

GAHC010035582022



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

Case No. : WP(C)/1297/2022

SMP MARKETING
HAVING ITS REGISTERED OFFICE AT GROUND FLOOR, P.B. COMPLEX, A.T
ROAD, GUWAHATI-781001, REPRESENTED BY ITS PROPRIETOR SHRI
RAJENDAR KUNDALIA, AGED ABOUT 41 YEARS, S/O DALAM CHAND
KUNDALIA, R/O 2ND FLOOR, N.C APARTMENT, SHANTIPUR, ASSAM-
781009

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, POWER DEPARTMENT, DISPUR, GUWAHATI-
781006

2:THE MANAGING DIRECTOR
ASSAM ELECTRICITY GRID CORPORATION LIMITED
BIJULEE BHAWAN
GUWAHATI-781001

3:THE CHIEF GENERAL MANAGER (P P AND D)
ASSAM ELECTRICITY GRID CORPORATION LIMITED
BIJULEE BHAWAN
GUWAHATI-781001

4:THE CHIEF GENERAL MANAGER (O AND M)
CENTRAL ASSAM REGION
ASSAM ELECTRICITY GRID CORPORATION LIMITED
BIJULEE BHAWAN
GUWAHATI-781001

5:THE TENDER AND PURCHASE COMMITTEE
ASSAM ELECTRICITY GRID CORPORATION LIMITED

BIJULEE BHAWAN
GUWAHATI-781001

6:M/S ENGINEERING CHAMBER
REPRESENTED BY ITS PARTNER SRI YOGESH KEJRIWAL
SUKHDEO BHAWAN
2ND FLOOR
A.T ROAD
GUWAHATI-781001
HOUSE NO. 15
PIYALI PHUKAN ROAD
REHABARI
GUWAHATI-78100

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : SC, AEGCL

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24.02.2022

Heard Mr. N. N. B. Choudhury, learned counsel for the petitioner and Ms. M. Barman, learned Government Advocate, Assam for the respondent No. 1. Also heard Mr. T. J. Mahanta, learned senior counsel assisted by Ms. P. Bhattacharjee, learned counsel, Assam Electricity Grid Corporation Limited (AEGCL) for the respondent Nos. 2 to 5.

The respondent AEGCL on 07.05.2021 issued an NIT inviting e-Tender from eligible bidders for "*Supply of clamps, connectors and hardware fittings for Central Assam Region in AEGCL*" specifying that the time schedule for the work is only for 4 (four) months from the date of contract commencement and further, that the bidder must submit a completion schedule bar chart for activities to complete the work within the said time schedule.

As per the said NIT Tender Start Date was 10:00 hrs of 08.05.2021 and Tender Submission End Date was 12:00 hrs of 02.06.2021.

With regard to the said NIT dated 07.05.2021 of the AEGCL for the Central Assam Region 7 (seven) bidders including the petitioner and the respondent No. 6 submitted their

bids, where bids were opened on 22.06.2021 and the petitioner was found to be L1 bidder and the respondent No. 6 as the L2 bidder.

The petitioner is aggrieved as the respondent AEGCL by order dated 23.12.2021 issued work order in favour of the respondent No. 6 disregarding the better claim of the petitioner who is the L1 bidder and that only on 16.02.2022 the respondent AEGCL have informed the petitioner about the rejection of its bid with regard to said NIT dated 07.05.2021 pertaining to Central Assam Region (CAR) under AEGCL.

The petitioner raised two issues in this writ petition: - (i) the respondent AEGCL under hidden clause allotted the work order in favour of the respondent No. 6 with regard to the said NIT dated 07.05.2021 pertaining to CAR, noted above and (ii) inspite of the finding that the respondent No. 6 does not have the experience of supplying 400 KV clamps, the respondent AEGCL issued the impugned work order dated 23.12.2021 to the said respondent violating the Tender Clauses to supply such clamps and connectors to the AEGCL.

The petitioner, amongst others, has prayed for setting aside the NIT dated 07.05.2021 as well as the work order issued in favour of the respondent No. 6 dated 23.12.2021, and also prayed for an interim order to stay the operation of the impugned tender process initiated in pursuance of the said NIT dated 07.05.2021 as well as the work order issued in favour of the respondent No. 6 dated 23.12.2021.

In support of his argument, Mr. Choudhury, learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of *Directorate of Education -Vs- Educomp Datamatics Ltd.*, reported in (2004) 4 SCC 19.

Mr. Mahanta, learned senior counsel for the respondent AEGCL placing the Tender Clause 1.21.0 of the said NIT dated 07.05.2021, the part of the said NIT that has not been annexed by the petitioner in his petition, placed before the Court that it relates to Award Criteria which stipulates that "*Purchaser shall in general award the contract to the lowest substantially responsive bidder. However, the purchaser reserves the right to not award contract to the lowest substantially responsive bidder without thereby incurring any liability to Bidders.*"

Mr. Mahanta, learned senior counsel for the respondent AEGCL has also placed the

Tender Clause 1.23.0 that relates to Notification of Award which reads as "*Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its bid has been partially or fully accepted quoting acceptance of the bid. The notification letter (hereafter called the "Notification of Award") shall specify the sum that the Purchaser will pay the Contractor (hereinafter called "Contract Price") in consideration of the execution and completion of the services. Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.*"

Mr. Mahanta, learned senior counsel for the respondent AEGCL has also placed the copy of the Minutes of the Tender and Purchase Committee Meeting of the respondent AEGCL held on 04.12.2021 with regard to the said NIT dated 07.05.2021 and states that three different tenders were issued by the respondent AEGCL for supply of clamps and connectors, one each for (i) Central Assam Region (CAR), (ii) Lower Assam Region (LAR) and (iii) Upper Assam Region (UAR) and that the present matter relates to Central Assam Region. Mr. Mahanta stated that the petitioner had submitted his bids for all the three regions i.e. CAR, LAR and UAR pertaining to three different tenders including NIT dated 07.05.2021 relating to CAR and in all of his three bids, the petitioner had shown his turn over as Rs. 2,70,84,618/- and cash flow of Rs. 69,97,881/- and was accordingly found to be the L1 bidder. Mr. Mahanta from the said minute placed before the Court that if the cash flow of all the three different tenders are added up, it becomes Rs. 1,86,00,000/- whereas the petitioner's cash flow was of only Rs. 69,97,881/-. Mr. Mahanta submitted that considering the cash flow and the price quoted by the petitioner and the respondent No. 6, the respondent AEGCL allotted with the contract of supply of clamps and connectors to the petitioner for the Upper Assam Region whereas to the respondent No. 6 for the Central Assam Region and accordingly, work orders were issued to them.

Mr. Mahanta, learned senior counsel for the respondent AEGCL further submitted that in terms of the work order dated 23.12.2021 testing of the clamps and connectors to be supplied by the respondent No. 6 are presently under inspection.

Mr. Mahanta, learned senior counsel further pointed out that the petitioner was fully aware of the fact that its bid for CAR pursuant to the NIT dated 07.05.2021 was rejected and was allotted to the respondent No.6 for which it submitted representation before the AEGCL on 24.12.2021 as reflected from Annexure-VI to this petition.

During the deliberation of the matter, the respondents in the AEGCL has been asked to show as to how it has come to the conclusion that the respondent No. 6 had the experience of supplying of 400 KV or more clamps and connectors without producing valid certificate by the said respondent and in that regard Mr. Mahanta, learned senior counsel for the respondent AEGCL prays for some time to place the relevant instructions in the matter.

Issue notice, returnable on **28.02.2022**.

On the returnable date (i.e., 28.02.2022), the respondent AEGCL shall place the relevant instructions in this matter along with the relevant records in original regarding selection of the respondent No. 6 for the contract of Central Assam Region relating to the said NIT dated 07.05.2021.

Since the details of the minutes with regard to the order of contract disregarding the claim of the petitioner as L1 bidder has been placed before the Court, as such, at this stage, the Court is not inclined to issue any stay order or interfere with the work order dated 23.12.2021 issued in favour of the respondent Nos. 6. However, the same shall be subject to the outcome of this writ petition. Further prayer of the petitioner shall be considered on the returnable date, (i.e., 28.02.2022) after verification of the records and the relevant instructions to be furnished by the respondent AEGCL.

As Ms. M. Barman, learned Government Advocate, Assam and Ms. P. Bhattacharjee, learned counsel, AEGCL have accepted notice on behalf of the respondent Nos. 1 and 2 to 4 respectively, no formal notice need be issued to those respondents.

Petitioner shall serve requisite extra copies of this petition along with the annexures appended thereto to Ms. M. Barman, learned Government Advocate, Assam and Ms. P. Bhattacharjee, learned counsel, AEGCL during the course of the day, obtaining necessary acknowledgment from them in that regard.

Petitioner shall take steps for service of notice on the respondent No. 6 by registered post with A/D during the course of the day, providing its proper and correct address with requisite postal stamps.

In addition to the above, the petitioner shall also take steps on the respondent

No.6 by dasti/personal service to be routed through the Registry of this Court.

Such dasti/personal service shall be made on the said respondent by serving a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from it with date, in presence of one or more witnesses. Thereafter, the petitioner shall file an affidavit towards completion of such dasti/personal service on the respondent No. 6.

Further, the petitioner is also allowed to take steps on the respondent No. 6 through the Chief General Manager, (PP&D), AEGCL, Assam.

List accordingly.

JUDGE

Comparing Assistant