

GAHC010161422023



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

Case No. : WP(C)/4185/2023

PARASH KUMAR BHATTACHARJEE
CONTRACTOR BY PROFESSION AND AS WELL AS PETITIONER IN
PERSON, REGENT PARADISE, 2B, GHORAMARA CHARIALI, GHORAMARA,
GUWAHATI-28.

VERSUS

THE ADDITIONAL CHIEF SECRETARY AND 5 ORS.
IN-CHARGE IRRIGATION, DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF IRRIGATION
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE DEPARTMENT OF IRRIGATION
DISPUR
GUWAHATI-781006.

4:THE CHIEF ENGINEER
ASSAM
IRRIGATION
CHANDMARI
GUWAHATI-3.

5:THE SUPERINTENDING ENGINEER
JORHAT (IRRIGATION)
JORHAT-785001.

6:THE EXECUTIVE ENGINEER
BOKAKHAT KHUMTAI DIVISION (IRRIGATION)
BOKAKHAT

Advocate for the Petitioner : PETITIONER IN PERSON

Advocate for the Respondent : SC, IRRIGATION

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 04.08.2023

Heard Mr. P.K. Bhattacharjee, the petitioner-in-person and Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department for all the respondents.

2. The respondent no. 5 published a Notice Inviting Tender [NIT] dated 15.06.2023 [Annexure-1] for a contract-work : "MDTWS [5 Points] at Rangamati Mouza under RIDF-XXVIII NABARD for the year 2022-23 under Bokakhat Khumtai Division [Irrigation], Bokakhat" ['Contract-Work no. 1', for short]. As per the NIT, the approximate value of the Contract-Work was Rs. 1,48,50,098/-. In the qualification criteria laid down in the Clause 4 of the NIT, the following qualification criteria have been provided : -

4. II. a. To qualify for the award of Contract, each bidder in its name should demonstrate

[i] The average [audited/unaudited] annual turnover of the contractors should not be less than 70% of the NIT value [Average of 3 previous years as per clause No. 4.1.f will be considered]. [Mandatory].

[ii][a] The bidder/contractor should have at least 1 [one] single work order of similar nature (not earlier than last 3 years) of value not less 80% [Eighty percent] of the NIT value with 100% work completion certificate from the authorized Engineer-in-Charge under Irrigation Deptt., Assam or any other Govt. deptt/ undertaking in Assam.

[b] 2 [two] work order [not earlier than last 3 years] of value not less 50% [fifty percent] of the NIT value for each work order of similar nature with 100% work completion certificate from the authorized Engineer-in-Charge under Irrigation Deptt., Assam or any other Govt.

Deptt./undertaking in Assam. If necessary, the authority reserved the right to enquire the successful completion of work order furnished.

[c] The bidder/contractor having experience in execution of civil engineering works in any other state Govt. deptt. in Assam and newly registered in Irrigation department should have at least 1 [one] single work order of civil works [not earlier than last 3 years] of value not less 90% [Ninety percent] of the NIT value with 100% work completion certificate from the concerned Executive Engineer.

3. The petitioner-in-person, who is a Class 1 Contractor has submitted that in all other NITs published by the respondent Irrigation Department, the qualification criteria ordinarily incorporated in such nature of contract-works are completely different than the ones set forth in the impugned NIT dated 15.06.2023. In all other NITs, the respondent Irrigation Department prescribes for qualification criteria of having atleast 1 [one] – single work order [not earlier than atleast 3 years] value not less than 30% of the NIT/package value of work under Irrigation Department in Assam. To cite an example, he has referred to an NIT dated 20.06.2023 [Annexure–2] published by the respondent no. 4 for another contract-work : “Solar Powered MDTW I/Scheme [4 Points] at Sipajhar area under SOPD for the year 2022-23 under Mangaldoi-Dalgaon-Sipajhar Division [I], Mangaldoi” [‘Contract-Work no. 2’, for short]. He has contended that incorporation of such offending clauses of having atleast 1 [one] single work of value not less than 80% of the NIT value had resulted into a discriminatory situation and level playing field, as in the tender process, only one bidder could participate for fulfilling such qualification criteria and resultantly, he was awarded the work order for Contract-Work no. 1. Mr. Bhattacharjee has, thus, contended that the impugned clause was chosen only to select the said bidder.

4. Issue notice, returnable in 4 [four] weeks.

5. As Mr. Upadhyay has appeared and accepted notices on behalf of all the respondents, no formal notices need to be issued in respect of the respondents. The petitioner shall serve an extra copy of the writ petition along with annexure, to Mr. Upadhyay within 3 [three]

working days.

JUDGE

Comparing Assistant