

GAHC010037632024



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

Case No. : WP(C)/1061/2024

HUNMONI PHUKAN
S/O- TULARAM PHUKAN,
R/O- DEMOW CHARIALI,
P.O- DEMOW, PIN-785665,
DIST- SIVASAGAR, ASSAM,

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EXCISE DEPARTMENT
DISPUR, GUWAHATI-06.

2:THE COMMISSIONER
OF EXCISE
ASSAM
HOUSEFED COMPLEX

DISPUR
GUWAHATI-06.

3:THE DISTRICT COLLECTOR
SIVASAGAR
DIST.- SIVASAGAR
ASSAM
PIN- 785640

4:THE E-TENDER/BID COMMITTEE
DIST- SIVASAGAR
REP. BY ITS CHAIRMAN
DIST.- SIVASAGAR
ASSAM

PIN- 785680

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

28.02.2024

1. Heard Mr. B.D. Konwar, learned Senior Counsel assisted by Mr. P. Doley, learned counsel for the petitioner. Also heard Mr. P.N. Goswami, learned Additional Advocate General, Assam for the respondents.
2. The petitioner is aggrieved with the decision of the respondent authorities in deciding to re-tender the grant of IMFL Retail Off Licence in Demow, Ward No.6 (SIV-1), wherein the petitioner was the sole valid tenderer, on the ground that acceptance of the petitioner's bid amount would result in very low revenue collection to the Government.
3. The petitioner's case is that in pursuance to a Notice Inviting e-Bid (NIB) dated 09.12.2023 for grant of IMFL Retail Off Licence in three urban locations in Sivasagar District, i.e. (1) Demow, Ward No.6 (SIV-1); (2) KPM Chariali, Sivasagar town (SIV-2) and (3) Simalguri town (SIV-3), the petitioner, who was the lone bidder, submitted his Bid for the Demow, Ward No.6 (SIV-I).
4. The petitioner's case is that he was the only tenderer for Demow, Ward

No.6 (SIV-I), wherein the base bid/minimum bid was fixed at Rs.2.00 lakhs. The base/minimum bid was fixed by the respondents, as per the licence fee payable by the IMFL Retail Off Licence holder for urban areas. The petitioner having submitted his Bid amount of Rs.2.50 lakhs, the petitioner should have been given the IMFL Retail Off Licence for opening the wine shop. However, vide impugned the letter dated 13.02.2021, the State respondents have decided to re-tender the IMFL Retail Off Licence for Demow, Ward No.6 (SIV-I), on the ground that the petitioner's bid amount would result in very low revenue collection for the Government, when compared with the other bids submitted in respect of the two other locations, inasmuch as, for KPM Chariali, Sivasagar town (SIV-2) the selected bidder had submitted a bid for Rs.31,01,100/-, while in respect of Simalguri town (SIV-3) it was Rs.50,05,000/-The petitioner's grievance is that as his bid is valid in terms of the NIB, the petitioner should be given the IMFL Retail Off Licence.

5. Mr. P.N. Goswami, learned Additional Advocate General, Assam, on the other hand submits that the Assam Excise Rules, 2016 has been amended by way of the Assam Excise (Amendment) Rules, 2023 (hereinafter referred to as "the 2023 Amendment"). In terms of the 2023 Amendment, after Rule 114, a new Rule, i.e.,114A has been inserted. Rule 114A(1)(xiv) provides that where there is only one tenderer for a shop, the Licencing Authority can accept the offer of the sole tenderer with the previous approval of the State Government. However, the Proviso to the said Rule 114A(1)(xiv) provides that the Licencing Authority can reject the application after recording reasons, if not satisfied with the bid submitted by a bidder. Mr. P.N. Goswami submits that the bids offered in respect of the other two locations were very high, while the low bid of the

petitioner from the location in which the petitioner had participated was not satisfactory to the Licencing Authority, as it would lead to low revenue collection. As such, the respondents had decided to re-tender the said IMFL Retail Off Licence in Demow, Ward No.6 (SIV-1), to enable more bidders to enter the fray, with the Government objective to collect more revenue.

6. Mr. P.N. Goswami, learned Additional Advocate General submits that as the respondents have the right to reject any bid, including a lone valid bid for reasons to be recorded in terms of the 2023 Amendment, there was no infirmity in the respondents taking a decision to re-tender the said IMFL Retail Off Licence which was in the interest of the public exchequer. He also submits that the petitioner has no fundamental right to trade or do business in liquor. In support of his submission, the learned counsel has relied upon the judgment of the Supreme Court in the case of ***Khoday Distilleries Ltd. & Others vs. State of Karnataka & Others***, reported in ***(1995) 1 SCC 574***.

