

Serial No.01
Supp. List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC[WP(C)]. No. 90 of 2023 in
WP(C). No. 104 of 2023

Date of Order :28.06.2023

Oasis Enterprises Vs. Shri. Samrat Inder Singh & 2 Ors.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Applicant/Resp.No.3 : Ms. B.S.Goyal, Adv.
Mr. S.Thapa, Adv.

For the Opposite Parties : Mr. S.Choudhury, Adv. with
Ms. M.K.Sah, Adv. for OP No. 1.
Dr. N.Mozika, DSGI with
Ms. S.Rumthao, Adv. for OP No. 2 & 3.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

ORAL

1. The instant Misc. application has been filed by the applicant/respondent No.3 for vacation/clarification/modification of interim order dated 12-05-2023 passed in the main writ petition ie., WP(C). No. 104 of 2023.

2. Before disposing this Misc. case on merits, it would be relevant to note the background facts that had brought the writ petitioner before this Court. The sole issue as put up by the writ petitioner, was the acceptance of the tender documents of the respondent No. 3 (applicant herein) which he alleged did not fulfill the technical bid requirements of Clause 6 (e) of the tender document, which reads as follows:

“6(e). Details of Existing Contract(s) & Tender Participation. Bidders will submit details of existing contract(s) for the FY 2022-23 and tenders participation for the FY 2023-24 along with Value(s) of the same failing which bids/tenders are liable to be rejected. Value of financial stability certificates will correspondingly reduce for subsequent tenders. The bidder will be eligible to participate in tender/tenders equal to the value of the FSC provided at the time of tendering. In the event of non participation in tenders for FY 2023-24, details can also be submitted as “NIL”/ “No participation” in any tender for FY 2023-24.”

3. This Court on being prima facie satisfied had then by order dated 12-05-2023, directed the respondents No. 1 & 2 to not take further action in the tender process until the next date. This was due to the stand of the respondents No. 1 & 2 that the tender of the respondent No. 3 was accepted as valid by the respondents No. 1 & 2, inasmuch as, the details as stipulated would not have any material impact in the execution of the contract even though the same had not been provided.

4. Heard learned counsel for the parties.

5. Ms. B.S.Goyal, learned counsel for the applicant/respondent No. 3, has at the outset submitted that the interim order had not been renewed after 20-06-2023 when the instant Misc. application was filed, and as such, there is no impediment for the respondents No. 1 & 2 to open the technical bids of the bidders which includes the writ petitioner.

6. On merits, the learned counsel submitted that Clause 6 (e) has to be read together with Clause 6 to understand the meaning of 'existing contractors'. Clause 6 which defines technical bids, she contends, stipulates that all tenderers/bidders including existing contractors were to submit the documents including the ones specified in Clause 6 (e) to be considered eligible. A plain reading of Clause 6, it is submitted, would naturally mean existing contractors who had subsisting works with the respondents No. 1 & 2, and not that disclosure was to be of any other work under execution with any other entity. It is further submitted, that notwithstanding the contention of the writ petitioner, the required information of contracts which the respondent No. 3 had with other entities, but which were not subsisting as on 31-03-2023, had been provided by way of a clarification before the respondents No. 1 & 2, on the complaint of the writ petitioner about the non-disclosure of such contracts. Learned counsel submits that as the respondents No. 1 & 2 on the

complaint of the writ petitioner, had thereafter accepted the clarification and found the bid valid, the objection as raised had run its course and was not material any longer, or any interference called for by this Court, at this stage.

7. Mr. S.Choudhury, learned counsel for the writ petitioner in reply has submitted that Clause 6 (e) having specifically stipulated for furnishing of details of existing contracts, it was incumbent at that time of submission of bids that there be full compliance of the tender requirements which he contends, the respondent No. 3 failed to provide. A compliance of Clause 6 (e) he submits, would mean existing contracts with any other entity also, apart from contracts under the respondent No. 1, as it had a bearing on the financial stability of a bidder, inasmuch as, if he was engaged in other contracts, his financial capacity would proportionately be decreased. He therefore, prays that the interim order dated 12-05-2023, be continued or revived and the Misc. application be dismissed.

8. Dr. N.Mozika, learned DSGI assisted by Ms. S.Rumthao, learned counsel for respondents No. 1 & 2, apart from concurring to the submissions made by the counsel for the applicant/respondent No. 3, submits that the clarification as received, the respondents No. 1 & 2 were satisfied and had come to a finding that the initial non-receipt of the details, did not have any material impact on the execution of tenders, and

hence the applicant firm was found valid to take part in the tender process. The learned Sr. counsel has apprised the Court that the technical bids have since been opened and out of 4 bidders, 3 have qualified and as such, the writ petition itself has been rendered infructuous.

9. As observed earlier, the sole issue in the main writ petition is with regard to the non-fulfillment of the conditions contained in Clause 6 (e) of the tender document. After having heard the submissions of the parties and having perused the materials on record, this Court firstly notes that the tender concerns the supply of food and rations to the Assam Rifles which is of extreme importance. It is also noted that in view of the complaints lodged by the writ petitioner who was the existing supplier, the settlement of the contract has been delayed by 3 months and the writ petitioner is continuing with the supply even though the same should have terminated on 31-03-2023.

10. This Court has examined the Clause in question and though it is not very clear, as to what would constitute an 'existing contractor' and whether it would be mandatory for a contractor to submit details of contracts with other entities, in view of the pointed submissions that the technical bids have since been opened, this Court will not venture to answer the same in the instant proceeding. However, it may be not out of place to observe that Clause 11 of the Note to Clause 6, allows bidders to prefer representations

before the tender opening authority with regard to the tender process. The same reads as follows:

“11. Representation/observations, if any, may be brought to the notice of the Board of Officer at the time of opening of tenders only and no representation shall be entertained thereafter. Any observation by any party regarding tender opening shall be immediately brought to the notice of the tender opening authority. All representations shall be handed over in writing within 24 hours of the tender opening. Thereafter, no representation, irrespective of nature, shall be accepted/entertained.”

The writ petitioner had taken recourse to this provision in lodging his objections of which thereafter, were dealt with by the tender opening authority by way of seeking clarification and coming to a finding that the alleged infraction, did not have any material impact on the execution of the tender.

11. Coupled with the aforementioned facts, the non-extension of the interim order beyond 20-06-2023 and the opening of the technical bids by the respondents No. 1 & 2, have infact, as submitted by the counsel for the applicant/respondent No 3 and by the learned DSGI, rendered the writ application itself infructuous as the cause of action for which the writ petitioner is before this Court, no longer survives.

12. As such, in view of the facts and circumstances and as discussed above, nothing remains for consideration before this Court either on the Misc. application or the main writ petition itself.

13. Accordingly, the instant Misc. case stands disposed of.

Judge

Meghalaya
28.06.2023
"Samantha PS"

