

GAHC010055272024



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

Case No. : WP(C)/1686/2024

LOPAMUDRA ROYCHOWDHURY
W/O- SANTANU KUMAR KALITA, FLAT NO.2A, SATYA ANAND
APARTMENT CHINAKI PATH, ZOO-NARENGI ROAD, GEETANAGAR,
GUWAHATI-781021, DIST.KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EXCISE DEPARTMENT, DISPUR, GHY-06.

2:THE DISTRICT COMMISSIONER (EXCISE BRANCH)
KAMRUP METROPOLITAN DISTRICT
GUWAHATI-781001.

3:THE SUPERINTENDENT OF EXCISE
-CUM- MEMBER SECRETARY OF THE TENDER/ BID COMMITTEE
KAMRUP(M) ASSAM

4:RAKESH KHOSLA
S/O- KRISHAN KUMAR KHOSLA
H/NO. 2
NEAR ASEB
A.K. DEB ROAD
FATASIL
P.O. AND P.S. BHARALUMUKH
GUWAHATI
KAMRUP(M)
ASSAM-781009

Advocate for the Petitioner : MD S HOQUE

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 27.03.2024

Heard Mr. S. Hoque, learned counsel for the petitioner. Also heard Mr. P.N. Goswami, learned Addl. Advocate General, Assam appearing for the Excise Department. Mr. J. Abedin learned counsel appears for the respondent No.4/caveator.

2. The petitioner is aggrieved by the disqualification of his technical bid at the technical bid evaluation stage. The petitioner's case in brief is that subsequent to a tender notice dated 15.12.2023, for grant of Indian Made Foreign Liquor (IMFL) Retail Off Licence in respect of a shop at Mannapara, Gorchuk-Fatasil Ambari Road, Ward No.23 (KAMM23), the petitioner submitted his tender documents, wherein Clause 6.2.5 of the tender notice required the tenderers to submit "copy of income tax return along with balance sheet for the years 2019-20, 2020-21, 2021-22 and 2022-23 (any three years in sequence) and statement of 'net worth' certificate as certified by a Chartered Accountant."

3. The petitioner's counsel submits that the petitioner did not submit a net worth certificate, inasmuch as, the petitioner submitted copies of the income tax returns along with balance sheet submitted for 3 years, certified by a Chartered Accountant, which was akin to filing a net worth certificate certified by a Chartered Accountant. He accordingly submits that the disqualification of the petitioner's tender notice on the ground that the petitioner did not submit a net worth certificate was not justified, as the objective of submitting a net worth

certificate was taken care of by the petitioner submitting copy of 3 years income tax returns and balance sheet.

4. The petitioner's counsel submits that besides the issue of the petitioner's technical bid having been disqualified on a spurious and unjustified ground, the respondent No. 4 could not have been granted the licence for the IMFL retail OFF shop, given the fact that the respondent No.4 had not signed all the pages of the tender documents, as was required under Clause 7.6 of the tender notice, which states as follows-

“7.6 All pages of the documents submitted by the bidder shall be signed by the authorized signatory and shall also be affixed with the Bidder entity's stamp.”

5. The petitioner's counsel further submits that the reply dated 23.02.2024 issued by the Superintendent of Excise to the petitioner's application, had stated that all the issues raised by the petitioner against the respondent No.4 had been waived by the Tender Committee as minor irregularity. He submits that the above proved that the respondent No.4 had been illegally favoured to be granted the licence, even though the respondent No.4 had not submitted his tender documents in terms of the terms and conditions enumerated in the tender notice.

6. Mr. P.N. Goswami, learned Addl. Advocate General submits that there is a difference between a net worth certificate and the income tax return, as has been clearly spelt out in the tender notice. He also submits that the respondent authorities have held that the net worth certificate to be submitted by the tenderers was a mandatory condition. He also submits that in terms of Clause

2.8(b) of the tender notice, the net worth value of a tenderer could be ascertained only after deducting the liabilities from the assets of a tenderer. He submits that the above clearly showed that a net worth certificate was different from an income tax return. He further submits that all the pages of the tender documents of the respondent no.4 was signed.

7. I have heard the learned counsels for the parties.

8. Clause 2.8(b) and 6.2.5 of the tender notice states as follows-

“2.8 The Bidder should have positive Net Worth in the preceding three financial years as on 31st March 2022.

Explanation: For the purpose of this Bid document 'Net Worth' shall mean as follows:-

b. If the Single Bidder is an individual, the value that is left after deducting liabilities from assets.”

“6.2.5 Copy of Income Tax Returns along with Balance Sheets for the years 2019-20, 2020-21, 2021-22 and 2022-23 (any three years in sequence) and statement of 'Net worth' as certified by a Chartered Accountant.”

9. A perusal of Clause 2.8 shows that the value of a tenderer depends upon what is left after deducting the liabilities from assets. Clause 6.2.5 clearly states that 'income tax returns' and 'statement of net worth' have to be submitted along with the tender documents. As such, there was a requirement for furnishing income tax returns and a net worth certificate separately. Further, the petitioner's application dated 17.02.2024 issued to the Superintendent of Excise (Annexure-E) and the representation at Para 4 states as follows-

“Due to this discrepancy, I refrained from submitting the net worth certificate, assuming it was not a mandatory requirement.”

The above admission made by the petitioner clearly shows that that the petitioner has admitted to the fact that he had not submitted the net worth certificate and he had also assumed that it was not a mandatory condition of the tender notice.

10. In the case of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr.***, reported in ***(2016) 16 SCC 818***, the Supreme Court has held as follows-

“The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents.”

11. In view of Clause 6.5.2 read with Clause 2.8(b) and the submission made by Mr. P.N. Goswami, the learned Addl. Advocate General, that the submission of a net worth certificate was a mandatory condition, this Court would have to accept the same as such.

12. With regard to the challenge made by the petitioner to the grant of the IMFL Retail Off Licence to the respondent No.4, on the ground that the respondent No.4's tender documents was not fully compliant with the terms and conditions of the tender notice, it would be profitable to refer to the judgment of the Supreme Court in ***TATA Motors Limited Vs. the Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others*** in ***Civil Appeal No. 3897/2023***, wherein it affirmed the view of the High Court that once the bid of the TATA Motors had been declared as non responsive and

having stood disqualified from the tender process, it could not have entered into the fray of investigating into the decision of BEST to declare the successful bidder.

13. The judgment of the Supreme Court in ***TATA Motors Ltd (supra)*** was made in line with the judgment of the Supreme Court in ***Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and Others***, reported in ***(1999) 1 SCC 492***, wherein it has been held that any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced.

14. In view of the fact that the petitioner had not submitted his net worth certificate, which was a mandatory condition of the terms and conditions of the tender notice, there is no infirmity with the disqualification of the petitioner's technical bid. Consequently, no challenge can be made by an unqualified tenderer to the grant of a licence to the respondent No.4. This Court accordingly finds no ground to exercise its discretion in the present case.

15. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant