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**(2024) 05 GAU CK 0022**

**Gauhati High Court**

**Case No:** Writ Petition (C) No. 3313 Of 2023

Abinash Nath

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

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**Date of Decision:** May 31, 2024

**Hon'ble Judges:** Nelson Sailo, J

**Bench:** Single Bench

**Advocate:** P Mahanta

**Final Decision:** Dismissed

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### **Judgement**

1. Heard Mr. P. Mahanta, learned counsel for the petitioner, Mr. I. Borthakur, learned Standing Counsel, Forest Department for respondent Nos. 1 to 4 and Mr. I. Choudhury, learned Senior Counsel assisted by Mr. S. Biswakarma, learned counsel for the respondent No. 5.

[2.] Brief facts of the case as projected by the petitioner is that he responded to an E-Auction Notice dated 02.03.2023 floated by the Divisional Forest Officer, North Kamrup Division, Rangia in respect of Item No. 3 i.e., N.KD-B-4 Khudnabari Mining Contract Area. The period of contract is for seven (7) years and the intending bidders are to deposit an earnest money of Rs. 20,51,000/-. According to the petitioner, although he submitted all the requisite materials that was required, his technical bid was rejected by the respondent authorities by giving five (5) grounds namely, (i) Provident Fund return not submitted (ii) Employee's State Insurance Corporation (ESIC) return not submitted (iii) Bakijai Certificate not submitted (iv) Bid document digitally not signed (v) Facts and affidavit not submitted as per the format. Aggrieved, the petitioner is before this Court.

[3.] Mr. P. Mahanta, learned counsel for the petitioner submits that in respect of the first ground of rejection of his technical bid, the petitioner had submitted a declaration

to the effect that if the work is allotted to him, he would provide EPF & ESI within one (1) month. The learned counsel in this connection refers to Annexure-J at page no. 93 of the writ petition. He also submits that the respondent no. 5 also did not submit his ESIC returns but his technical bid was accepted. The learned counsel submits that in respect of the ground No. 3 for rejection of the technical bid of the petitioner i.e., for not having submitted Bakijai Certificate, the learned counsel submits that the petitioner inadvertently did not submit the same although he had made a mention in the affidavit he submitted as per the prescribed format. He submits that the same otherwise cannot be the ground for rejecting his bid. In support of his submission, the learned counsel relies upon the case of Md. Bahar Uddin -Vs- Assam Fisheries Corporation Ltd. & Others 2017 (3) GLR 783, Kapili Nadi Matshyajibi Samati Ltd. -Vs- State of Assam & Ors. 2019 (3) GLT 351 and Order dated 29.09.2011 passed by a Division Bench of this Court in W.A No. 294/2011 (Abu Talib -Vs- Assam Fisheries Development Corporation Ltd.). The learned counsel in respect of the fourth ground of rejection that the bid letter not being digitally signed submits that the petitioner in fact signed the bid letter digitally but the annexed documents were signed by hand. He submits that if such discrepancy was found, the petitioner ought to have been given two (2) chances to upload and sign the bid document on or before the due date and time in terms of Clause 8A(b)(i) of the bid document. However, no such opportunity was given to the petitioner.

[4.] The learned counsel further submits that in respect of the fifth ground of rejection of the petitioner's technical bid that he did not submit facts and the affidavit was not as per the format is not correct in view of the fact that the petitioner had indeed submitted the required facts in the form of an affidavit. In this connection, the learned counsel refers to page Nos. 94-98 of the writ petition and submits that all the requirements and essentials have been stated in the affidavit filed by the petitioner. Referring to the comparative statement dated 04.05.2023, the learned counsel submits that out of the total eight (8) bidders, the respondent Nos. 5 and another bidder were found qualified in the technical bid while the remaining bids were rejected. He submits that the other bidder whose technical bid was accepted only appears to be a proxy bidder and that the respondent No. 5 seems to be the blue eyed boy shown favouritism. The reason for rejection of the technical bid of the bidders amongst others was mainly because of non-submission of the PF returns. Though the respondent no. 5 did not submit PF returns, as can be seen from the information sought from the ESIC through RTI application, which is annexed to the affidavit-in-reply filed by the petitioner on 05.12.2023 as Annexure-1, his technical bid was not rejected. The learned counsel submits that the respondent No. 5 has already been shown undue favouritism by the respondents. He submits that as individuals can also participate in the bidding process besides firms or other association of individuals, the respondent authorities ought to have accepted the technical bid of the petitioner since he clearly made a declaration that if the work was allotted to him, he would provide the EPF within a month.

