process. It is contended that even if there is any defect in the bid submitted by the petitioner, it would be curable in nature and therefore, the petitioner ought to have been given a chance to explain/ rectify such defect, if any. The element of public interest is also one of the relevant considerations.

9. *Per contra*, Shri Rabha, learned Standing Counsel, BTC has submitted that there is a major defect in the bid submitted by the petitioner. By producing the original records which contain the bid document of the parties, including the petitioner, it is submitted that in the row Tender Value, the petitioner has given the amount as Rs. 2,29,651/-. The comparative statement prepared by the authorities has also referred to the said amount. He submits that it is the said amount which has been taken into consideration in making a comparative



assessment of the price bids and therefore, the bid of the respondent no. 5 having found to be more at Rs.5,80,000/-, the settlement has been rightly given to the respondent no. 5 vide the order dated 04.07.2023. The learned Standing Counsel, accordingly submits that the writ petition ought to be dismissed as there is no fault in the decision making process which are based on relevant considerations.

10. The rival submissions made by the learned counsel for the parties have been duly considered.

11. It is the categorical case of the petitioner that he had offered an amount of Rs. Rs. 6,03,971/- which is more than the rate at which the settlement has been given to the respondent no. 5. However, on a scrutiny of the original records, including the bid document and application of the petitioner, this Court finds force in the contention of the learned Standing Counsel, BTC that the tender value has been stated to be 2,29,651/-. This Court, however, has also noticed that so far as the row pertaining to giving all the details of the bank draft along with the number and date of the bank draft, an amount of Rs. 6,03,971/- has also been stated. Further, the records reveal that it is a matter of fact that such bank draft was, indeed submitted along with the bid.

12. While the submission made on behalf of the Council cannot be held to be without any basis that the decision of the authorities is based on relevant materials, the aforesaid aspect of the matter cannot be overlooked. The role of the petitioner in writing the government value in the row pertaining to tender value cannot be excused. At the same time, the same appears to be a *bona fide* mistake as the records, as noted above, also include the demand draft dated



16.06.2023 for an amount of Rs.6,03,971/-.

13. In that view of the matter, this Court is of the view that while this Court held that the decision making process may not suffer from any legal infirmity, in the interest of public, the petitioner should be given an opportunity to make a proper representation.

14. Accordingly, this writ petition is disposed of by granting liberty to the petitioner to file a representation before the BTC authorities within a period of 2 weeks from today explaining the position and taking into consideration the public interest, the BTC authorities will give a proper consideration to the representation as admittedly, the bid of the petitioner, as would reveal from the demand draft, is more than the rate at which the settlement has been made. The BTC authorities are accordingly directed to consider the representation and pass a speaking order expeditiously and preferably within a period of 15 days from the date of receipt of such representation. The aforesaid direction is given keeping in mind that the settlement is for a period of 1 year and a substantial part of the same is already over.

15. The writ petition accordingly stands disposed of.



16. The records are handed back to the learned Standing Counsel, BTC.

JUDGE

Comparing Assistant