

GAHC010039322024



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

Case No. : WP(C)/1100/2024

M/S RADHIKA EXPRESS SERVICE
A PROPRIETORSHIP CONCERN HAVING ITS REGISTERED OFFICE AT
GROUND FLOOR, HOUSE NO. 12, SADANANDA BHAWAN, H.P.
BRAMACHARI ROAD, REHABARI, GUWAHATI-781008, DIST. KAMRUP(M),
ASSAM, REPRESENTED BY ITS PROPRIETOR NAMELY SRI PAWAN KUMAR
AGARWALA, S/O- MOHAN LAL AGARWALA.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF COMMUNICATIONS, DEPARTMENT OF POSTS, DAK
BHAWAN, NEW DELHI-110001.

2:THE CHIEF POST MASTER GENERAL (CPMG)
ASSAM CIRCLE
4TH FLOOR
MEGHDOOT BHAWAN
GUWAHATI-01.

3:THE ASSISTANT POST MASTER GENERAL (APMG)
OFFICE OF THE CPMG
ASSAM CIRCLE
4TH FLOOR
MEGHDOOT BHAWAN
GUWAHATI-01.

4:THE HEAD PARCEL OPERATIONS
OFFICE OF THE CHIEF POST MASTER GENERAL (CPMG)
ASSAM CIRCLE
4TH FLOOR
MEGHDOOT BHAWAN
GUWAHATI-01.

5:THE GOVERNMENT E-MARKETPLACE (GeM)
GOVT. OF INDIA
REPRESENTED BY THE SECRETARY
COMMERCE AND INDUSTRY DEPARTMENT
2ND FLOOR
JEEVAN TARA BUILDING
5-SANSAD MARG
NEW DELHI-01.

6:THE ROYAL EXPRESS SERVICE
A PROPRIETORSHIP CONCERN HAVING ITS REGISTERED OFFICE AT
HOUSE NO. 14
NEAR NEPALI MANDIR
SIMAN HOUSE
A.K. AZAD ROAD
REHABARI GHY-781008
DIST. KAMRUP(M) ASSA

Advocate for the Petitioner : MR. J I BORBHUIYA

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

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 06.03.2024

Heard Mr. J. I. Borbhuuya, learned counsel for the petitioner and Mr. U. K. Goswami, learned counsel for the respondents.

2. Mr. J. I. Borbhuuya, learned counsel for the petitioner submits that the petitioner participated in the tender notice dated 18.09.2023 for transporting postal mail bags. However, the petitioner's bid was disqualified at the technical bid evaluation stage, due to non-submission of earnest money, in terms of Clause 4.c. of the NIT.

3. Clause 4.c. of the NIT provides that micro and small enterprises registered under Udyam Resignation and National Small Industries Corporation are exempted from furnishing earnest money.

4. The petitioner's counsel submits that Clause 2.b. of the NIT requires the bidders to provide the average annual turnover of the bidder for the last three financial years, which should be more than or equal to Rs.1,12,50,000. The bidder has to submit authenticated copies of income tax returns, Audited balance sheet and profit & loss account for the last three financial years, i.e., 2020-2021, 2021-2022, 2022-2023 along with the technical bid. He submits that as the information required by the authorities in Clause 2.b. of the NIT was with respect to the last three years, as mentioned above, at which time the petitioner was a small scale industry, the petitioner was not required to submit earnest money. He accordingly submits that the disqualification of the petitioner's technical bid at the technical bid evaluation stage has to be set aside and the petitioner's financial bid should be opened.

5. The petitioner's counsel submits that the contract work has been allotted to the respondent no.6 vide letter dated 16.02.2024.

6. On the other hand, Mr. U. K. Goswami, learned CGC submits that the petitioner at the time of submission of his tender was a medium scale enterprise and not a small scale enterprise and as such, he could not have participated in the NIT without submission of earnest money. In this respect, he has referred to a document which he had downloaded from the Government of India website, showing that the petitioner was a medium scale enterprise as on 09.05.2023, i.e. before the NIT dated 18.09.2023 was issued. Accordingly, there has been no infirmity in disqualifying the petitioner's bid at the technical bid evaluation stage due to non-furnishing of earnest money.

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

8. Clause 2.b. and Clause 4.c. of the NIT provides as follows:-

2.b. Average annual turnover of the bidder for last three financial years should be more than or equal to 1,12,50,000/- . Bidder should submit authenticated copies of Income Tax Returns, Audited Balance Sheet and Profit and Loss Account for last three financial years 2020-2021, 2021-2022 and 2022-2023 along with Technical Bid.

4.c. Firms registered with the Micro and Small Enterprises (MSEs) registered under Udyam Registration and National Small Industries Corporation (NSIC) and Startups as recognized by Department of Industrial Policy & Promotion (DIPP) with current validity are exempted from furnishing the Earnest Money Deposit (Bid Security). In case the bidder desires exemption from the Bid Security, they should submit the valid MSE registered under Udyam Registration, NSIC or Startup certificate (applicable for this field of business) for such exemption and enclose this in the technical bid.

9. A perusal of the above clauses show that a small scale enterprise is not required to deposit the earnest money along with his bid documents. Clause 2.b. requires information from the bidders for the period of three years, i.e., 2020-2021, 2021-2022, 2022-2023. Though the petitioner has tried to make out a case that the information asked for the above period would determine whether the petitioner was a small scale industry at the time of submission of his bid, keeping in view the fact that the annual turnover of an enterprise below a certain amount are considered to be a small scale enterprise, this Court is of the view that the information provided under Clause 2.b. of the NIT would not determine whether the petitioner is a small scale industry at the time of submission of his bid. Clause 2.b. only requires information for the period stated above. Just because the petitioner was a small scale industry during the above

said period, does not mean that the petitioner can continue to be considered to be a small scale industry at the time of submission of his bid document.

10. In the present case, the respondent's counsel has submitted a document showing the Udyam registration number of the petitioner, which is Udyam-AS-03-0000-470. The said document shows that the petitioner has been classified as a medium scale enterprise w.e.f. 09.05.2023. The NIT in the present case has been issued on 18.09.2023 and as such, the requirement of submitting earnest money was required of the petitioner, as he was a medium scale enterprise at the time of submission of his tender document.

11. This Court, vide the last order dated 29.02.2024, had also given time to the petitioner's counsel to obtain instructions with regard to the veracity of the document produced by the respondent's counsel. However, no submission has been made by the petitioner's counsel with regard to the above query. As such, the content of the document has to be deemed to be admitted and correct. In view of the fact that the petitioner was required to have submitted earnest money, being a medium scale industry, the disqualification of the petitioner's bid at the technical bid evaluation stage by the respondent cannot be faulted.

12. The Supreme Court in the case of ***Raunaq International Limited -vs- IVR Construction Limited***, reported in **(1999) 1 SCC**, has held that any judicial relief at the instance of a party which does not fulfill the requisite criteria seems to be misplaced.

13. In view of the fact that the petitioner cannot participate in the NIT, as he has been disqualified he cannot make any challenge against the allotment of contract to the respondent no.6, in terms of the judgment of the Supreme Court in the case of ***Raunaq International Limited (supra)***.

14. The document submitted by the respondent's counsel is made a part of the record and marked as Annexure-'X' collectively.
15. Accordingly, in view of the reasons stated above, this writ petition is dismissed.

JUDGE

Comparing Assistant