

GAHC010063512024



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

Case No. : WP(C)/1744/2024

TRADE SUPPLY INDIA
A SOLE PROPRIETORSHIP, REPRESENTED BY ITS SOLE PROPRIETOR MR.
MADHUSUDHAN SHAHI, WITH PRINCIPAL PLACE OF BUSINESS AT
BEHIND HOTEL BHARGAV GRAND, SHAHI PATH, AHOM GAON,
BETKUCHI, GUWAHATI- 781035, KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF AGRICULTURE AND HORTICULTURE, E-BLOCK, 1ST
FLOOR, ASSAM SECRETARIAT, G.S.ROAD, GUWAHATI- 781006

2:THE DIRECTOR OF HORTICULTURE
DIRECTORATE OF HORTICULTURE AND FP ASSAM
KHANAPARA
GUWAHATI 781022
ASSAM

3:DEPARTMENTAL BID COMMITTEE
REPRESENTED BY THE CHAIRMAN CONSTITUTED FOR EVALUATING
TENDERS PERTAINING TO BIDDING DOCUMENT DATED 29.07.2023
BEARING BID REFERENCE NO. HORT.FP/701/TENDER (HMNEH)/PART-
III/2021-22/004 INVITING BIDS FROM ELIGIBLE BIDDERS FOR PARALLEL
RATE CONTRACT OF AGRO-MACHINERIES AND MINOR TOOLS FOR THE
DIRECTORATE OF HORTICULTURE AND F.P. FOR THE YEARS 2023-24 AND
2024-25

4:M/S SURYA ENTERPRISES
KUMUDINI COMMERCIAL COMPLEX
SHANKAR MARKET
A.T.ROAD

GUWAHATI- 781001
DISTRICT- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. M SARMA

Advocate for the Respondent : SC, AGRI. DEPARTMENT

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

28.03.2024

Heard Mr. M. Sarma, learned counsel for the petitioner as well as Ms. R. Bora, learned counsel appearing for the respondent Nos. 1, 2 and 3. The respondent No.4 is one of the bidders who participated in the tender pursuant to the tender notice/NIT dated 29.07.2023. However, his financial bid was not accepted.

2. The petitioner's grievance is that though the petitioner's experience certificate, in terms of Clause 4.2.1 of the tender notice dated 29.07.2023, required the petitioner to have experience for supply of at least 20% of the quantity as specified against a particular item in the schedule of requirement, the petitioner had submitted an experience certificate for supply of a similar but not the same item, than what was in the schedule of requirement. Similarly, the respondent No.4 had also submitted an experience certificate for supply of a different item than what was specified in the schedule of requirement. The items mentioned by the petitioner and the respondent no.4 against the item required in the NIT, i.e. Solar Light Trap 5W Type-A and Type-B were also different from each other. However, while the technical bid of the respondent

No.4 was found to be responsive, the technical bid of the petitioner was found to be non-responsive. The stand of the petitioner is that the respondents could not have applied different yardsticks at the technical bid evaluation stage.

3. The petitioner's case in brief is that the petitioner submitted his tender papers pursuant to a tender notice/NIT dated 29.07.2023 for "parallel rate contract of agro machineries and minor tools for the year 2023-24 & 2024-25." The petitioner had given his experience certificate for supply of "solar home lighting system", solar LED high mast lighting system and solar photo voltage pumping system. The issue in this case pertains only to supply of Solar Light Trap 5W Type-A and Type-B. The petitioner's technical bid for Solar Light Trap 5W Type-A and Type-B was disqualified on the ground that petitioner's item to be supplied, i.e. "solar home lighting system" could not be technically considered to be "solar light trap" for agricultural purposes. The specific item that was required in terms of the NIT was Solar Light Trap 5W Type-A and Type-B. The rejection of the petitioner's technical bid was informed to the petitioner vide e-mail dated 24.02.2024 and thereafter, vide letter dated 01.03.2024.

4. The petitioner thereafter submitted an appeal dated 26.02.2024 to the Director of Horticulture (respondent No.2) in terms of Section 38 of the Assam Public Procurement Act, 2017 (hereinafter referred to as 'the 2017 Act'). As the petitioner's appeal was not being considered by the appellate authority, the petitioner filed WP(C) 1217/2024. During the pendency of the writ petition, the petitioner's appeal was rejected by the respondent No.2 vide letter dated 01.03.2024, stating that the items to be supplied by the petitioner were not compatible in terms of the specification provided by the State respondents in the NIT. The petitioner was further aggrieved with the letter dated 01.03.2024

issued by the respondent No.4, rejecting the petitioner's appeal, on the ground that the same was cryptic and no opportunity of hearing had been given to the petitioner, prior to rejecting the petitioner's appeal.

5. WP(C) 1217/2024 was disposed of vide order dated 06.03.2024, by directing the appellate authority to give an opportunity of hearing to the petitioner, prior to taking a decision on the petitioner's appeal dated 26.02.2024, inasmuch as, Section 38(2) of the 2017 Act required that a reasonable opportunity of hearing was to be provided by the appellate authority to the appellant, prior to deciding an appeal. Consequently, the letter dated 01.03.2024 issued by the respondent No.2 was set aside.