[5.] The learned counsel further submits that price bid was opened on 15.05.2023 and soon after, on 18.05.2023, the respondent No. 5 was issued the Letter of Intent (LOI). He submits that the same goes to show that the respondent authorities were surprisingly interested to issue the LOI to the respondent no. 5 in haste since the successful bidder is required to deposit the initial bid security within one (1) week of completion of E-Auction. He therefore submits that the manner in which the respondent No. 5 has been selected is only doubtful. Despite the alleged shortcomings in the bid document, the respondents have failed to maintain parity. They have used different yardstick with regard ESIC. He thus submits that the LOI issued in favour of the respondent No. 5 should be set aside and also the financial bid be directed to be conducted afresh by allowing the petitioner to participate.

[6.] Mr. I. Choudhury, learned Senior Counsel on the other hand submits that Clause 5 of the tender document is in respect of the eligibility criteria which are mandatory in nature. Referring to Clause 5.2.9(a)&(b), the learned Senior Counsel submits that each bidder has to provide scanned copies of PF registration and ESIC registration of the company/firm/individual along with monthly details for the last two (2) years at the time of submission of bid. Accordingly, the respondent no. 5 submitted the required documents. There is no stipulation in the tender document for submitting returns of PF and ESIC as contended by the learned counsel for the petitioner. He submits that the remarks given in the comparative statement i.e., 'return no submitted' has to be only understood in the context of the stipulation in the tender documents. The learned Senior Counsel by further referring to Clause 8A(b)(i) of the tender document submits that the technical bid of the tenderer are to be submitted in the prescribed format along with all the required documents and information on or before the stipulated date and time, failing which, the same may lead to disqualification. The learned Senior Counsel by further referring to Clause 8A(b)(iv), (viii) and (c) submits that technical bid of the intending bidders should contain all the information, complete in all respect including the initial price offered as mentioned in the bidding document and that only those bidders who are found eligible in accordance with the terms and conditions of eligibility specified in Clause 5 with valid supporting documents will be considered for the second round of E-Auction. However, the petitioner has only failed to conform to the said requirement. The respondent No. 5 on his part had submitted the PF registration as stipulated under Clause 5.2.9A(a)&(b) of the tender document, which was accepted by the respondent authorities.

[7.] The learned Senior Counsel in respect of the second ground of rejection of the petitioner submits that requirement as per the bidding document is to submit scanned copies of PF registration along with monthly details of the last two (2) years at the time of submission of the bid. As per the own admission of the petitioner, he has no PF registration and he only undertook to submit the same in the event he is selected.

Therefore, the ground of rejection is only valid.

[8.] The learned Senior Counsel in respect of the third ground given for rejection of the technical bid of the petitioner submits that as per Clause 5.1.1(d) and Clause 18B(d)(v), a notarized affidavit in Rs. 100 non-judicial stamp paper declaring the lease in Major and Minor Mineral held by the bidder in the State of Assam and that no mineral revenue is due to the Govt. of Assam is required to be submitted as per the prescribed format. Although the petitioner submitted an affidavit stating that he has attached along with the affidavit his Bakijai clearance certificate but no such certificate was actually attached. Therefore, the petitioner has only made a false statement and declaration under oath and for which he is liable to be penalized under Clause 15 of the bidding document, which is the provision under the heading 'Fraud and Corrupt Practices'. As per the relevant provision, the earnest money deposited by the petitioner was liable to be forfeited which however was not done and therefore, the petitioner should consider himself fortunate.