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

8. The question that has to be decided is whether the State respondents could have re-tendered the IMFL Retail Off Licence, when the bid of the lone tenderer was valid and his bid amount was more than the minimum/base bid fixed by the State respondents. In this regard, Rule 114A(1)(xiv) of the 2023 Amendment needs to be gone into, which is reproduced below as follows :

“Where there is only one tender for a shop, if the licensing authority is satisfied that the tenderer is eligible for grant of licence and that the statutory requirements have been fulfilled, he shall accept the 'Initial

Grant Bid' offered by the applicant and may grant the licence with the previous approval of the State Government after realizing the applicable Licence Fee and Security Deposit:

Provided that if he is not so satisfied, he may reject the application after recording the reasons therefor;

9. A perusal of the above Rule shows that no re-tender is required even if there is only one valid tenderer for allotment of the IMFL Retail Off Licence, if the Licencing Authority is satisfied that the tenderer is eligible to the grant of the licence. However, the proviso provides that if the Licencing Authority is not satisfied, he may reject the application after recording reasons. In this case, the petitioner's tender is valid and the petitioner is eligible to be granted the licence, as there has been no violation of any of the terms and conditions of the Tender Notice. However, a perusal of the impugned order dated 09.02.2024 shows that the authorities had taken a decision to re-tender the licence to be given for the Demow, Ward No.6 (SIV-1), due to the fact that the acceptance of the petitioner's tender would result in low revenue collection for the Government, keeping in view the bids received for the other two locations.

10. The impugned order dated 09.02.2024 states as follows :

“At the very outset, the Hon'ble District Commissioner, Sivasagar cum Chairman of the Committee welcomed all the members and asked the Superintendent of Excise, Sivasagar cum Member Secretary of the Committee to open the financial bid and place the evaluation report before the house.

The Member Secretary, being the technical expert. placed and total 12 (twelve) technically qualified tenders were evaluated against 3 (three) nos IMFL OFF" shop at various places under Sivasagar district. After evaluation of the financial bid the findings are as follows:-

*>In respect of **SIV-1 (Demow, Ward No.-6)**, only one technically qualified financial bid was evaluated namely Sri Hunmoni Phukan and it is found that he has submitted bid money is Rs. 2,50,000/- (Rupees two lakh fifty thousand) only. The bid value of Rs. 2,50,000/- is substantially less than the bids received for SIV 2 (Rs. 31,01,100/-) and SIV - 3 (Rs. 50,05,000/-). This will result in very low revenue collection for the Government. Hence the committee has decided to retender for SIV-1 (Demow, Ward No. 6).*

*>In respect of **SIV-2 (KPM Charilai, Sivasagar town)**, total 3 (three) nos technically qualified financial bid were evaluated and out of these the H1 bidder namely Sri Tultul Chetia who had submitted Rs. 31,01,100/- (Rupees thirty one lakh one thousand one hundred) only as a bid money. As such, the Committee decided to forward the proposal of HI bidder to the higher authority for favour of kind information and necessary action and also issue LoA to the H1 bidder.*

*>In respect of **SIV-3 (Simaluguri town)**, total 8 (eight) nos technically qualified financial bid were evaluated and out of these the III bidder namely Smti. Jimli Phukan had submitted Rs. 50,05,000/-(Rupees fifty lakh five thousand) only as a bid money. As such, the Committee decided to forward the proposal of II bidder to the higher authority for favour of kind information and necessary action and also issue LoA to the H1 bidder.*

The meeting ended with vote of thanks from the Chair."

11. In the case of **Khoday Distilleries Ltd.(supra)**, the Supreme Court has held that liquor is dangerous and injurious to health and that a citizen has therefore no fundamental right to trade or do business in liquor.

12. On considering the judgment passed by the Supreme Court in **Khoday Distilleries Ltd. (supra)**, this Court is of the view that the decision made therein is based on a different set of facts, as opposed to the facts of the present case. The issue in **Khoday Distilleries Ltd.(supra)** was whether a person had the right to carry on trade or business in potable liquor. In the

present case, the issue is not with regard to a person's right to carry on trade or business in liquor, but as to whether the re-tendering can be allowed, only on the ground that the revenue to be received by the Government would be too low, as compared to the revenue to be received by the Government from other locations. It is settled law that a judgment is only a decision for what it decides and not what logically follows from it. A little difference in facts changes the precedential value of a judgment. In that view of that matter, this Court is of the view that the judgment of the Supreme Court in ***Khoday Distilleries Ltd. (supra)*** is not applicable to the facts of this case.

