



GAHC010193122023

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

Case No. : WP(C)/5042/2023

M/S INFOTECH SOLUTION AND ANR
A PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT SWAGOTA
ENVISSION, 3RD FLOOR, DIST- KAMRUP (M), ASSAM, BACKSIDE SIX
MILE, G.S ROAD, KHANAPARA, GUWAHATI-02,
REP. BY ONE OF ITS PARTNERS PURANJOY NEOG

2: PURANJOY NEOG
S/O- RAMESWAR NEOG

R/O- H.NO- 62

NAYANTARA BYE- LANE
JANAKPUR PATH
KAHILIPARA
GUWAHATI-19
DIST- KAMRUP (M)
ASSA

VERSUS

NORTH EAST FRONTIER RAILWAY AND 2 ORS
REP. BY ITS GENERAL MANAGER , MALIGAON, GUWAHATI-11

2:THE SENIOR DIVISIONAL SIGNAL AND TELECOM ENGINEER/GS

N.F RAILWAY
RANGIA
ASSAM
PIN-781354

3:M/S WOOD ENTERPRISE- TINSUKIA
REP. BY ITS PROPRIETOR

GAURAV AGARWAL



HAVING ITS REGISTERED OFFICE AT A.T ROAD
MAKUM JUNCTION
TINSUKIA
ASSAM
PIN-78617

Advocate for the Petitioner : MR. P BHOWMICK

Advocate for the Respondent : DY.S.G.I.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri P. Bhowmick

Advocate for respondents : Shri B. Chakraborty, CGC
Shri AK Gupta, R-3

Date of hearing : 11.12.2023

Date of judgment : 11.12.2023

JUDGMENT & ORDER

The instant application has been filed under Article 226 of the Constitution of India challenging the legality and validity of a communication dated 11.08.2023 issued by the respondent authorities whereby the private respondent no. 3 has been awarded contract. While the petitioner claims that in the tender process, the petitioner had emerged as the L1 bidder, the award has been given by the impugned order to the respondent no. 3, who was the L4



bidder.

2. Before going to the issue which has arisen for determination, it would be beneficial if the facts of the case are narrated in brief.

3. The respondent Railways had initiated a tender process for the work of installation and display system for upgradation of Station at 11 numbers of Stations under the Amrit Bharat Station Scheme of the Rangia Division. Such display system was by use of Video Wall and Monitor/TV. The claimant petitioner, who claims to be eligible in all respect, had submitted its bid by offering an amount of Rs.1,67,59,615.83/- and was adjudged the L1 bidder. On the other hand, the bid of the respondent no. 3 was for an amount of Rs.1,95,20,685.83. However, vide the impugned communication dated 11.08.2023, the award has been granted in favour of the respondent no. 3.

4. I have heard Shri P. Bhowmick, learned counsel for the petitioner whereas the respondent Railways are represented by Shri B. Chakraborty, the learned CGC. The respondent no. 3 is represented by learned counsel, Shri AK Gupta. The materials placed before this Court have been duly considered.

5. From the pleadings, more particularly the affidavit-in-opposition filed by the respondent no. 3, it transpires that the only reason for supporting the impugned action is that the petitioner failed to fulfill certain conditions of the tender.

6. Shri Bhowmick, learned counsel for the petitioner by referring to clause 10.1 has submitted that to be eligible for the work in question, a bidder is required to fulfill any of the three conditions namely, having done three similar nature of works of 30% of the tender value; two similar nature of works of value 40% of the present tender; one similar work of 60% of the tender value.

It is submitted that the petitioner fulfils the aforesaid condition inasmuch as, it had completed one work with 60% of the tender value of the present work. He however, submits that by introducing an unreasonable interpretation of the facts and circumstances, the petitioner has been sought to be treated as ineligible for the same work. He submits that there is no manner of doubt that the petitioner fulfils the aforesaid condition under clause 10.1 as the work already undertaken by him is more than 60% of the present work in question.

7. *Per Contra*, Shri Chakraborty, learned CGC appearing for the respondent Railways has submitted that the impugned action is taken by adhering to the conditions of the tender. By referring to clause 10.4.3 and 10.4.4 of the Contract, the learned CGC has submitted that clause 10 lays down the eligibility criteria. It is submitted that under clause 10.4.3 to be eligible, a bidder has to have the credentials of a work which is physically completed and completion certificate is issued by the concerned organization, but final bill pending, such work shall be considered for fulfillment of such credentials. However, as per clause 10.4.4, it is laid down that in case of completed work, the value of final bill including PVC amount shall be considered as the completion cost of work. In case final bill is pending, only the total gross amount already paid, including the PVC amount shall be considered as the completion cost of work. Shri Chakraborty, learned counsel submits that though the petitioner had done an earlier work, the amount paid to him is only for Rs.1.17 crores whereas the requirement under clause 10.1 is for a work of value of Rs.1.20 crores. He accordingly submits that there is no illegality or infirmity with the action taken.

