

GAHC010036182024



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

Case No. : WP(C)/956/2024

ALL ASSAM PRIVATE SECURITY AGENCIES ASSOCIATION
REGISTRATION NO. KAM(M)/263/D/128 OF 2013-14, REGISTERED OFFICE
AT OPPOSITE RAHMAN HOSPITAL, SIXMILE, KHANAPARA, GUWAHATI-
781022, KAMRUP(M), ASSAM, REPRESENTED BY THE PRESIDENT OF THE
ASSOCIATION SHRI BIKUL BORAH.

VERSUS

TEZPUR UNIVERSITY AND 4 ORS
NAPAAM, DIST. SONITPUR, ASSAM, PIN- 784028.

2:TEZPUR UNIVERSITY
REPRESENTED BY THE VICE-CHANCELLOR
NAPAAM
DIST. SONITPUR
ASSAM

3:THE REGISTRAR
TEZPUR UNIVERSITY
PIN- 784028.

4:THE DEPUTY REGISTRAR
GENERAL ADMINISTRATION
REPRESENTING THE TENDER EVALUATION COMMITTEE.

5:THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HIGHER EDUCATION
127-C
SHASTRI BHAWAN
NEW DELHI-110001

Advocate for the Petitioner : MR S P DAS

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

**B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO
ORDER**

16.05.2024

Heard Mr. S P Das, learned counsel for the petitioner and Mr. S C Keyal, learned counsel for the respondent Nos. 1 to 4. Having regard to the case projected by the petitioner, the writ petition is taken up for disposal at this stage with the consent of the parties.

[2.] The petitioner before this Court is the All Assam Private Security Agencies Association represented by its President and the challenge made is to the tender notice dated 15.02.2024 (Annexure-4), issued by the Tezpur University for hiring of security services for the University. The petitioner is particularly aggrieved with the criteria laid down for the technical bid evaluation under Section-D of the tender notice. According to the petitioner, while the estimated cost of the tender is Rs. 1,50,34,198/-, the experience required to be shown by the prospective tenderers in order to be given marks/points is execution of single contract with the value up to 10 crores or more during the last three financial years. They are also required to have operation in services

sector for a certain period of time. Likewise, the annual turnover of the prospective tenderer and the man-power on its payroll according to the petitioner has also been excessively fixed. This apart, marks have been assigned towards national presence as per Private Security Agencies (Regulation) Act, 2005 (PSARA) and to those having a certification of Central Association of Private Security Industry (CAPSI). The petitioner, therefore, questions the criteria fixed for granting marks in order to qualify the technical bid evaluation.

[3.] Mr. S P Das, the learned counsel submits that the respondent University has been floating tenders for the hiring security services from time to time and at no point of time, such a requirement has been stipulated. Referring to the conditions required for submission of tender document and evaluation in respect of the tender dated 19.02.2018 (Annexure-5), the learned counsel submits that the only stipulation was that the tenderer should be a registered and license security agency recognized by the State Government with minimum 5 years experience and having atleast 100 security personnel. Besides this, the annual turnover for the last three financial years should be at least 5 crores. Similar condition was also stipulated by the University when it floated a tender on 17.02.2023. The same, however, was withdrawn by the University for reasons best known to them and they came up with a fresh criteria for allotting marks in

the technical bid evaluation for the participating tenderers. Some of the conditions include the tenderer having executed single contract valued up to 20 crores during the last three financial years, the annual turnover of the company in anyone of the last three financial years to be up to 100 crores in order to get 2 marks and above 200 crores in order to get 10 marks. The petitioner, being highly aggrieved with such stipulation, submitted a representation on 28.01.2024 and the University, after constituting a committee to look into the matter, came up with second tender notice dated 15.02.2024, which again turned out to be more or less similar to the first tender notice. The petitioner, therefore, being aggrieved, has filed the instant writ petition.

[4.] The learned counsel submits that the Central Vigilance Commission (CVC) having received complaints regarding the discriminatory pre-qualification criteria incorporated in the tender documents by various Departments/Organizations have come up with certain guidelines through O.M dated 17.12.2002 (Annexure-7). Paragraph No. 5 (A)(i) of the O.M provides that for fixing eligibility criteria for Civil/Electrical Works, the average annual financial turnover during the last 3 years, ending on 31st March of the previous financial year should be at least 30% of the estimated cost. Further, experience of having successfully completed similar works comparable to the certain percentage of

the estimated cost has also been fixed as per paragraph No. 5(A)(ii). The guidelines have not been adhered to by the respondent University. The learned counsel therefore submits that having regard to the manner in which the respondent University has fixed the criteria for allotting marks to qualify the technical bid evaluation, the same is not in conformity with the guidelines and an indirect way of preventing the members of the petitioner Association from participating in the tender process. As such, the tender notice dated 15.02.2024 should be set aside and the respondent University should be directed to issue a fresh tender similar to the tenders that were earlier floated on 19.02.2018 or 17.02.2023.

