



GAHC010288742019

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

Case No. : WP(C)/8696/2019

TAFE MOTORS AND TRACTORS LTD.
(A WHOLLY OWNED SUBSIDIARY OF TAFE) HAVING ITS REGD. OFFICE AT
77 NUNGAMBAKKAM HIGH ROAD, NUNGAMBAKKAM, CHENNAI- 600034
REP. BY ITS COMPANY SECRETARY MR. C.P. SOUNDERARAJAN.

VERSUS

THE STATE OF ASSAM AND 11 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, AGRICULTURE
DEPTT., DISPUR, GHY.- 781006.

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
AGRICULTURE DEPTT.
DISPUR
GHY.- 781006.

3:THE DIRECTOR OF AGRICULTURE
GOVT. OF ASSAM
KHANAPARA
GHY.-22.

4:THE CHIEF EXECUTIVE OFFICER
MEGA MISSION SOCIETY
CHIEF MINISTER SAMAGRA GRAMYA UNNAYAN YOJNA
JAYA NAGAR
KHANAPARA
GHY.-22.

5:THE BID EVALUATION COMMITTEE
REP. BY ITS CHAIRMAN CUM SECY. TO THE GOVT. OF ASSAM
AGRICULTURE DEPTT.
DISPUR



GHY.-06.

6:M/S ESCORTS LTD
HAVING ITS REGD. OFFICE AT 15/5 MATHURA ROAD
FARIDABAD
HARYANA
PIN- 121003

7:M/S ACTION CONSTRUCTION PVT LTD
HAVING ITS REGD. OFFICE AT DUDHOLA LINK ROAD
VILL. DUDHOLA
DIST. PALWAL
HARYANA
PIN- 121102.

8:M/S INTERNATIONAL TRACTORS LTD (SONALIKA)
HAVING ITS REGD. OFFICE AT VILL. CHAK GURJARAN
P.O. PIPLANWALA
JLANDHAR ROAD
HOSHIARPUR.

9:M/S MAHINDRA AND MAHINDRA LTD
SWARAJ DIVISION HAVING ITS REGD. OFFICE AT PAHSE-IV
INDUSTRIAL AREA
SAS NAGAR (MOHALI)
PUNJAB
PIN- 160055.

10:M/S MAHINDRA AND MAHINDRA
HAVING ITS REGD. OFFICE AT FIRST FLOOR
MAHINDRA TOWERS
MURLI ROAD
KANDIVILI (EAST)
MUMBAI
PIN- 400101.

11:M/S CASE NEW HOLLAND INDUSTRIAL PVT LTD
HAVING ITS REGD. OFFICE AT THIRD FLOOR
PLOT NO. 14A
SECTOR 18
ATC BUILDING
MARUTI INDUSTRIAL COMPLEX
GURUGRAM
HARYANA
PIN- 122015.

12:SAKTIMAN (GROMAX)
HAVING ITS REGD. OFFICE AT NEAR VISHWAMITRI RAILWAY OVER



BRIDGE
VISWAMITRI
VADODRA
GUJRAT
PIN- 399011

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, AGRI. DEPARTMENT

Linked Case : WP(C)/8699/2019

TRACTORS AND FIRM EQUIPMENT LTD.
A COMPANY DULY REGD UNDER COMPANIES ACT
1956
HAVING ITS REGD OFFICE AT 861
ANNA SALAI
CHENNAI
PIN- 600002 REP BY ITS VP MR. CP SOUNDERARAJAN

VERSUS

THE STATE OF ASSAM AND 11 ORS
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GUJRAT
PIN- 399011.

Advocate for : MR. K N CHOUDHURY
Advocate for : SC
AGRI. DEPARTMENT appearing for THE STATE OF ASSAM AND 11 ORS

BEFORE

HON'BLE MR JUSTICE PRASANTA KUMAR DEKA

For the petitioner : Mr. K. N. Choudhury
Senior Advocate assisted by
Mr. J. Patowary. Advocate for
both the writ petitions.
Mr. K. Srinivasan, Advocate for
Petitioner in WP(C)/8696/2019.

For the respondents : Mr. D. Saikia, Senior Advocate,
Assisted by Mr. B. Choudhury,
Standing Counsel, Agriculture Deptt.
Mr. D. Das, Senior Advocate
assisted by Mr. B. Gogoi.
Advocate for respondent No.6.
Mr. A. D. Choudhury, Advocate for
respondent No.8.
Mr. A. Das, Advocate for
respondent Nos. 9, 10 and 12.
Mr. S. N. Tamuli, Advocate for
Respondent No. 7.

Date of hearing : 24.11.2020

Date of judgment : 01.06.2021

JUDGMENT & ORDER(CAV)

Heard Mr. KN Choudhury, learned Senior counsel assisted by Mr. J. Patowary, learned

counsel for the petitioners in both the writ petitions. Also heard Mr. K Srinivasan, learned counsel representing the petitioner in WP(C) 8696/2019., Mr. D Saikia, learned Senior counsel assisted by Mr. B Choudhury, learned counsel for the State Agriculture Department. Mr. AD Choudhury, learned counsel for the respondent No. 8, Mr. A Das, learned counsel for the respondent Nos. 9, 10 and 12, Mr. S N Tamuli, learned counsel for the respondent No. 7 and Mr. D Das, learned Senior counsel assisted by Mr. B Gogoi, learned counsel for the private respondent No. 6. Both the writ petitions are taken up for disposal through this common judgment and order in view of the common cause of action.

2. The Director of Agriculture, Assam, respondent No. 3 vide notice dated 04.02.2019 invited competitive rates of Tractor and Matching Implements from the manufacturers of tractors for Phase-II of the scheme for "Distribution of Tractor unit under CMSGUY" for one model of Tractor in each of the three categories namely:

- i. 35 PTO HP or more than 35 PTO HP and up to 40 PTO HP.
- ii. More than 40 PTO HP and up to 45 PTO HP.
- iii. More than 45 PTO HP and 50 PTO HP.

3. Amongst others, the following conditions were stipulated which are reproduced hereinbelow:

" 4. Most competitive rates offered by manufacturers in each category of models mentioned above would be selected and notified for procurement by the selected beneficiary groups as per their choice. In a particular category (Sl. No. 1), the most competitive rate offered by 50 (fifty) % of the technically responsive out of participating manufacturers against the particular model shall be selected.

11. The beneficiary group may procure the tractor of selected model and make along with implements, if so opted, from any authorised dealer of the manufacturer in the state. The group may negotiate with the dealer to bring rates below the price quoted by manufacturer. "

4. The tender evaluation committee on 29.03.2019 took the following decision in respect of the Tractors:

"The following bidders (manufacturer) were found non responsive due to reasons mentioned against them.

Name of bidders (manufacturer)	Reasons for non-responsive
i. M/s VST Tillers Tractors Ltd.	Offered tractor models are not enlisted in GOI letter No. 13-10/99-M&T (I&P) Vol-II dated 12.10.2018
ii. M/s Skylight Automotive Pvt. Ltd. on behalf of M/s Action Construction Equipment Ltd.	Manufacturer himself not registered in the e-Procurement portal: https://assamtenders.gov.in
iii. M/s Echo Motors & Automobiles Pvt. Ltd. on behalf of M/s Preet Tractors Pvt. Ltd	Manufacturer himself not registered in the e-Procurement portal: https://assamtenders.gov.in

One model of tractor namely DEUTZ FAHR Agromaxx 55 offered by M/s Same Deutz Fahr India (P) Ltd. in the category "More than 45 up to 50 PTO HP" was found non-responsive due to PTO HP is less than 45, as per the test report furnished.