8. In support of his submissions, Shri Chakraborty, relies upon the decision of the Hon'ble Supreme Court in the case of ***Uflex Ltd. Vs. Government of Tamil Nadu & ors.*** reported in ***(2022) 1 SCC 165***. In paragraph 40 of the

said decision, it has been stated as follows:

*“40. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted as set out in **Tata Cellular** (supra) and other cases. The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them.”*

9. Shri Gupta, learned counsel for the respond no. 3 while endorsing the submission of the learned CCC has submitted that no fault can be attributed for the works awarded to his client. As regards the submission made on behalf of the petitioner that there were two other bidders above the respondent no. 3, Shri Gupta, the learned counsel has submitted that those incumbents are not before the Court and therefore the aforesaid submission will not deserve any consideration.

10. Shri Bhowmick, learned counsel for the petitioner, in his rejoinder, however, has endeavored to clarify the controversy. It is submitted that the

earlier work done was for a much higher value of which only an amount of Rs.1.17 crores was paid to the petitioner. In this regard, the petitioner has instituted a money suit in the Court of the Learned Civil Judge No. 1, Kamrup in MS Case No. 42/22. In the said suit, the Railways had filed a written statement on 28.07.022 which has been brought on record. By referring to paragraph 13 of the written statement, the learned counsel for the petitioner has submitted that there is a clear admission in the written statement for payment of the balance amount. Reference has also been made to the Decree passed in the said Suit on 26.06.2023. It is submitted that the Decree has been passed on admission. The learned counsel for the petitioner accordingly submits that in view of such facts and circumstances, depriving the petitioner from its entitlement would be most unreasonable, arbitrary and irrational.

11. Rival submissions have been duly considered.

12. Clause 10.1, 10.4.3 and 10.4.4 are relevant for the adjudication of the present case. The credentials of a bidder is assessed on the basis of works done earlier and in the present case, the petitioner claims that he fulfils that part of clause 10.1 whereby he had done a similar work, the value of which is at least 60% of the present work. Though, it is true that as per 10.4.4, it is the value of the final bill which has been paid would be taken into consideration, in the instant case, the admitted position is that for earlier works, though the petitioner was paid an amount of Rs.1.17 crores, he had instituted money suit in which the Railways had filed written statement, admitting the claim of the petitioner and over and above that, an admission decree was passed directing payment of Rs.1.14 crores which is the balance amount. A fail attempt was sought to be made by the learned CGC that the judgment had come later. However, the Court is of the opinion that judgment is one based on an

admission and in fact, the decree in question is an admission decree based on the stand of the respondent Railways taken in the written statement. The written statement was filed on 28.07.2022 and therefore, it cannot be said that the judgment being in a later point of time cannot be taken into consideration. In any case, it is trite law that a judgment is always retrospective unless there is a specific mention.

13. The eligibility of the petitioner is also required to be taken into consideration by having a comparative assessment of the price offered by the petitioner and the respondent no. 3. It is not in dispute that while the petitioner had offered Rs.1,67,59,615.83, the respondent no. 3 had offered an amount of Rs.1,95,20,685.83. It is therefore seen that the difference of price is almost Rs.30 lakhs. In a matter of contract, the price is definitely a relevant factor as public interest is intrinsically connected with the price offered or the price in which the contract would be awarded.

14. As regards the case law relied upon on behalf of the respondent Railways, there is no dispute to the proposition regarding the inherent restriction of a Writ Court to enter into commercial disputes. However, in the instant case, Court is also reminded of the limited avenues laid down by the Hon'ble Supreme Court itself. In the case of **Central Coal Fields Limited vs. SLL-SML (Joint Venture Consortium & Ors.)** reported in **(2016) 8 SCC 622** it has been laid down that where the decision making process is arbitrary, reasonable and *mala fide* or where public interest is largely affected by such decision, a Writ Court can interfere. In the instant case, the impugned decision appears to be wholly unreasonable and the public interest is also adversely affected as the contract has been sought to be awarded at a much higher price.

15. In view of the same, this writ petition is allowed and the bid of the



petitioner is directed to be accepted as a valid bidder and the work be allotted to the petitioner at the price offered by it in accordance with law.

16. No order is to cost.

JUDGE

Comparing Assistant