

GAHC010047472024



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

Case No. : WP(C)/1313/2024

SATYAJIT MORANG
S/O JOGESH MORANG, P/R/O BOCHAGAON, P.O.-PANIGAON, DIST-
LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EXCISE DEPARTMENT, DISPUR, GUWHAATI-
781006

2:COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI-781006

3:COMMISSIONERATE OF EXCISE
BELTOLA TINIALI
GUWAHATI-781036

4:THE DISTRICT COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM

5:THE SUPERINTENDENT OF TAXES
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM

6:TENDER/BID EVALUATION COMMITTEE
HEADED BY CHAIRMAN CUM DISTRICT COMMISSIONER

LAKHIMPUR

7:HRISHIKESH DEKA
S/O GOPESH DEKA
22 BOGOLIGAN B.O. CINATOLI
DIST- LAKHIMPUR
ASSAM-78703

Advocate for the Petitioner : MR. B GOGOI

Advocate for the Respondent : SC, EXCISE DEPTT.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

07.03.2024

1. Heard Mr. B. Gogoi, learned counsel for the petitioner, who submits that the petitioner participated in the NIT dated 20.12.2023, for grant of IMFL Retail Off Licence pertaining to the Shop No.LKP-5, Pohumora, Lakhimpur District. The petitioner's bid was disqualified at the Technical Evaluation stage by the Technical Bid Evaluation Committee meeting held on 17.02.2024.

2. The petitioner's counsel submits that though the petitioner's technical bid had been disqualified on 3 grounds, two out of the three grounds for disqualifying the petitioner's Technical Bid was wrong and not justified. However, he admits to the fact that there was an error in the Site Plan submitted by the petitioner, which was one of the three reasons for disqualifying the petitioner's Technical Bid. The petitioner's counsel submits that though the bid of the petitioner could not qualify the Technical Bid Evaluation stage, the grant of the IMFL Retail Off Licence to the respondent no.7 is illegal, inasmuch as, the

respondent no.7 had also not fulfilled all the conditions required in the NIT dated 20.12.2023, which are enumerated in paragraph 10 of the writ petition. He accordingly submits that the licence granted to the respondent no.7 should be set aside and fresh tender should be issued.

3. Mr. I. Choudhury, learned Senior Counsel for the respondent no.7 and Mr. K.P. Pathak, learned counsel for the Excise Department submit that the petitioner not having qualified in the Technical Bid Evaluation stage, he cannot make a challenge to the grant of licence to the respondent no.7, in terms of the judgment of the Supreme Court in the case of ***Raunaq International Limited vs. I.V.R. Construction Limited*** reported in ***(1999) 1 SCC 492***, wherein the Supreme Court has held in paragraph 27 as follows :

*“..... Therefore, any judicial relief at the instance of a party which does not fulfill the requisite criteria seems to be misplaced.
.....”*

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

5. As can be seen from the submission made by the petitioner’s counsel, the petitioner’s disqualification at the Technical Bid Evaluation Stage cannot be faulted in one out of the three grounds taken by the State respondents. The question that has to be decided is as to whether the petitioner, who has not qualified in the Technical Bid Evaluation stage could have made a challenge to the settlement of the licence with the respondent no.7, on the ground that the respondent no.7 did not fulfil all the conditions of the NIT and as such, could not have been granted the licence.

6. In the case of ***Raunaq International Limited (supra)***, the Supreme Court has held that any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced. Further, in the case of ***Jagdish Mandal vs. State of Orissa & Others***, reported in **(2007) 14 SCC 517**, the Supreme Court has held at paragraph-22 as follows :

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interference, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached';

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

7. In the present case, the petitioner having been disqualified at the Technical Bid Evaluation Stage which cannot be faulted, as stated in the foregoing paragraphs, the petitioner cannot be stated to have any enforceable right, which has been violated. In the case of ***Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and Others***, reported in ***(2013) 4 SCC 465***, the Supreme Court has held that only those persons, whose enforceable rights have been violated, can approach a Writ Court under Article 226 of the Constitution for enforcement of their rights, as they are aggrieved persons. The Supreme Court has held in paragraph 9 and 10 as follows :

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a

complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).

8. On considering the fact that the petitioner does not have any enforceable right in view of the fact that no fault can be attributed to the decision of the respondent authorities in disqualifying his Technical Bid, with regard to the error in the writ petitioner's site plan which had submitted along with the tender documents, this Court finds that the petitioner cannot be said to be an

aggrieved person. Accordingly, the petitioner has no *locus standi* to file the present writ petition, as no right of his has been violated. Consequently, in terms of the judgment of the Supreme Court in ***Raunaq International Limited (supra)***, the petitioner's challenge to the grant of licence to the respondent no.7 being mis-placed, the writ petition stands dismissed.

JUDGE

Comparing Assistant