On evaluation of technical bids, the committee found the following brand and model of tractors offered by manufacturers in the three categories as responsive:

Category	Equal or more than 35 up to 40 PTO HP		More than 40 up to 45 PTO HP		More than 45 up to 50 PTO HP	
	Brand	Model	Brand	Model	Brand	Model
M/s Mahindra & Mahindra Ltd. (FES) Swaraj Division	Swaraj	843XM	Swaraj	744FE	Swaraj	855FE
M/s International Tractor Ltd.	Sonalika International	DI-740III CM Series	Sonalika International	DI-47 RX Heavy Duty	Sonalika	DI 750 III HDMSI
M/s Mahindra & Mahindra Ltd.	Mahindra	YUVO 415 DI	Mahindra Bhumi Putra	575 DI MKM DLX	Mahindra	555 DI Power
M/s Tractors and Farms Equipment Ltd.	TAFE	MF 1035 DI Mahashakti VI	TAFE	MF 7250 DI Power Drive Power Steering	TAFE	MF 5245 DI MAHAMAHAN

M/s Same Deutz Fahr India (P) Ltd.	DEUTZ FAHR	3040 E	DEUTZ FAHR	Agromaxx 50	-	-
M/s John Deere India Pvt. Ltd.	John Deere	5042D V3	John Deere	50500 V5	John Deere	5310 V3
M/s CNH Industrial (I) Pvt. Ltd.	New Holland	3230	New Holland	4710A	New Holland	3630 TX
M/s Tafe Motors & Tractors Ltd.	Eicher	368 USJ	Eicher	485 Hydromatic	Eicher	557
M/s Escorts Ltd.	Powertrac	439 E1	Farmtrac	45 F9	Powertrac	Euro 50
M/s Gromax Agri Equipment Ltd.	Shaktimaan	45 DLX	-	-	-	-

5. M/s Tractors and Farms Equipment Limited and M/s Tafe Motors & Tractors Limited the writ petitioners along with 6 other bidders were found to be technically responsive in the 3 categories as referred hereinabove. On the other hand, as reproduced hereinabove 3 bidders were found to be non-responsive. The respondent No. 7 who was found to be technically non-responsive filed WP(C) 2678/2019 which was disposed of vide order dated 19.06.2019 thereby directing the respondent Nos. 1,2 and 3 to consider the tender of the respondent No. 7 as technically responsive and thereafter consider its price bid alongwith the price bids of other technically responsive bidders. The financial bids were opened on 06.07.2019. The petitioner in WP(C) 8696/2019 was the L-6 bidder in 35-40 PTO HP amongst 11 numbers of bidders whose rate was found to be most competitive amongst technically responsive bidders, L-8 in 40-45 PTO HP amongst 10 numbers of qualified bidders, L-5 in 45-50 PTO HP amongst 9 numbers of qualified bidders. As per clause 4 of the notice dated 04.02.2019 50% of the most competitive rates offered and the technically responsive out of the participating

manufacturers against the particular model was the criteria to be selected. The petitioner in WP(C) 8699/2019 was within the 50% limit as per clause 4 in 35-40 PTO HP and 45-50 PTO HP (through its subsidiary company as L3).

6. The respondent No. 3 invited for fresh competitive rates of Tractors and Matching Implements vide notice dated 30.10.2019 and the reasons for such invitation of fresh competitive rates as mentioned in the said notice dated 30.10.2019 are reproduced hereinbelow:

“3. Accordingly, the Bid Evaluation committee in its meeting held on 15.10.2019 recommended rank wise brand/ model of tractors along with matching implements viz. Rotavator, Cultivator, Disc Harrow and Cage Wheel excluding the trailer and submit its report to the Agriculture Department for necessary action. The Agriculture Department placed the recommendations of Bid evaluation Committee before the Hon’ble Cabinet on 21.10.2019 for approval.

4. The decision and direction of the Hon’ble Cabinet in its meeting held on 21.10.2019 is reproduced below:

“The Council of Ministers discussed the proposal including the fact that price bids were received more than six months ago and during this period the automobile sector has experienced significant slump in demand leading to deep discount/ lowering of effective price in the open market. In order that benefit is passed on to both farmer beneficiaries and the Government, the Council of Ministers directed Agriculture Department to give opportunity to all technically qualified participating bidders to lower their price bids by giving 15 days to submit fresh price bids. The Agriculture Department will finalize the bid evaluation and selection of bidders with Department Minister”.

5. In the view of the Hon’ble Cabinet direction and in light of the acceptance of the withdrawal letter of M/s Skylight and M/s Echo Motors by the Governing Council, MMS-CMSGYY the technically responsive bidders are requested to submit fresh price bids for their technically approved Tractor models mentioned at Table-1 along with the technically approved matching implements (excluding trailer) mentioned at Table-2 as per the prescribed format (Format A) through e-Procurement portal: <https://assamtenders.gov.in> on or before 15.11.2019 upto 1.00 p.m. The price bids will be opened on the same day at 2.00 p.m.”

7. The petitioners raised its objection, filed representation to the respondent No. 3 dated 14.11.2019 against the said notice seeking for fresh competitive rates dated 30.10.2019 on



the ground that as the commercial bids were already opened and the qualifiers declared in each of the categories accordingly it was not fair to call for re-bid as the same might be construed to be done in order to accommodate the non-qualified manufacturers. It would not be out of place to mention herein that as per the standing of the various bidders after opening of the financial bid and as per criteria adopted under clause 4, the respondent No. 6 did not qualify in any of the three different categories. The said representation of the petitioner was disposed of by the respondent No. 3 stating that the same was not in conformity with the decision of the Cabinet and accordingly the said representation was rejected and disposed of. The evaluation Committee held its meeting on 16.11.2019 and accordingly the following rank wise brand/ model of Tractors was shortlisted as per clause 4 of the notice:

“Minutes of the Evaluation Committee for fixation of Price of Tractor and Matching Implements under the scheme for “Distribution of Tractor until under CMSGUY (Phase-II) held on 16.11.2019 at 11.30 AM in the Office Chamber of Director of Agriculture, Assam as per Govt.

Members Present: Annexure-I

At the outset, Chairman Evaluation Committee welcomed all the members present in the meeting.

Initiating the discussion, the Member Secretary informed the house that as per direction of the Hon’ble Cabinet and in pursuance of the notice vide No. Agri/Engg/4772/CMSGUY Phase-II/2018-19/339 dated 30.10.2019. The financial bids were opened on 15.11.2019 at 2.00 p.m. in the conference hall of Chief Engineer, Agriculture in presence of representative of bidders/ manufacturers of tractor. The online price bids were opened and the details rates quoted are placed at Annexure-2.

The Committee also observed that the following 05(five) technically qualified bidders did not submit the price bids viz M/s Tafe Motors & Tractors Limited, M/s Gromax Agri Equipment Ltd., M/s Mahindra & Mahindra Ltd., M/s Tractor and Farm Equipment Limited and M/s Mahindra & Mahindra Ltd. (FES) Swaraj Division. The member secretary also apprised the committee that 05 nos. of representations were received from the above said bidders on 15.11.2019 in the O/o the Directorate of Agriculture, Khanapara just before the scheduled opening time of the price bids.

In this regard, the member secretary informed the house that the representations were disposed of by the Director of Agriculture by issuing a Speaking Order (Annexure-3). After threadbare discussion, the Committee accepted the speaking order.

