

GAHC010037462024



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

Case No. : WP(C)/1069/2024

BALEN ROY MEDHI
S/O- LATE RAJMOHAN ROYMEDHI,
R/O- BHARALUMUKH, KUMARPARA, KRB ROAD, GHY-09,
P.S- BHARALUMUKH, DIST- KAMRUP (M), ASSAM,
PIN-781009

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, ANIMAL
HUSBANDRY AND VETERINARY DEPARTMENT
DISPUR, ASSAM, GHY-06

2:THE DIRECTOR
OF ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
ASSAM
CHENIKUTHI
GUWAHATI-03

3:THE BID PROCESS MANAGEMENT COMMITTEE
REP. BY ITS CHAIRMAN

OFFICE OF THE DIRECTOR OF ANIMAL HUSBANDRY AND VETERINARY
DEPARTMENT
ASSAM
CHENIKUTHI
GUWAHATI-03
ASSAM

4:THE DISTRICT ANIMAL HUSBANDRY AND VETERINARY OFFICER
NALBARI
ASSAM

PIN-781335

5:BABITA BORAH
SIVAMANDIR PATH
KHANAPARA
GUWAHATI-22
ASSA

Advocate for the Petitioner : MR. J KALITA, DIKSHITA DEKA

Advocate for the Respondent : GA, ASSAM, MS. D J BORAH (R-5),MR. S CHETRY (R-5),MR. B CHETRI (R-5),MS. M M KATOKI (for R/p No. 1 to 4)

WP(C)/1178/2024

BALEN ROY MEDHI
S/O LT. RAJMOHAN ROYMEDHI
R/O BHARALUMUKH
KUMARPARA
K.R.B. ROAD
GHY-09
P.S.-BHARALUMUKH
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KHANAPARA
GUWAHATI-22
ASSAM

Advocate for : MR. J KALITA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

WP(C)/998/2024

BALEN ROY MEDHI
S/O LT. RAJMOHAN ROY MEDHI R/O BHARALUMUKH KUMARPARA
K.R.B. ROAD
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KHANAPARA
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ASSAM

Advocate for : MR. J KALITA
Advocate for : GA
ASSAM
appearing for THE STATE OF ASSAM AND 4 ORS

WP(C)/996/2024

BALEN ROY MEDHI
S/O LT. RAJMOHAN ROY MEDHI
R/O BHARALUMUKH
KUMARPARA
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KHANAPARA
GUWAHATI-22
ASSAM

Advocate for : MR. J KALITA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

WP(C)/1071/2024

BALEN ROY MEDHI
S/O- LATE RAJMOHAN ROYMEDHI
R/O- BHARALUMUKH
KUMARPARA
KRB ROAD
GHY-09
P.S- BHARALUMUKH
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ASSAM

Advocate for : MR. J KALITA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri J Kalita, Advocate.

For the Respondents : Shri D Nath, Sr. Govt. Advocate, Assam,
Shri B Chetri, Advocate, R/5.

Date of Hearing : 10.09.2024.

Date of Judgment : 27.09.2024.

JUDGMENT & ORDER

The challenge in these five writ petitions being almost identical and based on same grounds, those were taken up together for an analogous hearing and are being disposed of by this common judgment and order. The matters pertain to a tender process for construction of Assam Type Sub-Centre Building under Animal Husbandry & Veterinary Department, Assam. The petitioner in each of the five cases, however, is the same.

2. As per the facts projected, a Notice Inviting Tender (NIT) was issued on 06.04.2023 by the AH & Vety. Department for construction of Assam Type Sub-Centre Building with Electrification, Water Supply and Sanitary Works etc. at various locations in the district of Nalbari. In the said tender document, there is a specific clause under the Qualification Criteria, being Clause 2.A.(g) which provides that a bidder who quotes the rate beyond 15% below the approved rate would have to submit justification with proper rate analysis and photographic evidence. It is the case of the petitioner that in all the writ petitions, the private respondent no. 5 had quoted rate which was beyond 15% below and accordingly, under the aforesaid clause, justification was sought for. The justification was purportedly given and after

consideration of the same, the bids of the private respondent no. 5 in each of the cases were accepted and accordingly, Work Orders were issued on 06.01.2024. Sensing some irregularity and foul play with regard to the bid of the private respondent, details of the justification was sought for under the Right to Information Act, 2005 (RTI Act). It was revealed that the respondent no. 5 justified the price by annexing a quotation of one Maa Enterprise from whom construction materials would be purchased. In the said quotation, a GSTIN number was given. On further enquiries, the petitioner could learn that the said GISTIN number was not pertaining to Maa Enterprise and it was of one Dhanjit Gupta with trade name, M/S Joy Maa Hardware and Sanitary. The petitioner had raised objection before the Department which was not paid heed to and it is averred that the formal Work Order was actually published on 13.02.2024. Being aggrieved by the aforesaid process of allotment of the works, the present writ petitions have been filed.

3. I have heard Shri J Kalita, learned counsel for the petitioner in all the cases. I have also heard Shri D Nath, learned Sr. Government Advocate, Assam as well as Shri B Chetri, learned counsel for the respondent no. 5 in all the writ petitions.

4. Before recording the submissions, it would be convenient to give the details of the works involved with the writ petitions in a tabular form:

WP(C)	Works Description	Estimated Cost (Rs.)
996/2024	Construction of Assam Type Sub- Centre Building with electrification, Water supply and sanitary works etc. at Naharbari in Nalbari District.	33,71,000.00
998/2024	Construction of Assam Type Sub- Centre Building with electrification, Water supply and sanitary	33,71,000.00

	works etc. at Hati Namati in Nalbari District.	
1069/2024	Construction of Assam Type Sub- Centre Building with electrification, Water supply and sanitary works etc. at Allia in Nalbari District.	33,71,000.00
1071/2024	Construction of Assam Type Sub- Centre Building with electrification, Water supply and sanitary works etc. at Balitara in Nalbari District.	33,71,000.00
1178/2024	Construction of Assam Type Sub- Centre Building with electrification, Water supply and sanitary works etc. at Sagarkuchi in Nalbari District.	33,71,000.00

5. Shri Kalita, learned counsel for the petitioner has submitted that Clause 2.A.(g) of the Tender Document though provides for an exception to accept bids which are 15% below, the same is subject to submission of proper justification with rate analysis, photographic evidence etc. and even thereafter, the Bid Process Management Committee (the Committee) has the right to reject the bid if such justifications are found incorrect after physical verification. It is submitted that the conditions attached to the aforesaid clause are required to be adhered to in a meticulous manner.

6. By drawing the attention of this Court to the information regarding the GSTIN of Maa Enterprise, whose quotation was one of the justifications, it is submitted that the GSTIN number which was given as 18AQCPG9499H1ZA belongs to one Dhanjit Gupta of M/S Joy Maa Hardware and Sanitary. He submits that a forged document was taken into recourse by the private respondent no. 5. By drawing the attention of this Court to the affidavit-in-opposition of the Department filed on 15.07.2024, it is submitted

that in the same, a clarification dated 11.12.2023 from Maa Enterprise has been annexed. The said clarification was given to the respondent no. 5 whereby, it was stated that the quotation of the GSTIN number was inadvertent as the said shop did not have any GSTIN. It is submitted that such an explanation was wholly unacceptable as no retailer of construction materials, like rod, sand, cement etc. can do business without any GSTIN.

7. The learned counsel for the petitioner has also dealt with a verification reports submitted by the Junior Engineer (HQ) which are all of the same date i.e. 09.10.2023. Along with the said reports, certain photographs have been annexed regarding the materials mobilized. It is submitted that apart from there being no Geo-tag, all the photographs are one and the same. The learned counsel has also taken exception of the progress report dated 28.02.2024 which has been annexed as Annexure-10 to the said affidavit-in-opposition as per which, approximately, 70% of physical progress has been made. It is submitted that the work order was published only on 13.02.2024 as would appear from Annexure-A5 and it was not possible to achieve such progress within 2 weeks.

8. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent no. 5, the learned counsel for the petitioner has submitted that it has been admitted that the GSTIN number was wrong and that the seller was not having any such GSTIN at all. He has also raised his grievance with regard to the aspect of releasing running bills on 21.05.2024 in spite of the interim order passed by this Court on 06.03.2024. It is submitted that such action is clearly contemptuous and accordingly, *suo moto* action is required to be taken by this Court. By referring to the affidavit-in-reply fled by the petitioner on 02.08.2024 to the affidavit-in-opposition of the respondent no. 5, he has submitted that the records would reveal that the same justification has been given for all the parties. In this regard, he has referred to the

documents annexed as Annexure-A7.

9. The learned counsel for the petitioner accordingly submits that the works could not have been proceeded on the basis of a fraud involved in such allotment and even assuming that certain portions of the work have been executed, the same cannot construe 70% progress as sought to be projected. He accordingly submits that the work orders are required to be interfered with and the balance of the works are required to be allotted to the petitioner in accordance with law.

10. *Per contra*, Shri Nath, learned Sr. Government Advocate has defended the action for allotment of the works in question. At the outset, he has raised a preliminary objection on the maintainability of the writ petitions. It is submitted that the petitioner is not the L2 bidder in all the cases and there are other bidders between the respondent no. 5 and the petitioner who have not been made party respondents. It is accordingly submitted that no relief can be claimed by the petitioner.

11. On the merits of the case, more specifically with regard to the requirement of GSTIN registration, the learned State Counsel has referred to Clause 2.A.(d)(ii) which necessitates GSTIN registration of the bidder. It is submitted that there is no allegation against the bidder (respondent no. 5) regarding not having a GSTIN registration and therefore, the present challenge is not maintainable. In this regard, he has drawn the attention of this Court to the registration of the respondent no. 5 under the GST which was duly verified.

12. By drawing the attention of this Court to the affidavit-in-opposition filed on 15.07.2024, the learned State Counsel has submitted that the verification was done on 10.09.2023 as per the decision dated 15.09.2023 and based on the said verification reports, further steps were taken for allotment of the works. It is submitted that the

work orders were issued on 06.01.2024 and the date relied upon by the petitioner by referring to Annexure-5 i.e. 13.02.2024 has nothing to do with the actual date of issuance. He has also drawn the attention of this Court to the photographs of the construction undertaken and has submitted that as per the progress report dated 28.02.2024, 70% of the works have been completed. He has also submitted that the Department has taken into consideration the explanation provided that GSTIN of Maa Enterprise was inadvertently quoted.

13. The learned State Counsel has submitted that in matters relating to tender, the role of the Court is circumscribed and only when there is gross illegality apparent on the face of it, there may be a scope for interfering with such process. On the aspect of restraint to be maintained while exercising powers of judicial review, the learned State Counsel has relied on the judgments of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. and Anr.***, reported in **(2016) 16 SCC 818** and ***Bharat Coking Coal Ltd. Vs. AMR Dev Prabha & Ors.***, reported in **(2020) 16 SCC 759**.

14. On the issue of payment being released, the learned State Counsel has submitted that the interim order was passed by this Court on 06.03.2024 by which time, 70% of the work was done and therefore, the payment has been made. He has, however, informed that after the interim order, the constructions have been stopped.

15. Shri B Chetri, learned counsel appearing for the respondent no. 5 in all the cases has endorsed the submissions made on behalf of the Department. He has submitted that under Clause 11.1(viii), the GSTIN registration by a bidder is required to be submitted. Such requirement has also given under Clause 2.A.(d)(ii) and the bidder has duly fulfilled the said condition. He has defended the action that while giving the justification for quoting beyond 15% below the approved rate, a communication of the supplier was given in which by inadvertence, a GSTIN number