[9.] The learned Senior Counsel further submits that in respect of the fourth ground of rejection of the technical bid of the petitioner for want of digital signature in all the bidding documents, the petitioner cannot have any grievance since he himself admitted not subscribing digital signatures in all the bidding documents. Referring to Clause 2.12 and the relevant bullet points under Part-III Schedule-II of the tender documents (page Nos. 43 & 81 of the writ petition), the learned Senior Counsel submits that having each and every bidding documents digitally signed by the intending bidder is mandatory and therefore, the technical bid of the petitioner was rightly rejected on this ground as well.

[10.] In respect of the fifth ground for rejection of the technical bid of the petitioner, the learned Senior Counsel submits that the petitioner did not submit his affidavit in the prescribed format as stipulated in the bidding documents. He submits that the same can be seen by comparing the affidavit in the prescribed format at page No. 73 of the writ petition and the affidavit actually submitted by the petitioner at page No. 98 of the writ petition. He submits that the requirement as per the tender documents is that the affidavit should be submitted in the prescribed format. Therefore, the technical bid of the petitioner has been rightly been rejected on this ground as well.

[11.] The learned Senior Counsel submits that the petitioner having failed to submit all the requirements as stipulated in the tender documents does not have any locus standi to raise grievance against the selection of the respondent No. 5. In this connection, the learned Senior Counsel relies upon the case of Raunaq International Limited -Vs- I.V.R. Construction Ltd. & Ors. (1999) 1 SCC 492. The learned Senior Counsel further submits that in matters concerning award of contract, the power of judicial review by the Court may be exercised only when it is found that the process adopted or the decision made

by the authority is tainted with mala fides or intended to favour someone or when the process adopted or decision made is arbitrary. In support of his submission, the learned Senior Counsel relies upon Jagdish Mandal –Vs- State of Orissa & Ors. (2007) 14 SCC 517.

[12.] The learned Senior Counsel further submits that the case of Abu Talib (supra) has been distinguished by another Division Bench of this Court in W.A No. 56/2023 (Sanjeet Chandra Das –Vs- Assam Fisheries Corporation Ltd.) vide Judgment & Order dated 25.08.2023 which is relevant to the instant case. He therefore submits that the case of Abu Talib (supra) will not be applicable to the instant case per se.

[13.] Mr. I. Borthakur, learned Standing Counsel, Forest Department appearing for the respondent Nos. 1 to 4 submits that what was stipulated by the tender documents was merely the submission of ESIC registration along with monthly details for the last two (2) years and which was accordingly submitted by the respondent No. 5. The petitioner has annexed the reply dated 12.07.2023 received on the query made through RTI in his reply affidavit filed on 05.12.2023 wherein, a copy of the C-6 registration which records the receipt of monthly contribution of an employer in respect of the employer i.e., the respondent No. 5 besides others mentioned in the said letter for the period April, 2021 to March, 2023 were enclosed. However, the petitioner has failed to annexed the said enclosure along with the letter dated 12.07.2023. At any rate, since the requirements was submitting the ESIC registration along with monthly details for the last two (2) years which was submitted by the respondent No. 5, the selection of the respondent No. 5 is valid and may not be interfered with by this Court. He submits that in respect of other issues, he would like to adopt the submissions already made by the learned Senior Counsel for the respondent No. 5.

[14.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The grievance of the petitioner as can be seen is with regard to the rejection of his technical bid on five (5) grounds. According to the petitioner, the grounds for rejecting his technical bid are not legitimate. This apart, the respondent authorities have failed to maintain parity in scrutinizing the bid documents of the tenderers by adopting different yardsticks to consider the technical bid of the tenderers. Be it stated herein that on 14.06.2023 when notice was issued to the respondents at the time of motion, it was observed that settlement made in favour of the respondent No. 5 would be subject to the outcome of the writ petition. In other words, no interim order was passed staying the award of contract to the respondent No. 5. There is no dispute that the respondent No. 5 since having been allotted LOI has started the work.