Further, Committee has deliberated upon the decision of the Cabinet and accordingly in the interest of the farmers and to reduce the burden on the state exchequer in the form of subsidy to be released, the technically qualified

bidders were given an option to lower their price quoted earlier due to slump in the auto sector in the country. As 05(five) technically qualified bidders out of 11 nos. in the category 35-40 PTO HP 04 (four) technically qualified bidders out of 09 nos. in category 40-45 PTO HP and 04 (four) technically qualified bidders out of 08 nos. in the category 45-50 PTO HP did not offer any new lowered rate. Hence the committee decided to accept their price quoted earlier on dated 06.07.2019.

Accordingly, in the above changed scenario, the following rank wise brand/ model of tractor has been shortlisted as per Clause-4 of the notice.”

Ranking	Name of Manufacturer	Category	Brand	Model	PTO HP	Fresh quoted price as on 15.11.2019
1	2	3	4	5	6	7
L-1	M/S Skylight Automotive Pvt. Ltd	Equal or more than 35 up to 40 PTO HP	ACE	350 NG	37	381888.00
L-2	M/s International Tractor Limited		Sonalika	DI-740 III CM Series	37.9	384000.00
L-3	M/s Mahindra & Mahindra Ltd. (FES) Swaraj		Swaraj	843XM	38.9	426720.00
L-4	M/s Gromax Agri Equipment Ltd.		Shaktimaan	45 DLX	39	459536.00
L-5	M/s Escorts Ltd.		Powertrac	439 EI	38.5	465000.00
L-6	M/s CNH Industrial (I) Pvt. Ltd		New Holland	3230	38.02	468786.000
L-7	M/s Same Deutz Fahr India (P) Ltd.		DEUTZ FAHR	3040E	35	469711.00
L-8	M/s Tafe Motors & Tractors Ltd.		Eicher	368 USJ	35.8	470225.00
L-9	M/s Tractors and Farms Equipment Ltd		TAFE	MF 1035 DI Mahashakti VI	35.5	485000.00
L-10	M/s John Deere		John Deere	5042D V3		497989.00

	India India Pvt. Ltd.					
L-11	M/s Mahindra & Mahindra Ltd.		Mahindra	YOVO 415 DI	35.6	516500.00
L-1	M/s International Tractor Limited	More than 40 up to 45 PTO HP	Sonalika international	DI-47 RX Heavy Duty	43.2	445000.00
L-2	M/s Mahindra & Mahindra Ltd. (FES) Swaraj		Swaraj	744 FE	41.2	478240.00
L-3	M/s Tafe Motors & Tractors Ltd.		Eicher	485 Hydromatic	41.6	500000.00
L-4	M/s Escorts Ltd.		Farmtrac	45 F9	43.9	510000.00
L-5	M/s Mahindra & Mahindra Ltd.		Mahindra Bhumiputra	575 DI MKM DLX	40.07	513410.00
L-6	M/s CNH Industrial (I) Pvt. Ltd.		New Holland	4710 A	42.23	516786.00
L-7	M/s John Deere India Pvt. Ltd.		John Deere	5050 D V5	43.2	521950.00
L-8	M/s Same Deutz Fahr India (P) Ltd.		DEUTZ FAHR	Agromaxx 50	41.78	536000.00
L-9	M/s Tractors and Farms Equipment Ltd.		TAFE	MF-7250 DI	43.0	550000.00
L-1	M/s International Tractor Limited	More than 40 up to 45 PTO HP	Sonalika	DI 750 III HDM SI	46.1	480000.00
L-2	M/s Mahindra & Mahindra Ltd. (FES) Swaraj		Swaraj	855 FE	46.0	490560.00
L-3	M/s Escorts Ltd		Powertrac	Euro 50	45.3	499000.00

L-4	M/s Mahindra & Mahindra		Mahindra	555 DI Power+	48.0	530930.00
L-5	M/s CNH Industrial (I) Pvt. Ltd.		New Holland	3630 TX	46.0	548786.00
L-6	M/s Tractors and Farms Equipment Ltd.		TAFE	MF 5245 DI MAHAMAHAN	46.6	575000.00
L-7	M/s John Deere India Pvt. Ltd.		John Deere	5310 V3	49.6	603000.00
L-8	M/s Tafe Motors & Tractors Ltd.		Eicher	557	45.8	605000.00

Accordingly, the Committee has recommended that L-1 to L-6 in the category 35-40 PTO HP L-1 to L-5 in the category 40-45 PTO HP and L-1 to L-4 in the category 45-50 PTO HP to be given the Letter of Award and subsidy will be limited to L-1 price in each category.”

8. From the aforesaid table it is seen that the respondent No. 6 had gone up to L-5 in 35 up to 40 PTO HP, L-4 in 40-45 PTO HP and L-3 in 45-50 PTO HP and prior to the change in the scenario, the respondent No. 6 nowhere found its place within the 50% technically responsive bidders with competitive rates. Being ousted from the final standings of the qualified bidders, the petitioners filed these writ petitions challenging the subsequent action respondent No. 3 calling fresh competitive price bids once the price bids were opened as illegal and arbitrary and the consequential reliefs thereof.

9. The respondent No. 3, the Director of Agriculture, Assam filed the affidavit-in-opposition. It is stated that on the basis of the decision of the Hon'ble Cabinet notice inviting fresh competitive rates of tractor and matching implement dated 30.10.2019 was issued giving 15 (fifteen) days time to all technically responsive bidders to reduce their earlier price quoted against their technically approved tractors. The said notice dated 30.10.2019 also covers the petitioners. Just prior to completion of the time schedule for submission of fresh competitive rates i.e. on 15.11.2019 the petitioners alongwith 4 (four) others submitted a



representation which was disposed of rejecting the same by way of a speaking order dated 15.11.2019 as the demand was not in conformity with the decision of Hon'ble Cabinet. The subsequent notice dated 30.10.2019 was intended only for bringing the prices of tractor lower in the larger interest of the farmers and saving the expenditure of State exchequer in the form of lesser subsidy. But 5 (five) numbers of bidders including the petitioners did not participate in the said process. The subsequent act of asking for fresh competitive price bids resulted in substantial reduction of prices of tractors. Equal opportunities were given to all the technically qualified bidders and there were no discrimination to the bidders as sufficient opportunity were given to the petitioners and others who did not participate.

10. The respondent No. 3 in WP(C) 8696/2019 filed an additional affidavit bringing on record the act of participation of the petitioner in a similar situation when it came to the notice of the tender authority that petitioners alongwith other bidders quoted high rates as against the tender notice dated 07.07.2017 under Phase I CMSGUY scheme for tractors of 35 to 55 HP. The said prices were rejected and notice dated 26.02.2018 was issued calling for fresh competitive rates. The petitioners participated without any demur and lowered the prices and reaped the benefit by supplying 732 numbers of tractors.

11. The respondent No. 7 filed an affidavit-in-opposition wherein it is stated that it preferred WP(C) No. 2678/2019 challenging the act of rejection of its technical bid by the tender committee. Vide order dated 19.06.2019 the writ petition was allowed whereafter the bid of the respondent No. 7 was considered as technically responsive. However the respondent No. 7 confined itself only in 35-40 HP category due to some problem within it. But in the said category it was adjudged as L4 bidder. In the said affidavit in opposition the respondent No. 7 stated that the respondent No. 6, Escorts Limited also filed a writ petition before the court on 03.08.2019 seeking amongst other reliefs a writ of Mandamus directing the respondent authorities to allow re-submission of financial bids by all the technically responsive bidders pursuant to the tender notice dated 04.02.2019. The said writ petition was withdrawn vide order dated 09.12.2019.