[5.] Mr. S C Keyal, learned counsel for the respondent University, on the other hand, submits that there is no arbitrariness or illegality on the part of the respondent University in issuing the tender notice dated 15.02.2024. He submits that due to the complaint submitted by the petitioner Association on the first tender notice issued on 24.01.2024, the University constituted a committee to look into the matter and considering the sentiments of the members of the petitioners Association, the University came up with the tender notice dated 15.02.2024. Referring to the affidavit-in-opposition filed by the respondent Nos. 1 to 4 on 23.04.2024, the learned counsel submits that there is no restrictive

clause in the tender document debarring any service provider from the participating in the tender process floated by the University. He submits that there were certain eligibility conditions when tender was floated in the year 2018 but since then, the number of campus dwellers have increased many folds and presently, more than 7000 dwellers are residing in the campus and further, more than 4000 students and equal number of employees and their dependents are expected to be on the campus once the undergoing construction works for hostels, new departments, quarters are completed. In order to ensure hiring of professionally strong security agency to ensure the safety and security of the campus dwellers, certain modifications were made in the tender published on 15.02.2024. He submits that from the experience in the past about theft, robbery, accidents, etc., the University has being compelled to put certain conditions to protect its interest. The learned counsel further submits that the University has not violated the CVC Guidelines or the General Financial Rules or the Assam Public Procurement Act, 2017. In fact, the CVC Guidelines suggest that pre-qualifications shall be based entirely upon the capability and response of prospective bidders to perform a particular contract. Considering such suggestive guidelines and the requirement of the University, the University published the revised tender notice on 15.02.2024 by making suitable relaxation compared to the initial tender floated on 24.01.2024.

[6.] The learned counsel further submits that the tender notice does not prescribe the registration of the prospective tenderer with CAPSI compulsorily. All that is provided is that for those who are registered with CAPSI, 5 marks can be earned out of the 100 marks/points provided for the technical bid evaluation. He submits that CAPSI being a pre-eminent organization for security professionals playing a leadership role in the formulation of global standards and best practices for the private security industry world over, the respondent University is therefore looking forward to select a reputed security agency. Therefore, the allotment of marks being only 5% of the total marks the same cannot be said to be arbitrary and offending for any prospective tenderer.

[7.] The learned counsel lastly submits that the scope of interference by this Court in exercise of its powers under Article 226 of the Constitution of India in contract/tender matters is limited. He submits that the scope of judicial review on administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, biasness and mala fides, which is not found in the instant case. Therefore, the writ petition should be dismissed. The learned counsel, in support of his submission on the scope of judicial review, relies upon the following authorities:-

(i) Jagdish Mandal vs. State of Orissa & Ors., (2007) 14 SCC

517.

(ii) M/s G J Fernandez vs. State of Karnataka & Ors., (1990) 2 SCC 488.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[9.] As can be seen, the petitioner is aggrieved with the manner in which marks/points have been allotted in order to qualify the technical bid evaluation of the tender notice dated 15.02.2024, on the ground that the same is unlike the earlier tender notice issued by the University particularly on 19.02.2018 and on 17.02.2023. According to the petitioner, the earlier tender notice for hiring security services for the University laid down certain terms and conditions enabling the members of the petitioner association participating in the tender process. However, as per the impugned tender notice, it would not be possible for intending tenderers particularly such as the members of the petitioner Association to compete in the tender process. The minimum points or marks required to be scored is 70 in the technical bid evaluation in order to be qualified for the financial bid. From the criteria laid down, the petitioner contend that its members will not be able to even score 70 marks/points.

[10.] In view of the issue raised by the petitioner in the criteria provided for

the technical bid, we may examine the same. It is seen that for the experience in the work concerned, the tenderer would get 10 marks for executing single contract value up to 10 crores during the last three financial years and 20 marks for executing single contract value above 10 crores. 5 marks has also been fixed for annual turnover of the company up to 100 crores in any year during the last three financial years, while 7 marks is fixed for the annual turnover between 100 crores to 200 crores. For those having upto 5000 numbers of man-power on payroll, 5 marks will be given and 10 marks to those having above 5000 numbers of man-power. It, therefore, can be seen that no minimum criteria has been fixed in order to get marks under the technical bid evaluation. For those having the certification of CAPSI which is also no compulsory, 5 marks can be earned. Therefore, from an overall appreciation of the distribution of marks and its criteria for earning the same, one can say that there is no restrictive clause. This Court also finds that the CVC Guidelines issued vide O.M dated 17.12.2022 and also the General Financial Rules, 2007 cannot be said to have been violated in view of the finding that there is no prohibitory clause in the tender. The PSARA provides for the regulation of the Private Security Agencies and grant of license. The grievance made in the instant case by the petitioner is otherwise in respect to the criteria for allotting marks for qualifying in the technical bid evaluation. All the members of the petitioner association admittedly are license

holders and therefore, the regulation has no direct application to the grievance projected by the petitioner.

[11.] It is a settled law that in contractual matters, the power of judicial review may be invoked to prevent arbitrariness, irrationality, unreasonableness, biasness and mala fides and that the power of judicial review should not be invoked to protect private interest at the cost of public interest. Therefore, having regard to the facts and circumstances involved in the instant case and in view of the findings arrived at, the petitioner cannot be said to have any legitimate grievance and accordingly, the writ petition is found to be without merit and therefore dismissed. The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant