



GAHC010196022023

Page No.# 1/8



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

Case No. : WP(C)/5080/2023

TECH BUSINESS INDIA PVT. LTD. AND ANR.
REPRESENTED BY SRI KHAGEN CHOWDHURY, DIRECTOR, REGISTERED
OFFICES AT VIP ROAD, NEAR RAHMAN HOSPITAL, GUWAHATI 781022,
DISTRICT- KAMRUP (M), ASSAM

2: KHAGEN CHOWDHURY
DIRECTOR
TECH BUSINESS INDIA PVT. LTD.
VIP ROAD
NEAR RAHMAN HOSPITAL
GUWAHATI 781022
DISTRICT- KAMRUP (M)
ASSA

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF DEVELOPMENT
OF NORTH EASTERN REGION (MDONER), VIGYAN BHAWAN ANNEXE,
MAULANA AZAD ROAD, NEW DELHI- 110011

2: THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF AGRICULTURE AND HORTICULTURE
E-BLOCK
1ST FLOOR
ASSAM SECRETARIAT
G.S.ROAD
GUWAHATI- 781006

3: NORTH EASTERN REGIONAL AGRICULTURAL MARKETING
CORPORATION (NERAMAC)
REPRESENTED BY THE MANAGING DIRECTOR
HOUSE NO.09



RAJBARI PATH
GANESHGURI
PIN- 781005
DISTRICT- KAMRUP (M)
ASSAM

4:THE DEPUTY GENERAL MANAGER
NERAMAC
HOUSE NO.09
RAJBARI PATH
GANESHGURI
PIN- 781005
DISTRICT- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. M SARMA

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

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri M Sarma, Advocate.

**Advocates for the respondents : Ms. R Devi, CGC,
Shri B Choudhury, SC, Agriculture Deptt.,
Shri G Das, Advocate, NERAMAC,**

Date of hearing : 28.11.2023.

Date of judgment : 28.11.2023.

JUDGMENT & ORDER

Heard Shri M Sarma, learned counsel for the petitioners and Shri G Das, learned counsel appearing for the contesting respondent nos. 2 and 3-North Eastern Regional Agricultural marketing Corporation. Also heard Mrs. R Devi, learned CGC appearing for the Union of India as well as Shri B Goswami, learned Standing Counsel, Agriculture Department, Assam.

2. Considering the subject matter involved and the fact that the affidavit-in-opposition has been filed by the contesting respondent nos. 3 and 4, this writ petition is taken up for disposal at the admission stage itself.

3. The petitioner no. 1 is a private limited company whereas the petitioner no. 2 is one of the Directors of the said private limited company. The petitioners operate in the field of trade and supply of seeds, pesticides, fertilizers and other agricultural inputs to different agencies of the Government of Assam. The respondent no. 3-North Eastern Regional Agricultural Market Corporation (hereafter referred to as the NERAMAC) had floated a notice on 13.05.2022 whereby the interest of expression was solicited for being empanelled under the NERAMAC as a business associate. It is the case of the petitioners that their offer was accepted and vide letter dated 30.06.2022, the petitioner no. 1 was empanelled as a business associate for 1 year. The petitioners contended that their performance was satisfactory and based upon the same, a letter was issued on 30.06.2022 to the petitioners by the respondent no. 3 whereby the empanelment was extended for a period of 6 months till 31.12.2023 on the same terms and conditions. The letter, however, directed the petitioners to

acknowledge the same and confirm their interest in the same.

4. Shri Sarma, learned counsel for the petitioners has, however, submitted that though the petitioners did not issue any letter which expressly contained the issue of confirmation, two letters were issued by the petitioners, both dated 17.08.2023 which have been annexed in the writ petition. While by the first letter, the petitioners had asked for providing details of the items included in the segment for which the petitioner no. 1 was empanelled as a business associate, by the second letter of the same date, a request was made to provide the details of the other companies who were also empanelled for the same. The petitioners had also informed that the site of the NERAMAC was not being able to be explored for the last few months and accordingly, steps were directed to be taken. The grievance of the petitioners is, however, with regard to a communication dated 23.08.2023 issued by the NERAMAC whereby the petitioners have been informed that the extension with NERAMAC stood null and void. The reason for the said action has been stated to be that no acknowledgement mentioning the interest was given by the petitioners. The impugned letter, however, reveals both the information sought for by the petitioners in their communications dated 17.08.2023.