12. The respondent No. 8, M/s International Tractors Ltd (Sonalika) in its affidavit-in-opposition stated that the Bid Evaluation Committee on 06.07.2019 evaluated the financial



bid. It was L1 in respect of 35-40 PTO HP and 40-45 PTO HP categories and L2 in the 45-50 PTO HP categories. As per the invitation for fresh competitive rates in view of the decision of the Cabinet meeting held on 21.10.2019 it submitted fresh price bids but the writ petitioners neither submitted fresh bids nor challenged the Cabinet meeting decision dated 21.10.2019. The evaluation Committee evaluated the fresh financial bids in its meeting held on 16.11.2019 and the respondent No. 8 was declared L2 in respect of 35-40 PTO HP and L1 in respect of 40-45 PTO HP and 45-50 PTO HP categories. The writ petitioner in WP(C) 8696/2019 was declared L3 in respect of 40-45 PTO HP category considering the earlier price bid. All the technically responsive bidders were given equal opportunity to submit their fresh price bids by the respondent State.

13. The respondent No. 6, Escorts Limited filed its affidavit-in-opposition supporting the action of respondent authority on the basis of the Cabinet decision. But as the writ petitioners did not respond to the notice inviting fresh competitive bids it cannot challenge the action of the respondent authorities. But in the said affidavit the respondent No. 6 was totally silent about filing of any writ petition and subsequent withdrawal of it.

14. Mr. Choudhury, the learned Senior counsel for the petitioners submits that the process adopted by the respondents more specifically the respondent No. 3 cannot at all be accepted inasmuch as the tender process which was yet to be concluded to its logical end cannot be interfered and that too after opening of the financial bid by calling fresh financial bids. Referring to the stand taken by the respondent No. 3 in its affidavit in opposition it is submitted by Mr. Choudhury that after the notice inviting fresh competitive bid was issued, the petitioner objected before respondent No. 3 explaining the manner in which the petitioner would be deprived of the benefit of the competitiveness as per the Cabinet decision in the meeting held on 21.10.2019 which was summarily rejected. Further, referring to the statement made in the said affidavit-in-opposition it is submitted that the respondent No. 3 had taken recourse to falsehood before this court inasmuch as the present petitioners along with 3 others did not participate in response to the notice dated 30.10.2019 as such question of opening of the bid of all the 11 technically responsive bidders including the petitioners does not arise at all. As per the minutes of the meeting dated 16.11.2019 the evaluation



committee shortlisted the bidders under clause 4 of the notice upon fresh quoted price as on 15.11.2019 wherein the names of the petitioners are also shown but they along with 3 other bidders did not quote any fresh price bids.

15. Mr. Choudhury referring to the affidavit-in-opposition filed by the respondent No. 7 submits that from the said affidavit-in-opposition new facts had emerged which the respondent No. 6 in its affidavit-in-opposition suppressed. The respondent No. 6 in fact filed writ petition on 03.08.2019 for a writ of mandamus directing the respondent authorities to allow re-submission of financial bid by all the technically responsive bidders pursuant to the tender notice dated 04.02.2019. The said writ petition was filed on 03.08.2019 and subsequently the same was withdrawn vide order dated 09.12.2019. The said suppression of material facts itself is an indication that the respondent State in order to accommodate the respondent No. 6 had made changes in the NIT dated 04.02.2019. The delay which was caused from the date of opening of the technical bid in pursuance of the notice dated 04.02.2019 and the date i.e. 06.07.2019 on which the financial bid was opened coupled with the fact of filing the writ petition which the respondent No. 6 failed to bring to the notice of this court itself indicate that the notice dated 30.10.2019 inviting for fresh competitive rates of Tractors as per the decision and direction of the Hon'ble Cabinet in its meeting held on 21.10.2019 is purely in order to accommodate the respondent No. 6. Otherwise the benefit due to the slump in the market and the discount offered by the manufacturing companies of tractors could have very well been given to the beneficiaries under clause 11 of the notice dated 04.02.2019.

16. Mr. Choudhury relied on the ratio in ***Larsen and Toubro Limited and Another Vs. Union of India and Others reported in (2011) 5 SCC 430*** and submits that in a tender process once the commercial bids are opened there remained no further scope of the rates being altered. The tender process requires openness, transparency and fair dealing. In the present case as per Mr. Choudhury all the requirements and procedures adopted by the respondent No. 3 and the Government of Assam in the tender process are liable to be set aside. In support of the said contention he relies on ***Dutta Associates Pvt. Ltd. Vs Indo Merchantiles Pvt. Ltd. and Others reported in (1997) 1 SCC 53***.

17. The terms and conditions in the NIT dated 04.02.2019 are sacrosanct and no one can

violate once the said terms and conditions are published and put to public domain. If bidders are to abide the terms and conditions of the NIT similarly the employer is also bound to accept the said terms and conditions without any deviation. In support of the said contention Mr. Choudhury relies on ***Ramana Dayaram Shetty Vs. International Airport Authority of India and Others reported in (1979) 3 SCC 489.***

18. The respondent No. 6 as per Mr. Choudhury, did not disclose about the filing of the writ petition seeking for the relief as referred hereinabove. It is the duty of the respondent No. 6 to disclose all material facts without any reservation even if such fact goes against him. The respondent No. 6 without disclosing the facts misled this court inasmuch as the writ jurisdiction rests in disclosure of true and complete facts. Suppression of material facts would result impossibility in functioning of the writ court. In support of the said contention Mr. Choudhury relies on ***KD Sharma Vs. Steel Authority of India Limited and others reported in (2008) 12 SCC 481.*** Accordingly, on aforesaid submission Mr. Choudhury sought for interference of the tender process seeking appropriate direction to the respondents.

19. Mr. Srinivasan, learned counsel for the petitioner in WP(C) 8696/2019 submits that as per the notice dated 04.02.2019 there is no provision for considering second financial bid. Referring to ***Central Coalfields Limited and Another Vs. SLL_SML (Joint Venture Consortium) and Others reported in (2016) 8 SCC 622*** it is submitted by Mr. Srinivasan that tender terms are to be duly followed. Pointing out another instance of act of misleading on the part of the respondent No. 3 Mr. Srinivasan reverting back to the minutes of the evaluation committee meeting held on 16.11.2019 submits that it was recorded that 5 technically qualified bidders out of 11 numbers in categories 35-40 PTO HP, 4 technically qualified bidders out of 9 bidders in 40-45 PTO HP and 4 technically qualified bidders out of 8 numbers in the category 45-50 PTO HP did not offer any new lower rates and accordingly the committee decided to accept their price quoted earlier on 06.07.2019 which is in gross violation of terms of tender condition. At the time of opening of the said subsequent price bids there were only 5 bidders present and the same is a specific violation of the CVC guideline as new entrants were considered who never even quoted their prices inasmuch as only



subsequent 5 bidders were present at the time of opening the price bids on the subsequent re-bid opening. Earlier bidders were not present. In support of the said violation and the force of the CVC guidelines Mr. Srinivasan relies on ***Haffkine Bio-Pharmaceutical Corporation Limited, A Government of Maharashtra undertaking through Manager Vs. Nirlac Chemicals through its Manager and Others reported in (2018) 12 SCC 790.*** Accordingly, as per his submission the whole process smacks malafide and liable to be set aside.

20. Mr. D Saikia, learned Senior counsel submits that the writ petitions are not maintainable inasmuch as the Cabinet decision dated 21.10.2019 is not challenged. Even for the sake of argument if the writ petitions are allowed till the Cabinet decision remains, the respondent No. 3 cannot go beyond the said Cabinet decision. Referring to the notice dated 30.10.2019 it is submitted that the benefit is given to the farmers and while doing so if there are any violation of tender conditions that does not matter and for that purpose no clause for calling second financial bid is required in the NIT dated 04.02.2019. The tender process was on level playing ground, it had its reasonableness and fair play. The decision and direction of the Hon'ble Cabinet remained un-challenged and as it was an exceptional situation for the Government the said decision was taken. On a specific query to Mr. Saikia he admits that the logical conclusion of the NIT dated 04.02.2019 was not arrived at when the Cabinet resolution was taken before 30.10.2019 i.e. the date on which the subsequent request seeking for fresh financial bid was issued. In fact while the tender process on the basis of notice dated 04.02.2019 was placed for its approval from the Government than only the Cabinet decision was taken. The delay factor was due to the Code of Conduct prevailing due to Parliamentary Election which ended in the month of May, 2020 and subsequent thereto the tender process on the basis of the NIT dated 04.02.2019 was slowed down as agricultural season was already over. It is further submitted that the earlier part of the NIT dated 04.02.2019 so far the technical qualification is concerned is kept as it is but modified the financial price bid of the earlier NIT dated 04.02.2019 and there cannot be any bar to that effect nor it vitiates the tender process initiated by notice dated 04.02.2019 when equal opportunities were given to all the technically qualified bidders.



21. Mr. Saikia submits that as per decision dated 21.10.2019 of the Cabinet, in order to give opportunity to all the technically responsive bidders, notice dated 30.10.2019 was uploaded in the website to submit fresh competitive price bids in view of slump in automobile sector. The representation of the petitioners which was received on 15.11.2019 was rejected by a speaking order dated 16.11.2019. Notice for fresh competitive price bid dated 30.10.2019 was uploaded in e-portal on 31.10.2019 and subsequently opened for all 11 (eleven) technically responsive bidders. The petitioners opted out from such participation. The respondent department gave equal opportunities to the petitioners and other technically qualified bidders to come up with fresh competitive price bids thereby reducing their price bids in the larger interest of the farmers and to the expenditure of the State exchequer in the form of lesser subsidy. Such action was with a view to give a level playing ground to all the technically qualified bidders. Similar exercise was carried on in Phase I as referred in the additional affidavit by respondent No. 3. The CMSGUY scheme is a beneficial one to the farmers and decision for fresh price bid and deviation from the terms and conditions of the NIT was due to larger public interest much higher than the one of the individual interest of the writ petitioners. The reason for such variation is very much discernible and the question of malafide against the writ petitioners does not arise as they were treated with equality and fairness with other technically qualified bidders.

22. Mr. Saikia relied ***Jagadish Mandal Vs. State of Orissa & Ors.*** reported in **(2007) 14 SCC 517** in support of his contention that court must be reluctant to exercise the power of judicial review if a decision is taken bonafide and in public interest even if it causes prejudice to a tenderer. He also relied ***Central Coalfields & Another Vs SLL-SML (Joint Venture Consortium)*** reported in **(2016) 8 SCC 622** and submits that if the decision relating to award of contract is bonafide and is in public interest court will not in exercise of power of judicial review interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. Further deviation can be allowed in public interest if applicable to all bidders. Citing the ratio that tender inviting authority is the best person to understand and appreciate its requirement and interpret tender documents, Mr. Saikia relied ***Montecarlo Ltd. Vs. NTPC Ltd*** reported in **(2016) 15 SCC 272** and goes on to submit that if such interpretation is not acceptable to the court that by itself is not a reason for



interfering with such interpretation. Finally relying **Ramana Dayaram Shetty Vs. International Airport Authority of India and Ors.** Mr. Saikia submits that opportunity should be given to everyone if there were changes in norms laid down initially. Accordingly it is his submission that the writ petitions are liable to be dismissed.

23. Mr. Das the learned Senior counsel for the respondent No. 6 submits that the respondent No. 6 was technically responsive bidder as per the minutes of meeting of the Evaluation Committee meeting dated 29.03.2019. The respondent No. 3 issued the notice inviting fresh competitive price bid on 30.10.2019 from the technically responsive bidders of the NIT dated 04.02.2019 in respect of their technically approved tractor models along with technically approved matching equipment on or before 15.11.2019 up to 1 pm. There was no immediate objection/ protest by the petitioner No. 1 against such issuance of notice seeking fresh price bid. The tender authorities accordingly proceeded with the fresh price bid quoted by the rest of the technically responsive bidders leaving aside the writ petitioners and opened the fresh price bids on the scheduled date and time and published the result on the basis of fresh financial bid. The petitioners did not qualify amongst 50% of technically responsive bidders and thereafter they filed this writ petition. During the said course of action already the tender process was finalised to its logical conclusion. There was no protest by the petitioner immediately after issuance of the impugned notice inviting fresh financial bid on 30.10.2019. Rather the writ petitioner in WP(C) 8696/2019 submitted a representation dated 14.11.2019 which was received by the department on 15.11.2019 placing certain suggestions and seeking clarifications regarding the distribution of tractor and matching implements. In the said representation the said writ petitioner in WP(C) 8696/2019 sought clarification as regard to the mode of payment to the manufacturers from the Government which according to the said writ petitioner was essential before submission of fresh price bid with revised prices as desired. Further in the said representation it was suggested to the tender authority to empanel all the technically responsive bidders and leave it to the beneficiaries to choose from amongst them instead of short listing of 50% of the technically responsive bidders as per clause 4 of the NIT dated 04.10.2019. The said representation was disposed of by speaking order dated 15.11.2019 rejecting the suggestions and claims made therein. From the contents of the representation dated 14.11.2019 it is the contention of Mr. Das that the



writ petitioner in WP(C) 8696/2019 had no grievance against the fresh invitation of bid rather willing to participate in the process. Accordingly, the petitioners are estopped in raising the grievance before this court when there is apparent delay and laches in coming to this court.

24. Mr. Das referring to the decision of the Hon'ble Cabinet in its meeting held on 21.10.2019 submits that the Cabinet consciously felt that if the tractors were procured at the rate quoted six months back before the slump in the market the beneficiaries as well as the Government would suffer by paying higher prices for the tractors which are otherwise available at lower price in the open market. Accordingly, a conscious decision was taken keeping in view the larger public interest to call for fresh financial bids from all technically responsive bidders at lower rates within a period of 15 days and thereafter completed the process expeditiously. Accordingly, if the list of final short listed bidders is interfered after the notice dated 30.10.2019 by this court the poor beneficiaries would be compelled to procure tractors at higher rates quoted by the writ petitioners and the same would be against the larger public interest. The respondent No. 6 being technically qualified bidder in respect of the tractor manufactured by it responded against the notice inviting fresh price bid dated 30.10.2019 and accordingly short listed along with other bidders offering lower price in all the three categories and it would be evident that the rates were much lower than the rate quoted by the writ petitioners. Accordingly, the larger public interest shall have to prevail over the private interest in a dispute involving private interest and as such the writ petitions are devoid of any merit and are liable to be dismissed.

25. The other learned counsel for the rest of the private respondents supported the submission made by Mr. Das and Mr. Saikia.