was provided. It is submitted that there is no requirement that the supplier is required to have a GSTIN number. He has also relied upon a Gazette Notification dated 03.06.2019 as per which, a person engaged in exclusive supply of goods whose aggregate turnover in a financial year does not exceed to Rs. 40 lakhs is exempted from registration under the Assam Goods and Services Tax Act, 2017. It is submitted that the respondent no. 5 was found to be the lowest bidder and accordingly, a decision was taken in the meeting dated 13.10.2023. He has also referred to the communication dated 11.12.2023 by Maa Enterprise on the issue of GSTIN and the clarification given by the petitioner on 12.12.2023. It is submitted that the work had progressed and 80% has been achieved. In support of his submissions, he has relied upon a judgment of this Court dated 18.02.2022 in the case of ***M/S Naga Builders and Suppliers Vs. State of Nagaland & Ors.***, passed in **WP(C)/96/2022**. In the aforesaid case, this Court has laid down that when a challenge is made by an unsuccessful bidder, the Court would be loath to interfere. He, however, clarifies that so far as the WP(C)/998/2024 is concerned, due to certain boundary dispute, no construction could be made and therefore, no amount has been released.

16. Shri Kalita, learned counsel for the petitioner, in his rejoinder has submitted that the progress report dated 28.02.2024 showing 70% of progress is wholly unacceptable document inasmuch as the work orders were actually published much later. With regard to the so-called explanation given by Maa Enterprise, the learned counsel has submitted that the communication does not bear any seal or is given on any letter-head and the same is simply a typed copy. It is reiterated that the photographs given to justify the verification reports in all the five cases are exactly the same which would raise a serious doubt on the *bona fide* of such exercise. By referring to the case of ***Bhaba Dev Mahanta Vs. State of Assam & Ors.***, reported in **2022 (6) GLT 698**, the learned counsel has submitted that all the clauses of the tender document are required to be read independently. As regards the preliminary

objection raised on behalf of the Department on the issue of maintainability, the learned counsel has submitted that though in three cases, there are two more bidders above the petitioner, the rates quoted by them was beyond 15% which were also without justification and therefore, they are not necessary parties. He has also informed that in WP(C)/998/2024, the petitioner is the L2 bidder and therefore, all the writ petitions are maintainable.

17. The rival submissions have been duly considered and the materials placed on record have also been carefully examined.

18. To examine the issue which revolves upon the clause relating to a quotation beyond 15% below the approved rate, it would be convenient if the said provision i.e. 2.A.(g) is extracted hereunder:

“(g) The bidder who quotes the rate equivalent to beyond 15% below the current DSR should submit the justification of quoting the rate in details with proper rate analysis along with photographic evidences with their Bid and the Bid process Management Committee has right to reject the Bid if his justifications are found incorrect after physical verification.”

19. A bare reading of the aforesaid provision would clearly reveal that an exception has been carved out to consider a rate which is beyond 15% below the current DSR. The said consideration is subject to a proper justification of the rate in details with proper rate analysis and photographic evidence and even thereafter, the Committee has the right to reject the bid if the justifications are found incorrect after physical verification. The objective of such a clause is apparent which is to ensure that the quality of the work does not suffer in any way and in certain cases where works are allotted on exceptionally low rate, it is found that the works are abandoned mid way

which adversely affects the public interest. The aforesaid clause is a balance to the process adopted for distribution of State *largesse* by following a fair and transparent procedure as well as to protect the public interest wherein, an exceptionally low rate beyond 15% is also considered which, however, is subject to strict conditions as mentioned above. While consideration strictly in accordance with the provision is permitted, the same is required to be examined whether in the instant cases, the justification put forward by the respondent no. 5 towards the rate quoted is in accordance with law. The respondent no. 5 has justified the rate by relying upon a quotation from one Maa Enterprise which had given a GSTIN number. It, however, transpires that the GSTIN number did not belong to Maa Enterprise but is of another entity, which is not at all connected. The respondent no. 5 has tried to explain the position by a further clarificatory letter from Maa Enterprise that the said Enterprise did not have any GSTIN number. This Court, however finds force in the contentions advanced on behalf of the petitioner that such explanation is not acceptable inasmuch as the said clarificatory letter does not bear any seal and is not even issued in the letter-head of Maa Enterprise.

20. With regard to the submissions made on behalf of the respondent no. 5 by referring to the Gazette Notification dated 03.06.2019, though certain entities are given exemption under the Assam GST Act of 2017, there is nothing on record to show that Maa Enterprise would fall within the exempted clause. A retailer cannot be presumed to fall within the exception from the requirement of GST registration without any materials placed on record, more so when the very purpose of the Act of 2017 is to bring all business under the purview of the Act.