5. Shri Sarma, learned counsel has submitted that the part of the impugned letter whereby the extension has been held to be null and void is unsustainable in law on the following counts:

- i) The letter dated 30.06.2023 of empanelment was a decision already conveyed by the NERAMAC and the confirmation/acknowledgment of the same would not make any material difference.

ii) Even if the letter dated 30.06.2023 is held to be an offer, the same was not bound by any time for which the acknowledgement has to be made and in any case, two letters were issued by the petitioners on 17.08.2023 much before the impugned communication dated 23.08.2023 was issued.

iii) At no point of time, the petitioners had expressed their inability to continue with the extension and had rather, sought certain details which would not affect the terms and conditions of their empanelment.

6. In support of his submission, Shri Sarma, learned counsel for the petitioners has referred to a decision of the Hon'ble Supreme Court in the case of **KA Abbas Vs. The Union of India & Anr., 1970 (2) SCC 780**. By referring to paragraph 46 of the said judgment, it is submitted that in the construction of expressions, such construction has to be made in a manner which would advance the interest of justice.

7. Shri G Das, learned counsel appearing for the NERAMAC submits that extension of the empanelment is not a matter of right as the initial notice dated 13.05.2022 seeking expression of interest was only for 1 year. He accordingly submits that the letter dated 30.06.2023 can at best be termed to be a letter of offer which was required not only to be acknowledged but also to be confirmed. It is submitted that the said letter makes it specific that the extension proposed for another 6 months were on the same terms and conditions and therefore, it was necessary to have the confirmation on record. He further submits that both

the letters dated 17.08.2023 heavily relied upon the by the petitioners cannot be construed to be the letters of acknowledgement as there was no reference to the offer letter dated 30.06.2023 and therefore, the impugned order dated 23.08.2023 is fully justified as the requirement of supply was of immense importance.

8. Both Shri B Choudhury, learned Standing Counsel, Agriculture Department and Ms. R Devi, learned CGC submit that the matter is between the NERAMAC and the petitioners and they would have not much to say.

9. The rival submissions have been considered and the materials placed have been carefully examined.

10. The initial empanelment of the petitioners vide communication dated 30.06.2022 was for a period of 1 year. The materials would show that the performance of the petitioners was satisfactory and this conclusion of this Court is fortified by issuance of the letter dated 30.06.2023 by the NERAMAC by which, it has been stated that considering the performance of the petitioner no.1 in the last year after their empanelment as a business associate, the empanelment was extended for another period of 6 months till 31.12.2023 on the same terms and conditions. This Court has, however, noticed that there was a requirement to acknowledge the letter and confirm their interest in the same. Though much emphasis has been laid by the learned counsel for the petitioners on the two communications dated 17.08.2023, this Court is of the view that both the communications can neither be treated to be acknowledgement of the offer of extension nor of confirmation of their interest. This is because of the fact that there is no reference to the letter dated 30.06.2023. However, at the

same time, this Court observes that in the impugned letter dated 23.08.2023 by which the extension offered has been termed to be null and void, both the information sought for have been divulged by the NERAMAC to the petitioners, meaning thereby that the information sought for were not classified in any manner. One of the letters dated 17.08.2023 has also raised the issue that the site of NERAMAC was not being able to be explored and steps were directed to be taken for rectification of the same.

11. A close perusal of the letter dated 30.06.2023 would show that though the letter was directed to be acknowledged and confirmed, the decision to extend their empanelment already taken by the NERAMAC-respondent no. 3. Under these circumstances, holding such extension to be null and void without seeking any further clarification from the petitioners does not appear to be fully justified, more so when there was no complaint regarding the performance of the petitioners in the period of its empanelment of 1 year after the empanelment letter dated 30.06.2023. In fact, the letter dated 30.06.2023 has been issued only based upon the performance of the petitioners in the previous year of their empanelment as business associate.

12. Shri Sarma, learned counsel for the petitioners has also clarified that the petitioners are very much interested to continue with their empanelment with the respondents-NERAMAC. This Court has already observed that the petitioners are seeking enforcement of their extension of empanelment which would not mean that the petitioners are to be given the business as a matter of right and would only be within the zone of consideration for allotment of such business.

13. In view of the above, this Court is of the opinion that a case for

interference is made out and accordingly, the part of the impugned communication dated 23.08.2023 by which the extension of empanelment of the petitioner no. 1 has been treated to be null and void is interfered with. The petitioners' empanelment accordingly be treated to be in existence till the date fixed which is 31.12.2023. It is further made clear that in the event, the respondents-NERAMAC is of the opinion that further extension may be required of the empanelled entities, such offer may also be given to the petitioners.

14. Writ petition accordingly stands allowed to the extent mentioned above.

15. No order as to cost.

JUDGE

Comparing Assistant