[15.] From the projection made by the petitioner, the issue to be decided is as to whether the technical bid of the petitioner was wrongly rejected by the respondent

authorities. As many as five (5) grounds for rejection has been mentioned which can be seen in the comparative statement (Annexure-1). Ground No. 1 for rejecting the technical bid of the petitioner is that he did not submit PF return. Although it is stated as PF return but in the tender documents more particularly at Clause 5.2.9(a)&(b) it has been provided that the bidder has to provide scanned copies of PF & ESIC registration along with monthly details for the last two (2) years at the time of submission of the bid. There is no dispute to the fact that the same has been submitted by the respondent No. 5 and the only contention raised is that as per the comparative statement, it was mentioned as "PF return" and the prescription as per the tender documents is that submission of PF registration and monthly details and therefore, the mentioning of "PF return" in the comparative statement cannot be a ground to vitiate the selection of the respondent No. 5 and the rejection of the petitioner. Even otherwise, whether it is PF registration or PF return, the petitioner admittedly has no PF registration in view of the fact that he himself submitted a declaration that if he is allotted the work, he will provide EPF and ESI within a month.

[16.] In respect of Bakijai certificate, which was a ground for rejection of the technical bid of the petitioner, the tender documents as submitted by the learned Senior Counsel for the respondent No. 5 clearly stipulates that the same has to be submitted by the bidder concerned along with the no mineral revenue dues affidavit in the prescribed format. The authorities relied upon by the petitioner in this connection are only distinguishable as can be seen from the judgment of the Division Bench of this Court in Sanjeet Chandra Das (supra) wherein, the Court observed that the case of Abu Tilab (supra) was based on a single bid system where technical and financial bids were opened simultaneously. Upon opening the bids, it was found that the technical bid of appellant Abu Tilab was deficient on Bakijai clearance certificate but since his bid was almost double to that of the bidder who qualified on technical aspect, it was under such peculiar circumstance that the Court decided the matter in favour of the offer made by Abu Talib. This apart, it was the respondent authorities themselves who had taken conscious decision and in the interest of public ex-chequer that the bid offered by Abu Talib being the highest, he was given time to submit the latest Bakijai certificate. In the instant case, despite the prescription in the tender documents no Bakijai certificate has been annexed by the petitioner in his technical bid and therefore, the ground for rejection cannot be faulted with.

[17.] In respect of ground No. 4, the petitioner himself admits that the entire bid documents submitted by him were not signed digitally. Considering the provisions of the bid documents particularly Clause 2.12 and Clause (ix) of Part-II Schedule-IB(1)(d), the petitioner cannot have any legitimate grievance for the rejection of his technical bid for want of digital signature. In respect of the fifth and last ground, the affidavit submitted by the petitioner at paragraph No. 98 of the writ petition when compared to

the affidavit as prescribed in the tender document at paragraph No. 73 of the writ petition only speaks for itself. All that the petitioner declared is that he is a resident of India and he has verified the document submitted by him to his own satisfactory. The same not being as per the prescription of the tender documents, rejection of the technical bid of the petitioner on this ground also cannot be faulted with.

[18.] In respect of the submission advanced on behalf of the petitioner that parity was not maintained cannot be accepted in view of the fact that the petitioner himself not adhered to the stipulation of the tender requirements. Although the learned counsel for the petitioner has tried to develop an argument that some preferential treatment has been given to the respondent No. 5 over the other bidders, the same cannot be accepted merely on the basis of such allegation since it is a settled position in law that where any mala fide has been alleged against any person or authority, the same has to be specifically pleaded and also the individual against whom such allegation is made is required to be made a party respondent for affording an opportunity to respond to their allegation. The same is not the case in the instant writ petition.

[19.] Thus, upon overall consideration of the writ petition in its entirety, I find no merit in the writ petition and accordingly, the same is dismissed. Under the given facts and circumstances, the parties shall bear their own cost.