

GAHC010061122024



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

Case No. : WP(C)/1799/2024

M/S DAISY INDUSTRIES
S NO. 49/1 PAIKE 2, TIMBHI, UMBERGAON, VALSAD, GUJRAT-396171.
REP. BY ITS AUTHORIZED AGENT,
RIDIP MAHANTA, AGE 40 YRS,
S/O- LATE RATNA MAHANTA, ANANDA NAGAR, SIXMILE, GUWAHATI,
DIST- KAMRUP(M), ASSAM, PIN-781022

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF AGRICULTURE AND HORTICULTURE, E- BLOCK, 1ST
FLOOR, ASSAM SECRETARIAT,
DISPUR, GUWAHATI-781006

2:THE DIRECTOR
HORTICULTURE AND FOOD PROCESSING
ASSAM AGRICULTURE CAMPUS
KHANAPARA GUWAHATI-781022

3:CHAIRMAN OF BID EVALUATION COMMITTEE
CUM THE DIRECTOR OF AGRICULTURE
ASSAM
AGRICULTURE CAMPUS
KHANAPARA
GUWAHATI-22

4:M/S J.K COMMERCIAL
REP. BY ITS PROPRIETOR
JIBON KUET
D-12
PRAGJYOTISH HOUSING COMPLEX
HATIGAON
GUWAHATI-28

5:M/S SHAKTI CORPORATION
REP. BY ITS PARTNERS
RAHUL JASRASARIA AND RITU AGARWAL
4TH FLOOR
403 SRI KAMAKHYA TOWER
CHRISTIANBASTI
GUWAHATI-04

6:M/S KRISHNA ENTERPRISE
REP. BY ITS PARTNERS
PANKAJ AGARWAL AND MADAN GOPAL AGARWAL
WARD NO-3
SANTINAGAR
KOKRAJHAR
BTAD-78337

Advocate for the Petitioner : MR S HOQUE

Advocate for the Respondent : SC, AGRI. DEPARTMENT

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 01.04.2024

Mr. S. Hoque, learned counsel for the petitioner prays that an enquiry should be made by the respondent Nos. 1 2 & 3 against the respondent Nos. 4, 5 & 6, as they have formed a cartel in the matter of supply of materials under the Directorate of Horticulture & Food Processing (in short, 'H&FD').

2. The petitioner's counsel submits that the petitioner had participated in the NIT dated 29.07.2023, pertaining to "Parallel rate contract for supply of Agro-Plastic items for the years 2023-2024 & 2024-2025" under the Directorate of H&FP. He submits that the respondent Nos. 4, 5 & 6 have formed a cartel and in terms of Rule 6(3)(b)(d) & (e) of the Assam Public Procurement Act, 2017 as well as the Assam Public Procurement Rules, 2020, the respondent Nos. 4, 5 & 6 cannot be allowed to form a cartel and

influence the bidding process. He submits that due to the cartel formed by the respondent Nos. 4, 5 & 6, the said respondents have been ruling the roost for supply of materials under the Directorate of H&FD for a number of years. He submits that the documents submitted by the petitioner show that there has been money transactions made between the respondent Nos. 4, 5 & 6, which would show that they have a conflict of interest and as such, the cartelization of the bidding process should be enquired into.

3. Mr. B. Chakraborty, learned counsel for the Agriculture Department submits that this Court should not initiate a roving enquiry, especially when the petitioner's bid was declared non-responsive at the technical bid evaluation stage. He accordingly submits that the petitioner not having passed the technical bid evaluation stage, he could not make a challenge to the bids of the other tenderers.

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

5. On a pointed query made by this Court to the learned counsel for the petitioner as to what was the bid amount of the respondent Nos. 4, 5 & 6, pursuant to the NIT dated 29.07.2023, the petitioner's counsel submits that he does not know the financial bid amounts submitted by the respondent Nos. 4, 5 & 6.

6. I have noticed that the petitioner has not made any challenge to the disqualification of his technical bid on being declared non-responsive at the technical bid evaluation stage. The petitioner having participated in the NIT dated 29.07.2023, the petitioner cannot now turn around and challenge the selection process, in terms of the judgment of the Division Bench of this Court in the case of ***Sibaram Deka vs. The State of Assam & 7 Others***

(WA 395/2022), wherein it has held that when a tenderer participates in a tender process without objection and is subsequently found to be not successful, a challenge to the process is precluded. Such a tenderer cannot be allowed to turn around and contend that the process was unfair by virtue of existence of a Clause in the NIT.

7. Further, in the case of **TATA Motors Limited Vs. the Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others** in **Civil Appeal No. 3897/2023**, the Supreme Court has 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 to declare the successful bidder.

8. 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 fulfill the requisite criteria seems to be misplaced.

9. The above being said, a roving enquiry cannot be initiated on the basis of unsubstantiated allegations of an unsuccessful tenderer, especially when there is nothing to show that the respondent Nos. 4, 5 & 6 have information about each others' bid or were in a position to influence the bidding system, pursuant to the NIT dated 29.07.2023, especially in the absence of the bid amounts quoted by the respondent Nos. 4, 5 & 6 being known to the petitioner. The money transactions allegedly made between the

respondent Nos. 4, 5 & 6 does not prove that the Assam Public Procurement Act or the Rules have been violated.

10. There being no merit in the writ petition, the writ petition stands dismissed.

JUDGE

Comparing Assistant