6. In pursuance to the order dated 06.03.2024 passed in WP(C) 1217/2024, an opportunity of hearing was provided to the petitioner by the First Appellate Authority, who was the respondent No.2. Thereafter, the respondent No.2 issued the impugned order dated 18.03.2024, by holding that the petitioner failed to submit supply experience of particular items, i.e., 1. Solar Light Trap 5W- Type A, 2. Solar Light Trap 5W- Type B, 3. Solar Bubble Dryer 0.5 MT & 4. Solar Bubble Dryer 1.0 MT and that the solar powered equipments used for agriculture purposes are quite different from the solar powered equipments used for other purposes in terms of technology.

7. The petitioner's counsel submits that the impugned order dated 18.03.2024 issued by the respondent No.2 should be set aside, inasmuch as, the petitioner and the respondent No.4 had both submitted their experience certificates, with regard to supply of similar solar items and not the particular item required by the respondents in the NIT, i.e the Solar Light Traps. While the technical bid of the respondent No.4 was found to be responsive at the technical

bid evaluation stage, the petitioner's bid was found to be non-responsive. He submits that the State respondents cannot apply different yardsticks in similar cases, though the experience certificates submitted by the respondent No.4 and the petitioner referred to similar solar lighting systems, but not the exact Solar Light Traps. The petitioner's counsel submits that the certificate dated 21.06.2022 issued by the Assam Electronics Development Corporation Limited shows that the respondent No.4 had given an experience certificate relating to "Led based solar lanterns" and not for "solar light traps" in pursuance to the tender notice. He further submits that the respondent No.4 was not selected as the successful tenderer, after comparing the financial bids of the valid bidders.

8. Ms. R. Bora, learned counsel appearing for the respondent Nos. 1, 2 and 3 submits that the NIT required the tenderers to supply Solar Light Trap 5W-Type-A and Type-B. The petitioner, on the other hand, submitted his experience certificate for supply of "solar home lighting system", which was not the requirement of the State respondents. She submits that solar light trap is used for the purpose of trapping insects in the agricultural fields, while solar home lighting system, as the name suggests, is used for lighting homes. She submits that the certificate dated 21.06.2022 issued by the Assam Electronic Development Corporation Limited, with regard to the experience of the respondent no.4, is not related to the present NIT. She accordingly submits that there is no infirmity in the State respondents in not accepting the experience certificate of the petitioner, as the same was not in consonance with the requirements of the State respondents.

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

10. As can be seen from the NIT, the State respondents required the tenderers to submit experience certificates for supply of Solar Light Trap 5W Type-A and Type-B. The same was to be used for trapping insects in agricultural fields. On the other hand, the petitioner had submitted experience certificate for supply of "solar home lighting system", which is not a solar light trap used for trapping insects. It is only used for lighting homes. The above makes it abundantly clear that the petitioner did not submit the past experience required for supply of Solar Light Trap 5W Type-A and Type-B as required in the NIT. It is not understood as to how a tenderer can demand that the State respondents should accept an item, which is not the requirement of the State respondents in terms of the NIT. When the State respondents want a solar light trap, the tenderers cannot demand that they should be allowed to supply some other item, which is not in consonance with the terms and conditions of the tender notice. On that count alone, this Court is of the view that there was no infirmity with the decision of the State respondents in holding that the petitioner's technical bid was not responsive.

11. In the case of ***Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd. & Another***, reported in ***(2016) 16 SCC 818***, the Supreme Court has held that "*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.*"

12. With regard to the contention of the petitioner's counsel that the respondent No.4 had also not given an experience certificate for "solar light trap", it is noticed that the certificate dated 21.06.2022 issued by the Assam Electronics Development Corporation Limited states that the respondent No.4

had successfully completed supply of "Led based solar lanterns". There is nothing to indicate in the said certificate dated 21.06.2022 that the "Led based solar lanterns" are similar with the "solar home lighting system" or "solar light trap". Be that as it may, the fact remains that the petitioner's experience certificate for supply of "solar home lighting system" was not as per the requirement of the NIT and as such, the disqualification of the petitioner's technical bid on that count alone cannot be faulted. The items mentioned in the petitioner's experience certificate and the experience certificate of the respondent no.4 are not similar and as such, the issue of whether the "Led Based solar lanterns" of the respondent no.4 is equivalent/similar to solar light trap as required in the NIT is best known to the author of the NIT. Though it appears that the Led based solar lanterns are to be the items to be supplied as per the experience certificate of the respondent No.4, the same is not similar to the petitioner's items. The charge of discrimination is not attracted to the case in hand. In any event, the respondent no.4 has not been selected as a successful tenderer pursuant to the NIT dated 29.07.2023.

13. In view of the reasons stated above, this Court does not find any ground to exercise its discretion in the present case.

14. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant