

GAHC010130222023



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

**Case No. : WP(C)/3428/2023**

MEGHALAYA OXYGEN PVT LTD  
REPRESENTED BY ITS MANAGING DIRECTOR  
PRAVIN JAIN, AGED 41 YEARS,  
HAVING THE REGISTERED OFFICE AT KOCHAR HOUSE S.J. ROAD  
ATHGAON,  
GUWAHATI- 781001 DISTRICT- KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM,  
HEALTH DEPARTMENT, DISPUR-6,  
GUWAHATI, DISTRICT- KAMRUP(M),  
ASSAM.

2:THE DIRECTOR  
MEDICAL EDUCATION  
SIX MILE  
GUWAHATI- 781022

DISTRICT- KAMRUP(M)  
ASSAM.

3:PREMIER CRYOGENICS PVT. LTD  
136  
MANIRAM DEWAN ROAD

NIZARPAR  
KRISHNA NAGAR

CHANDMARI  
GUWAHATI- 781003

CHANDMARI  
DISTRICT KAMRUP(M)  
ASSAM

**Advocate for the Petitioner** : MR A C BORBORA

**Advocate for the Respondent** : SC, HEALTH

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 14.06.2023**

Heard Mr. A.C. Borbora, learned senior counsel, assisted by Ms. N. Dey, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned standing counsel for the Health Department, respondent nos.1 and 2.

2. Aggrieved by the rejection notification dated 31.05.2023 of the bid submitted by the petitioner during technical evaluation, the present writ petition has been filed under Article 226 of the Constitution of India.

3. Issue notice returnable in 4 (four) weeks.

4. Requisite extra copies of the writ petition be furnished to the learned departmental counsel in course of the day.

5. The petitioner shall take steps within 2 (two) days for service of notice on the respondent no.3 by registered post with A/D.

6. Liberty is granted to the learned instructing counsel for the petitioner to collect the postal receipt number from the Registry and track

service through the postal website and the track report may be filed before the Registry prior to the next date fixed.

7. Heard both sides on the prayer for interim relief.

8. The learned senior counsel for the petitioner has submitted that as per the terms and conditions of the tender, 3 days' time was allowed for technical clarification. Accordingly, on receipt of the notice regarding rejection of the bid of the petitioner for supply of liquid medical oxygen through e-portal notification dated 31.05.2023, on the same day, the petitioner had submitted a representation. It is submitted that the respondent authorities thorough e-response portal, had changed their stand from the grounds for which bids were rejected on 31.05.2023 to now project that the total storage capacity was less than 50% of the required quantity. It is submitted that in the representation against disqualification of tender dated 08.05.2023, three reasons assigned for rejection of the technical bids, which were all responded to by an elaborate reply/representation dated 31.05.2023, and certain documents were also submitted to support their contention. It is submitted that the documents relating to storage capacity was already provided to the respondent authorities and the same was re-submitted along with the representation dated 31.05.2023. It is submitted that the previous tender had expired on 31.05.2023, but timely steps was not taken for tendering the work for this year, and the private respondent no.3, who was the earlier bidder is given the contract till the present tender is finalized. Hence it is submitted that the respondents are biased in giving the benefit to respondent no.3. It is submitted that as per the requirement of tender, both L-1 and L-2 bidders were made eligible to supply the rates of L-1 bidder in case of emergency. Accordingly, it is submitted that

the petitioner would be entitled to make supply of the liquid medical oxygen at the rates quoted by the respondent no.3 in the previous tender and accordingly, the respondent authorities be directed to allow the petitioner to make supply.

9. Per contra, learned standing counsel for the Health Department has submitted that the petitioner has misconstrued the 3 days' time allowed for technical clarifications and it is submitted that the time which was allowable was for technical clarifications during the technical evaluation and that opportunity cannot be availed after the evaluation is completed. Hence, it is submitted that as per the e-portal notification, the status of the petitioner is shown as disqualified and therefore, as the petitioner had full knowledge of their disqualification, they had submitted their representation dated 31.05.2023 against such disqualification. Accordingly, it is submitted that after having been disqualified in technical evaluation, it was not permissible for the respondent no.2 to allow the petitioner to submit any additional documents to supplement their bid. It is also clarified that although the petitioner, in his representation dated 31.05.2023, is referring to queries, but as per the contents of the e-portal notification dated 31.05.2023, the three points mentioned therein are merely comments to justify the rejection/disqualification of the petitioner. Accordingly, it is submitted that the response provided by the respondent authorities on 03.06.2023 is only against the representation submitted on 31.05.2023 and the same is not to be construed as a ground of rejection of the tender during technical evaluation.

10. On the basis of the materials available on record, the Court finds force in the submission made by the learned departmental counsel that in the e-portal notification dated 31.05.2023, the status of the petitioner is reflected as

disqualified. The three grounds for disqualification are as follows:

*“1. Production Capacity certificate per day in MT of the LMO manufacturer and purity status of Liquidified Medical Oxygen Gas for Hospital use duly signed by the concerned authority not submitted.*

*2. Self-Certification about storage capacity in KG of the Amingaon storage unit and authorised letter from PESO/Licensing Authority not submitted as per the bid document, "Supplier has to maintain the stock for minimum of 15 days requirement after assessing the "requirement before submission of bid".*

*3. Self-Declaration of fulfilling the clause "The bidder must have experience of supplying to minimum 1 (one) Govt./Private Hospitals of minimum 300 bedded not submitted". "*

11. On a perusal of the list of documents submitted by the petitioner along with the bid, on a cursory reading of 34 documents mentioned therein, none of the documents relates to the three certificates regarding per day production capacity of the petitioner or certificate regarding storage capacity of the petitioner in Amingaon storage unit in K.G., or a self declaration of having experience of supplying to minimum one Govt./private hospitals with minimum 300 beds. Nonetheless, the petitioner is found to have provided a certificate from a private hospital at North Guwahati regarding supply of liquid medical oxygen, but there is no other “self declaration” to fulfill the said clause.

12. Under such circumstances, the Court is not inclined to grant interim relief to the petitioner at this stage and accordingly, the prayer for interim relief is refused at this stage.

13. However, it is provided that the finalization of the tender process would be subject to further orders that may be passed in this proceeding.

14. It is further provided that in the event an affidavit-in-opposition is not filed by the respondent no.2, they shall provide their learned standing counsel

with the relevant records to be produced before the Court.

15. List after 4 (four) weeks.

**JUDGE**

**Comparing Assistant**