

GAHC010248542024



undefined

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

Case No. : WP(C)/6158/2024

MR. RIPONJYOTI SARMAH @ RIPON SARMAH
S/O KHAGEN SARMAH
PROPRIETOR OF M/S KAZIRANGA MEDICOS. MOTHER TERESA ROAD,
NARENGLI, GUWAHATI KAMRUP M ASSAM 781026

VERSUS

THE UNION OF INDIA AND ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HEALTH AND FAMILY
WELFARE, NIRMAN BHAWAN, NEW DELHI 110011

2:THE DIRECTOR

ROOM NO. 545 A WING
CENTRAL GOVT. HEALTH SCHEME
DIRECTORATE GENERAL OF CENTRAL GOVT. HEALTH SCHEME
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN
NEW DELHI 110011

3:THE ADDL. DDG(HQ)

DIRECTORATE GENERAL OF CENTRAL GOVT. HEALTH SCHEME
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN
NEW DELHI 110011

4:THE ADDITIONAL DIRECTOR

CENTRAL GOVT. HEALTH SCHEME
AK AZAD ROAD
GOPINATH NAGAR GUWAHATI 78101

Advocate for the Petitioner : DR R C BORPATRA GOHAIN, MS P.HAZARIKA,MR. R D PHUKAN,MRS. S BORPATRA GOHAIN

Advocate for the Respondent : DY.S.G.I., MRS. R DEVI,MRS. R DEVI

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 01.04.2025

Heard Ms. S Borpatra Gohain, learned counsel for the petitioner.

In view of the order passed in I.A(Civil) No.109/2025, issue notice to the newly impleaded respondent No.5

Steps upon the respondent No.5 be taken through the standing counsel, GeM.

List this matter again on 22.04.2025.

An NIT was issued by the Government of India, Ministry of Health & Family Welfare for contract empanelment of authorized local chemist for CGHS/Wellness Centre of Guwahati for the period 2024-2027. Such tender was called through e-market place called Government e-Marketing place (GeM).

It is the contention of the petitioner that petitioner's drug license having registration No.KMP/12099 & KMP/1200 valid up to 31.12.2026 could not be uploaded in GeM portal and accordingly he could not upload his tender documents. It is further the contention of the petitioner that there is no fault on the part of the petitioner, rather it is the fault on the GeM, for which the petitioner

could not upload the tender.

In the meantime, the technical bid was opened by the CGHS, after downloading the tender documents from GeM and thereafter, price bids were also opened, however, for the reason of a status quo order passed by this court, no final order of empanelment has been issued.

Ms. Borpatra Gohain, learned counsel for the petitioner submits that the employer is not taking any responsibility on their part, rather, according to them, it is the GeM who did not accept the license of the petitioner.

The other grievance of the petitioner is that the respondent/employer has acted arbitrarily by not permitting the petitioner to upload the documents subsequently when the section 1 of the tender document itself creates a right upon the bidder to write an explanatory letter explaining reasons for not uploading the document along with supporting relevant government order, if applicable. According to the petitioner, though such application was filed, but the same was also not considered.

This court is of the prima facie view that when the technical bid has already been evaluated and price bids have been opened, there shall remain a little scope to issue a writ allowing the petitioner to participate in a tender process which has already been concluded.

This court is also of the prima facie view that, if the contentions of the petitioner is accepted to be correct and that there was no fault on the part of the petitioner, then also this court

may, at best cancel the entire tender process by giving an opportunity to the petitioner to participate afresh in a tender process or to compensate the petitioner for no fault of him. However, this view expressed is a tentative view.

Taking note of the aforesaid position and also considering the submission of Ms. R Devi, learned counsel for the respondent that the Central Government employees are facing difficulty for want of the finalization of the empanelment, this court is of the view that the status quo order passed earlier shall be vacated.

Accordingly, the same stands vacated. However, it is made clear that any empanelment that may be made pursuant to the tender, shall be subject to outcome of this writ petition.

JUDGE

Comparing Assistant