

GAHC010035812024



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

Case No. : WP(C)/1145/2024

DHIRESWAR NATH
S/O- JITENDRA NARAYAN NATH,
R/O- VILLAGE BUDHIPARA,
P.O AND P.S- AGIA, DIST- GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, FOREST DEPARTMENT
ASSAM SECRETARIAT, DISPUR, GUWAHATI-06.

2:CONSERVATOR OF FOREST
LOWER ASSAM SOCIAL FORESTRY CIRCLE
BONGAIGAON
ASSAM

3:DIVISIONAL FOREST OFFICER
GOALPARA SOCIAL FORESTRY DIVISION
GOALPARA
ASSAM

4:TENDER COMMITTEE
DFO (SF) OFFICE
GOALPARA SOCIAL FORESTRY DIVISION
GOALPARA
ASSAM

5:RANJIT KUMAR DAS
R/O- VILLAGE BAPUJI NAGAR
P.O- BALADMARI

P.S AND DISTRICT- GOALPARA
ASSAM
PIN-78312

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

01.03.2024

1. Heard Mr. H. Das, learned counsel for the petitioner and Mr. D. Gogoi, learned Standing Counsel for the Forest Department.

2. Mr. H. Das, learned counsel for the petitioner, at the very outset submits that he does not wish to press his challenge to the NIT dated 28.12.2023. His only challenge is to the impugned NIT dated 09.12.2023.

3. The petitioner's case in brief is that he had taken part in the short Notice Inviting Tender dated 09.12.2023, hereinafter referred to as "the NIT", pertaining to GLPSF-3, i.e. Erection of Boundary Fencing around 25 hectare AR Plantation at Bandarmatha, Lakhipur, at an estimated cost of s.28,59,850/-.

4. The petitioner participated in the NIT by submitting his bid and being unsuccessful in the tender process has put to challenge the NIT on three grounds. Firstly, on the ground that as the estimated cost was above Rs.20.00 lakhs, publication of the NIT should have been done through e-tender process

in www.assamtender.gov.in and not in www.assamforestonline.in or by way of advertisement in a newspaper, in terms of the OM dated 10.06.2023 issued by the Commissioner & Secretary to the Government of Assam, Finance Department. The second ground of challenge to the NIT is that the requirement of submitting the Court Fee payable had not been mentioned in the Tender Form, though it was mentioned in the NIT. Thirdly, the NIT was signed by the Divisional Forest Officer and it was not countersigned by the Conservator of Forest.

5. The petitioner's counsel submits that the petitioner's bid was rejected on the ground that he did not submit Court Fee. He submits that in view of the reasons stated above, the NIT dated 09.12.2023 should be set aside and a fresh NIT should be published through e-tender process.

6. Mr. D. Gogoi, learned Standing Counsel, Forest Department, on the other hand submits that the petitioner's tender was considered by the respondents and it was not disqualified. As there were 5 valid tenderers out of 11 tenderers including the petitioner, who quoted the same rate, the selection of the successful tenderer was made on the basis of Clause 10.9 of Bidding Document, which provided that in case of two bidders having equal score, the bidder having a higher average in the Annual Turnover for the last 3 years would get preference. He submits that as one Ranjit Kumar Das (respondent no.5) had a higher Turnover for the last 3 years amounting to Rs.11,07,16,750/- as compared to the petitioner's Annual Turnover for the last 3 years amounting to Rs.1,86,10,576/-, the bid of Ranjit Kumar Das was accepted and he was awarded the work on 11.01.2024. Mr. D. Gogoi submits that 80% of the work

has already been completed by the respondent no.5.

7. On a query put to the petitioner's counsel as to the basis for which the petitioner has taken the stand that the NIT should be countersigned by the Conservator of Forest, the petitioner's counsel submits that he does not have the said basis or justification with him. As can be seen from the submission made by the counsel for the State respondents, the petitioner's bid document had not been disqualified or rejected by the authorities due to lack of Court Fee. The Comparative Statement of bids which Mr. D. Gogoi has produced, shows that out of 11 bidders, the bids of 5 persons have been rejected. The bid of the petitioner herein was not rejected or disqualified. However, he was among 5 bidders who quoted the same bid amount.

8. The above being said, once the petitioner has participated in the bidding process in terms of the NIT dated 09.12.2023, no prejudice can be said to have been caused to the petitioner just because the NIT was not published by way of an e-tender process in www.assamtender.gov.in. The NIT had been published in www.assamforestonline.in and in the Sentinel newspaper.

9. The above being said, the Division Bench of this Court in the case of ***Sibaram Deka vs. The State of Assam & 7 Others, WA No.395/2022***, has held that when a person participates in the tender process and is subsequently found to be unsuccessful, a challenge to the process is precluded. Such a tender cannot turn around and challenge a clause in the tender notice. Further, the petitioner having participated in the tender process, the petitioner

has not been able to show what prejudice has been caused to him.

10. In view of the reasons stated above, this Court does not find any merit in the writ petition. The writ petition is accordingly dismissed.

11. The Comparative Statement of the bidders and the other connected documents are made a part of the record and marked as Annexure-X collectively.

JUDGE

Comparing Assistant