26. I have considered the submissions of the learned counsel. The Government of Assam in the Agriculture Department took up a mega scheme through Chief Minister Samagra Gramya Unnayan Yojana (CMSGUY) under the name and style of "Distribution of Tractor units at subsidized prices" to one farmer group in each village of the State. The tractors were divided into three groups i.e. (i) 35-40 PTO HP, (ii) 40-45 PTO HP and (iii) 45-50 PTO HP. Revised guidelines were issued entitling one applicant group against each revenue village to avail subsidy under the scheme. As part of phase I of the scheme, notice inviting tender was



issued. Both the writ petitioners participated along with other participants. As the rates quoted were found to be on higher side compared to the one against the tender issued by Char Areas Development Department for procurement of tractors and 3 implements so the Governing Council of Mega Mission Society of CMSGUY on the basis of findings of a Committee formed to determine the methodology decided to invite fresh rates from 11 (eleven) manufacturers of GOI approved model. The petitioners participated and successfully supplied a substantial numbers of tractors.

27. For the phase II of the scheme "Distribution of Tractors unit" NIT No. Agri/Engg/4772/CMSGUY-Phase II/2018-19/55 dated 04.02.2019 was issued seeking competitive rates of tractors and matching implements from GOI approved manufactures. On 26.02.2019 online technical bids were opened by the Evaluation Committee. The bids of the petitioners were found to be technically responsive including those of the private respondents. On 06.07.2019 the financial bids were evaluated of the technically qualified bidders and as per the criteria stipulated in Clause 4 of tender conditions the petitioners were within the most competitive rates offered by 50% of the technically responsive bidders.

28. The Bid Evaluation Committee in its meeting held on 15.10.2019 recommended rank wise brand/ model of the tractors alongwith matching implements and submitted the report to the Agriculture Department for necessary action. The Department placed the recommendation of Bid Evaluation Committee before the Cabinet on 21.10.2019 for approval. The Council of Ministers considered the fact that the price bids were quoted six months back and during this period subsequent to quoting of the price bids there was significant slump in demand leading to discount/ lowering of effective prices in the open market of the automobile sector. So in order to give the benefit of such slump in the demand and lowering of effective price to the farmers (beneficiaries) and the Government, the Cabinet directed the Agriculture Department to give opportunity to all technically qualified bidders to lower the price bids by giving 15 days to submit fresh price bids.

29. The respondent No. 3 issued notice dated 30.10.2019 seeking for fresh competitive rates and the subsequent financial bids were opened on 15.11.2019. "TAFE Motors and Tractors Limited" and "Tractors and Farm Equipment Ltd" are the writ petitioners. Comparison



of the standings of the petitioners prior to 30.10.2019 (date of issuance of subsequent notice) and 15.11.2019 (date of issuing of the subsequent price bids lowered one) are made hereinbelow:

MSGUY ASSAM PROJECT-PHASE-2 COMMERCIAL BID DETAILS

35-40 PTO HP			
Assam commercial bids (7/7/2019)			
Brand	Model	Offer price	Level
ITL	740 III CM	3,85,000	L1
Swaraj	843 XM	4,26,720	L2
SHAKTIMAN (Gromas)	45 DLX	4,59,536	L3
ACE (Skylight)	350 NG	4,65,999	L4
TMTL	368 USJ	4,70,225	L5
TAFE	MF 1035 Di MS V1	4,85,000	L6
CNH	3230	4,89,786	L7
John Deere	5042 D V3	4,97,989	L8
Escorts	PT 439 E1	5,09,000	L9
SAME	3040 E	5,10,932	L10
M&M	Yuvo 415 Di	5,16,500	L11

35-40 PTO HP					
Assam commercial bids (15/11/2019)					
Brand	Model	Offer price	Offer price	REDUCTION	Level

		(7/7/19)	(15/11/19)		
ACE (Skylight)	350 NG	4,65,999	381888	8411	L1
ITL	740 III CM	3,85,000	384000	1000	L2
Swaraj	843 XM	4,26,720	426720	0	L3
SHAKTIMAN (Gromas)	45 DLX		459536		L4
Escorts	PT 439 E1	5,09,000	465000	44000	L5
CNH	3230	4,89,786	468786	21000	L6
SAME	3040 E	5,10,932	469711	41221	L7
EICHER	368USJ	470225	470225	0	L8
TAFE	MF 1035	4,85,000	4,85,000	0	L9
John Deere	5042 D V3	4,97,989	4,97,989	0	L10
MAHINDRA	YUVO 415 DI	516500	516500	0	L11

40-45 PTO HP			
Assam commercial bids (7/7/2019)			
Brand	Model	Offer price	Level
ITL	Di 47 Rx HD	4,50,000	L1
Swaraj	744 FE	4,78,240	L2
TMTL	485 Hydromatic	5,00,000	L3
M&M	575 Di MKM DLX	5,13,410	L4
CNH	4710A	5,37,786	L5
Preet (Echo)	4549	5,43,888	L6



John Deere	5050 D V5	5,43,950	L7
TAFE	7250 Di PD PS	5,50,000	L8
Escorts	FT 45 F9	5,59,000	L9
SAME	Agro Max 50	5,65,000	L10

40-45 PTO HP					
Assam commercial bids (15/11/2019)					
Brand	Model	Offer price (7/7/19)	Offer price (15/11/19)	REDUCTION	Level
ITL	Di 47 Rx HD	4,50,000	445000	5000	L1
Swaraj	744 FE	4,78,240	478240		L2
EICHER	485 Hydromatic	5,00,000	5,00,000		L3
Escorts	FT 45 F9	5,59,000	510000	49000	L4
MAHINDRA	Mahindra Bhumiputra	513410	513410		L5
CNH	4710A	5,37,786	516786	21000	L6
John Deere	5050 D V5	5,43,950	521950	22000	L7
SAME	Agro Max 50	5,65,000	536000		L8
TAFE	MF 7250 DI	5,50,000	550000		L9
Preet (Echo)	4549	5,43,888			

45-50 PTO HP

Assam commercial bids (7/7/2019)			
Brand	Model	Offer price	Level
Swaraj	855 FE	4,90,560	L1
ITL	Di 750 III HDM Si	5,00,000	L2
ACE (Skylight)	550 Ng	5,29,999	L3
M&M	555 Di Power +	5,30,930	L4
TAFE	5245 Di MM	5,75,000	L5
Escorts	Euro 50	5,79,000	L6
CNH	3630 TX	5,89,786	L7
John Deere	5310V3	6,03,000	L8
TMTL	557	6.05.000	L9

45-50 PTO HP					
Assam commercial bids (15/11/2019)					
Brand	Model	Offer price (7/7/19)	Offer price (15/11/19)	REDUCTION	Level
ITL	Di 750 III HDM Si	5,00,000	480000	20000	L1
Swaraj	855FE	490560	490560	0	L2
Escorts	Euro 50	5,79,000	499000	80000	L3
MAHINDRA	555DI Power+	530930	530930	0	L4
CNH	3630 TX	5,89,786	548786	41000	L5
TAFE	5245 Di MM	5,75,000	575000	0	L6

John Deere	5310V3	6,03,000	6,03,000	0	L7
EICHER	557	605000	605000	0	L8
ACE (Skylight)	550 Ng	529999			

30. From the aforesaid comparison it is seen that prior to 30.10.2019 the petitioners were L6 and L5 in the categories 35-40 PTO HP and 45-50 PTO HP and within the most competitive rates offered by 50% of the technically responsive bidders satisfying clause 4 of the selection criteria in the tender document. But after quotation of the lowered price bids in terms of notice dated 30.10.2019 the petitioners were pushed down to L9 and L6 in the aforesaid categories resulting in ouster from the selection criteria on the basis of most competitive rates. On the other hand the respondent No. 6 (Escorts) who was not qualified under clause 4 prior to 30.10.2019 became L5, L4 and L3 in the categories respectively 35-40 PTO HP, 40-45 PTO HP and 45-50 PTO HP.