13. It is also settled law that a Writ Court can examine the decision making process, but not the decision itself. A bidder participating in a tender cannot insist that his tender should be accepted simply because his tender is the highest or lowest, depending upon the nature of the tender work. The participating bidders are entitled to claim a fair, equal and non-discriminate treatment in matter of evaluation of a tender, so as to prevent arbitrariness or favouritism.

14. In the case of ***Tata Cellular vs. Union of India***, reported in **[1994] 6 SCC 651**, the Supreme Court has held that that the Government or instrumentalities/agencies of the State are guardians of the finances of the State and they are expected to protect the financial interests of the State. The right to refuse the lowest or any other tender is always available to the Government or its instrumentalities/agencies. However, the principles laid down in Article 14 of the Constitution of India have to be kept in view while accepting or refusing a tender. There is no question of infringement of Article 14, if the

Government tries to get the best person or the best quotation and the right to choose cannot be considered to be an arbitrary power. But the said power is not to be exercised for any collateral purpose. If the the power is exercised for any collateral purpose, the exercise of that power has to be struck down.

15. In the case of ***State of Jharkhand and others vs. CWE-Soma Consortium***, reported in ***[2016] 14 SCC 172***, the Supreme Court has held that that the State derives its power to enter into a contract under Article 298 of the Constitution of India and has a right to decide whether to enter into a contract with a person or not, subject only to the requirement of reasonableness under Article 14 of the Constitution of India. If the tendering authority finds that the rates offered by a responsive bidder is not reasonable in its view, it can take a decision to cancel the tender and invite fresh tenders in order to make the bidding process more competitive. Such a decision cannot be held to have suffered from the vice of arbitrariness or unreasonableness.

16. In the case of ***Silppi Constructions Contractors vs. Union of India and another***, reported in ***[2020] 16 SCC 489***, the Supreme Court has held that that the decision to cancel a tender process is purely an administrative decision and it is not required to give reasons, even if it be a State or an instrumentality/agency within the meaning of Article 12 of the Constitution of India.

17. In the case of ***M/s NAD & Associates & Another vs. The Union of India & Others [WP(C) No.5826/2021]***, this Court in it's judgment and

order dated 18.02.2022, has held that administrative discretion is available to the tendering authority to cancel the entire tender process in public interest, provided such action is not actuated with any ulterior motive or vitiated by any kind of arbitrariness or irrationality or in violation of any statutory provisions.

18. In the case of **M/s M.K. Trade and Commerce Silver Square Building vs. National Thermal Power Corporation Ltd. (NTPC Ltd.) [WP(C) No.930/2020]**, which was disposed of vide judgment and order dated 11.03.2022, this Court has held at paragraph-19 as follows :

“19. The principle deducible from the decision in South Delhi Municipal Corporation [supra] is to the effect that the tendering authority is well within its right to satisfy itself about the reasonableness of the rates quoted by the bidders keeping in view the prevalent market rates in the area nearby the tendering authority. It is also within the scope of an authority to maintain an internal system for financial checks and to examine the reasonableness of the rates quoted by the bidders by comparing them with the rates at which other similar works were awarded in the recent past in favour of the successful bidders. Such steps are necessary to be carried out for the reason that an instrumentality of the State is also a custodian of public money and its intention has to be aimed at getting the best price. If the actions of the tendering authority towards cancellation of a tender process, are preceded by such factors then the Court in exercise of its power to judicial review under Article 226 of the Constitution of India should not interfere.”

19. On considering the fact that the decision of the State respondents to re-tender the IMFL Retail Off Licence has been made only with the object for the Government to earn higher revenue, keeping in view the fact that the bids submitted for the other locations were much higher, this Court is of the view

that the said decision made by the respondent authorities cannot be said to be arbitrary or unreasonable. The Government being the protector/guardian of Government revenue/finance, the reasons for re-tendering due to the low bid amount of the petitioner, when compared with the bids given for other locations, shows that the Government's decision not to accept the petitioner's bid is not in conflict with Rule 114A(1)(xiv) of the 2023 Amendment. The opinion of the Government to go for a re-tender is not for any extraneous reason, but with the object of earning more revenue for the State, which is in public interest. Besides, when considering the present issue in terms of the law laid down by the Supreme Court and this Court, the right to refuse a bid offer is always available to the Government, provided the same is not arbitrary. In the present case, the decision to re-tender is not found to be arbitrary or unreasonable, though the petitioner's bid may have been above the minimum bid price fixed by the Government.

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

21. The writ petition stands dismissed.

JUDGE

Comparing Assistant