21. As regards the verification to be done for invoking the aforesaid clause of the tender pertaining to accepting rates below 15%, it appears that the Junior Engineer had made a verification by purportedly making a field visit which was communicated

to the Executive Engineer on 09.10.2023. Along with the said communication, certain photographs have been annexed. A bare perusal of the photographs which have been enclosed to an identically written verification report would show that all the photographs in all the five cases are exactly the same. It is absolutely intriguing as to how the works which pertain to various locations in the district of Nalbari could be justified with certain materials which have been stacked in one location. Apart from their being no Geo-tag in the photographs enclosed, the bare facts that all the photographs are same raise serious questions on the *bona fide*. Apart from the aspect that the photographs which have been annexed to the reports dated 09.10.2023 being similar for all the five bidders, the same would not have any bearing with the justification which is envisaged under Clause 2.A(g). It is also failed to be understood as to how the similar/same photographs could be given for making a field verification pertaining to five works of different locations.

22. There is another aspect of the matter which has come to the notice of this Court. On a close perusal of all the writ petitions, it appears that the respondent no. 5 who are different persons in all the cases have one address which is "Sivamandir Path, Khanapara, Guwahati-22, Assam". It clearly appears that each of the respondent no. 5 belong to the same family. An explanation has been given by the learned State Counsel that the works are different and none of the family members offered bid for the same work. It is, however, noticed that the respondent no. 5 for the works at Hati Naharbari and Hati Namati [WP(C)/996 and 998/2024, respectively] is the same who has been allotted the works. Though there may not be a strict restriction on each of the family members to do business and participate in different tenders, in the instant case, the works are the same which are, however, spread out in various locations in the district of Nalbari. The rates which have been offered by the respondent no. 5 in all the five works involved are all beyond 15% below which obviously require a justification under the aforesaid clause. Interestingly, all the justifications are identical

which had relied upon a quotation from one Maa Enterprise giving a particular GSTIN number. It is, however, not in dispute that the said GSTIN number is not of Maa Enterprise but of a different entity and the explanation which had given later on is that Maa Enterprise does not even have a GSTIN number. Without even going into that aspect as to whether a sale of construction materials on huge quantity can be done by an entity without a GSTIN number, the nature of clarification given by a document which does not even bear a seal and not the letter-head of the entity, the Department was under a higher obligation to make proper verification. As observed above, the aforesaid clause considering a bid which is beyond 15% below the current DSR was an exception subject to serious scrutiny and rigours. In the instant case, it however appears the recourse of the aforesaid provision has been taken only with the purpose to allot the works to the respondent no. 5 in each of these cases who appear to be the members of the same family. The decision making process which involves a verification report dated 09.10.2023 and its acceptance appear to be done in a wholly predetermined with which clearly reflects *bias* and nepotism.

23. As regards the submission made that the work orders were published only on 13.02.2024, this Court is, however, unable to accept the said submission as the work order is dated 06.01.2024 wherein there is a stipulation of completion of the work within 180 days. Therefore, the progress report that 70% of the work has been done cannot be presumed to be erroneous.

24. It has been submitted that in spite of the interim order, payment of running bills has been made. Though ideally Leave should have been taken from this Court, since part of the work has been done prior to passing of the interim order, this Court is not inclined to enter into the said issue in these proceedings.

25. In view of the facts and circumstances of the case and the discussions made

above, this Court is of the opinion that the process adopted for allotting the works to the respondent no. 5 is not in accordance with law and accordingly, the Work Orders dated 06.01.2024 are interfered with. It is, however, made clear that since there was certain progress pursuant to the aforesaid Work Orders, the balance of the works are to be done through the eligible bidders who would be qualified for the same pursuant to the tender process. So far as WP(C)/998/2024 is concerned, since no progress could be made, the work is to be allotted to the eligible bidder.

26. The writ petitions are accordingly allowed in the manner indicated above.

27. The interim orders passed earlier stand merged with the final order.

JUDGE

Comparing Assistant