31. Mr. Choudhury submits that the procedure adopted amounts to adoption of hidden criteria inasmuch as there was no enabling provision in the ITB permitting the respondent State to invite fresh financial bid in respect of NIT dated 04.02.2019. Once the commercial/price bids were opened there was no further scope of altering the rates to cause prejudice to the petitioners. Because after opening of the price bid on 06.07.2019 prices were known to all the bidders. Taking advantage, bidders like respondent No. 6 and 11 who were not short listed earlier due to high price quoted by them could manage to quote lower price. The procedure adopted by the respondent No. 3 is against the rule of transparency and fairness in State's action and violative of Article 14 and 19(1)(g) of the Constitution of India. The respondent No. 3 vide the impugned action changed the rules of the game after the game was played which is not permitted under the law.

32. Mr. Choudhury in support of his submission relied **Larsen and Toubro Ltd Vs UOI (Supra)**. On perusal of the factual matrix it is found that it has no similarity with the one in the present case. As against the requirement of firm commercial offers, the petitioner Larsen



and Toubro Limited claimed the benefit of the foreign exchange variation component. The contract Negotiation Committee concluded the offer of the petitioner was non-responsive as the offer was variable considering the rate fluctuation of foreign exchange. The petitioner (L&T) withdrew its offer and offered quoted price without the foreign exchange rate variation. The contract Negotiation Committee declared however the bid of the petitioner (L&T) as non responsive and awarded the contract to the respondent No. 4 therein who was declared as L1. Petitioner after its writ petition being dismissed by Hon'ble Delhi High Court preferred the Special Leave Petition before the Hon'ble Supreme Court which was dismissed upholding the findings of the Hon'ble Delhi High Court on the ground that since once the commercial bids were opened there was no further scope of the rates being altered which is not so in the case of the present petitioners in the writ petitions who tried to make its bid responsive by withdrawing the initial offer and submitting the same with another offer. The said ratio is not applicable in the present case in hand.

33. Mr. Choudhury also relies ***Educomp Solution Ltd & Ors Vs. State of Assam*** reported in ***2006 (2) GLT 775*** wherein the Hon'ble Division Bench of this court held that if selection criteria in a tender process is not notified at the beginning, the same should be made known to all the interested parties before submission of the bids by duly informing them about the proposed criteria to be applied and the methodology in awarding the marks to evaluate the technical and commercial bids. The ratio of this decision also cannot be applied in the present case in hand considering the factual matrix in the present case inasmuch as it is not the case of non disclosure of the selection criteria in the NIT. Mr. Choudhury further relied ***Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd and Others*** (supra) wherein the Hon'ble Apex court held the tender process leading to acceptance of the appellant's tender therein was vitiated as the tendering authority considered some of the criteria beyond the scope of the tender notice. The subsequent action of the authority calling upon the appellant therein on the alleged ground he was the lowest tenderer among the eligible tenderers was held to be outside the tender notice. It was held that fairness demanded that the authority should have notified in the tender notice itself the procedure which they proposed to adopt while accepting the tender. This ratio is also not applicable in the present writ petitions.



34. Here it is the stand of the respondent No. 3 that the recommendation of the Bid Evaluation Committee in the meeting held on 15.10.2019 was placed before the Agriculture Department and in term of the said recommendation placed it before the Cabinet on 21.10.2019 for approval. The Cabinet considered the significant slump in demand of the automobile sector leading to deep discount/ lowering of the effective price in the open market. The price bids were received six months prior while there was no slump in demand of the automobile sector. The beneficiaries of the scheme are the farmers and as per the scheme the tractors are to be provided to the farmers on subsidized rate and lowering of the price would benefit the Government in the form of lesser subsidy. So the Council of Ministers directed the Agriculture Department to give opportunity to all technically qualified participating bidders to lower their price bids by giving 15 days to submit fresh price bids. Accordingly in view of the decision of the Cabinet the technically responsive bidders were requested to submit fresh price bids fixing 15.11.2019 up to 1.00 pm. The same was notified vide notification dated 30.10.2019 further notifying the price bids would be opened on 15.11.2019 at 2.00 pm.

35. The petitioners had not denied the fact of slump in demand of the automobile sector nor lowering of effective prices of tractors in the form of discount in the open market. But as apparent from the objection raised through the representation dated 14.11.2019 by the petitioners it was to the effect that the said act of inviting fresh price bids was purportedly done to accommodate the non qualified manufacturers. Rather the petitioners appreciated the good intent of the department passing the benefit to the farmers. Petitioners demanded confirmed payment timeline for the pending subsidy payment dues of phase I and similar timeline was demanded to be stipulated before the petitioners submit fresh price bids with revised prices as desired. It was also suggested that all the technically qualified bidders be empanelled leaving it to the beneficiaries to choose the product. This proposal was rejected on the ground that the same was not in conformity with the Cabinet decision.

36. The petitioners did not submit fresh price bids. The respondent No. 3 as per the Cabinet decision opened the fresh price bids following which the petitioners were almost ousted from the earlier standings as per requirement of selection criteria. While doing so the



respondent No. 3 considered the price bids of all the technically qualified bidders including the one of the petitioners quoted earlier leaving aside two bidders viz Ms. Skylight and M/s Echo Motors who were allowed to withdraw from the tender process. Mr. Srinivasan the learned counsel for the writ petitioner in WP(C) 8696/2019 wanted to project that such consideration of the price bids of the writ petitioners and opening of the fresh price bids in absence of the representative of the writ petitioners amounts to violation of the Central Vigilance Commission (CVC) guidelines and in support of the said submission he relies **Haffkine Bio Pharmaceutical Corp. Ltd** (Supra). Therein it was held by the Hon'ble Apex Court that as per the CVC guidelines the tender must be opened in the presence of the bidders or representative of the bidders who were present at the time when the bids were opened.

37. The petitioners' representatives were absent at the time of opening the fresh price bids and they did not even quote fresh price bids sought for vide notice dated 30.10.2019. The Hon'ble Apex Court as referred above held that tender must be opened in presence of bidders who were present. Now the present one is a case wherein it is specifically pleaded and submitted that the petitioners did not quote fresh price bids nor representative of petitioners were present at the time of opening. Had the respondent tender authority did not give a chance to know the details of the bids to the representative of the petitioners present at that relevant point of time than it would have been a case of violation of CVC guidelines. Accordingly in my considered opinion the submission of Mr. Srinivasan has no force.

38. Whether the procedure adopted by the respondent No. 3 amounts to adoption of hidden criteria and the same is bad there being no enabling provision in the ITB to seek for fresh price bids after the price bid was opened? In answering this issue the cause for taking such recourse to call fresh price bids from technically qualified bidders requires no further reference for the sake of brevity. The benefit arising out of reduction of prices was meant for the farmers and the Government itself. There are no denial of the prevailing market scenario of automobile sector at the relevant time when the Cabinet took the decision on 21.10.2019 by the petitioners. Mr. Choudhury wanted to project that such action was initiated by the respondent No. 3 in order to benefit the respondent No. 6 and in support of the said



contention Mr. Choudhury submits that the respondent No. 6 after it failed to remain amongst the 50% of the competitive bid value filed a writ petition on 03.08.2019 for a writ of mandamus directing the respondent authorities to allow re-submission of financial bids by all the technically qualified bidders. The said writ petition was withdrawn vide order dated 09.12.2019. The said fact was not disclosed by the respondent No. 6 in its affidavit-in-opposition which amounts to suppression of material fact and indication of the fact that the subsequent action was totally in order to give the benefit to the respondent No. 6. Mr. Choudhury however failed to bring on record the copy of the writ petition filed by the respondent No. 6 for examining the contents thereof by this court nor there is any pleading to that effect. Accordingly presumption goes against the writ petitioners that the contents of the writ petition if produced would go against the writ petitioners and as such I am of the considered opinion that filing of the writ petition and subsequent withdrawal of the same by the respondent No. 6 had no nexus in the subsequent act of respondent No. 3 in issuing the notice dated 30.10.2019 seeking for fresh price bids.

39. The notice dated 30.10.2019 for invitation of fresh competitive rates of tractors and matching implements is perused. It contains the reasoning seeking for such fresh competitive rates extracting the Cabinet decision dated 21.10.2019. It specifically requested the technically responsive bidders to submit fresh price bids for their technically approved tractor models etc as per prescribed format. It was also stipulated that the price evaluation for short listing of tractor manufacturers and matching implements would be as per the terms and conditions already laid down in the notice inviting tender published dated 04.02.2019. The fresh price bids were requested to be submitted on or before 15.11.2019 upto 1.00 pm and to be opened at 2.00 pm on that day. Thus the notice requested for participation of the technically qualified bidders which includes the petitioners also. So equal opportunity was given to all the technically qualified bidders to quote fresh competitive price bids. The petitioners did not challenge the said notice though an objection was raised through its representation on 14.11.2019, which was disposed of on 15.11.2019.

40. Thus the issuance of the subsequent notice dated 30.10.2019 by the respondent No. 3 was keeping in view the greater public interest which includes the benefit to the farmer

beneficiaries of the CMGSUY scheme and the Government itself. The savings in the Government exchequer is also a benefit which falls within the term of 'public interest' and as such the issue referred hereinabove is decided against the petitioners i.e. the procedure adopted by the respondent No. 3 does not amount to adoption of hidden criteria rather it is only in the larger public interest the same was done. There was no oblique purpose behind such action to benefit only the respondent No. 6.

41. ***In Rammana Dayaram Shetty Vs. The International Airport Authority of India and Others*** reported in ***AIR 1979 SC 1628/ (1979) 3 SCC 489*** the Hon'ble Apex Court held the power and authority of the Government while entering into contracts or granting other form of largen which is extracted hereinbelaow.

"12. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering in to contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was non-irrational, unreasonable or discriminatory"

42. The respondent No. 3 initiated the tender process on the basis of the notice dated 04.02.2019. After opening of the price bids of the technically qualified bidders the Bid Evaluation Committee took decisions and sent for approval by the Government in the Department of Agriculture. Therein due to reasons herein above stated the Cabinet took a decision on the basis of which fresh competitive price bids were called for from the technically qualified bidders. There was no enabling provision in the ITB of the NIT dated 04.02.2019 for such recalling of fresh competitive price bids after opening of the price bids. But the grounds on the basis of which the tendering authority had to go beyond the terms of NIT were informed to the petitioners and other technically qualified bidders which clearly shows that such deviation was for the larger public interest. The petitioners failed to discharge their burden in order to disprove the fact of larger public interest being involved in such deviation from the tender terms and conditions. Accordingly, I hold that the act of the respondent No. 3 in issuing the notice dated 30.10.2019 calling for fresh competitive price bids is based on valid principle and the same is not irrational, unreasonable or discriminatory towards the petitioners. There was no hidden agenda

behind such action of the respondent No. 3 and the action is in conformity with the ratio laid down in **Ramana Dayaram Shetty (supra)**.

43. Accordingly, after evaluation of the fresh competitive price bids the petitioners' position in the competitive price bids were pushed down resulting ouster from the group of 50% of the competitive price bidders. It is held that the deviation from the tender conditions was for larger public interest. In such a situation to what extent this court can exercise its jurisdiction of judicial review.

44. In **Jagadish Mandal Vs. State of Orissa (supra)** the Apex court held as follows:

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.....”

45. In **Central Coalfields Ltd vs. SLL-SML (Joint Venture Consortium)** (Supra) the Hon'ble Apex Court relying the scope of judicial review as held in Jagadish Mandal (supra) held as follows:

“43. Continuing in the vein of accepting the inherent authority of an employer to deviate from the terms and conditions of an NIT, and reintroducing the privilege of participation principle and the level playing field concept, this court laid emphases on the decision making process, particularly in respect of a commercial contract. One of the more significant cases on the subject is the three Judge decision in Tata Cellular Vs. Union of India which gave importance to the lawfulness of a decision and not its soundness. If an administrative decision, such as a deviation in terms of NIT is not arbitrary, irrational, unreasonable, malafide or biased, this court will not judicially review the decision taken. Similarly the court will not countenance interference with the decision at the behest of an unsuccessful bidder in respect of a technical or procedural violation.....”

46. Now it has been held that the respondent No. 3 for the sake of larger public interest had to issue the notice dated 30.10.2019 calling for fresh competitive price bids and the decision was not irrational, unreasonable and discriminatory as such though the petitioners were ousted from the selection criteria in terms of clause 4 of ITB of NIT dated 04.02.2019 but keeping in view the aforesaid ratio laid down by the Hon'ble Apex Court, I am not inclined to exercise the scope of judicial review insofar as the decision making process of

the Bid Evaluation Committee i.e. tender authority is concerned. Moreover equal opportunities were given to all the technically qualified bidders to quote the fresh competitive price bids and the question of violation of the fundamental rights of petitioners under Article 14 of the Constitution of India and Article 19 (1)(g) does not arise.

47. The learned counsel for the respondents urged that the writ petitions are not maintainable as the petitioners failed to challenge the Cabinet decision dated 21.10.2019 whereby it was resolved for calling fresh price bids. Unless the Cabinet decision is set aside by a declaration the respondent No. 3 is bound by the same. The reliefs sought for are consequential one flowing from the declaration that the Cabinet decision is void. Mr. Choudhury the learned Senior counsel countered the said submission that the Cabinet decision was duly notified by the notice dated 30.10.2019 whereby the respondent No. 3 requested all technically responsive bidders in the tender process initiated under NIT dated 04.02.2019 to submit their responsive fresh competitive price bids. The petitioners are persons affected by the said Cabinet decision and as the same was notified to the petitioners being the persons affected as such the decision has crystallised to Government action which is under challenge in this writ petition. In support of the said contention, Mr. Choudhury relies the Constitutional Bench decision of the Hon'ble Supreme court, **Bechhitar Singh Vs State of Punjab and another** reported in **AIR 1963 SC 395**.

48. The submissions made by the learned counsel are taken note of. In **Bechhitar Singh** (supra), the Hon'ble Supreme court decided the required ingredients for an order of the State Government under Article 166 of the Constitution of India including conversion of action taken by Council of Ministers to action of State. The relevant portion of which is extracted hereinbelow:

“10.Thus it is of the essence that the order has to be communicated to the person who would be affected by the order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over against and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.”

49. Admittedly in the notice dated 30.10.2019 the decision of the Cabinet dated 21.10.2019 was extracted and the petitioners being persons interested in the notice and also being affected under such circumstances the decision of the Cabinet consisting of Council of Ministers was duly notified satisfying the requirements as held in **Bechhitar Singh** (supra). The said decision of the Cabinet dated 21.10.2019 was converted to action of the State once the notice dated 30.10.2019 with the decision of the Cabinet was published. Accordingly the submission of Mr. Choudhury has force. The writ petitions are maintainable inasmuch as it is the actions of the State which are challenged and the court has the power to pass appropriate order against the actions of the State.



50. In view of the discussions made hereinabove, I donot find any merit in these writ petitions which stand dismissed. Interim order passed stands vacated. No costs.

JUDGE

Comparing Assistant