



GAHC010051552022

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

Case No. : WP(C)/1876/2022

M/S J C STATIONERY (P) LTD
(U21012AP2008PTC060893), A COMPANY INCORPORATED UNDER THE
CIMPANIES ACT, 1956, BEING REP. BY ITS DIRECTOR MR. DINAKAR
THYAGARAJ, S/O. HEMAN RATNAKAR THYAGRAJ, HAVING ITS REGD.
OFFICE AT R.S. NO.220/1, GANNAVARAM ROAD, PUNADIPADU,
KANKIPADU MANDAL, ANDHRA PRADESH, PIN-521151.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY COMMISSIONER AND SECREETARY, GOVT. OF ASSAM, DEPTT. OF
ELEMENTARY EDUCATION, DISPUR, GUWAHATI-06.

2:AXOM SARBA SIKSHA ABHIYAN MISSION

ASSAM
KAHILIPARA REP. BY THE MISSION DIRECTOR CUM CHAIRMAN STATE
LEVEL PURCHASE COMMITTEE.

3:THE MISSION DIRECTOR

SSA
ASSAM.

4:THE STATE LEVEL PURCHASE COMMITTEE

REP. BY THE CHAIRMAN.

5:M/S PP BAFNA VENTURES PVT. LTD.
REGISTERED ADDRESS- 111
WORLD TRADE CENTRE
TOWER 1



KHARADI
PUNE-411014. ALTERNATIVE ADDRESS- 86
MARKET YARD
GULTEKADI
PUNE
MAHARASHTRA-412037.

6:M/S PRAGATI PAPER CONVERTERS

REGD. ADDRESS- TEGHERAI MAIN ROAD
JAGIROAD
ASSAM-782413

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/1877/2022

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Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

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Advocate for : SC

ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner :

Shri KN Choudhury, Sr. Advocate.
Shri R. Chakraborty

Advocates for the respondents : Shri B. Choudhury, SC, SSA
Shri PR Mahanta, R-5
Shri R. Borpujari, R-6

Date of hearing : **27.03.2023 & 28.03.2023**

Date of Judgment : **06.06.2023**

JUDGMENT & ORDER

The issue of maintaining transparency and fairness in matters of distribution of State largesse has once again been raised by means of the present writ petitions. While the petitioners allege that by misinterpreting certain clauses of the tender document there has been violation of the established principles of law pertaining to distribution of State largesse, the version of the respondents is that the clauses of the bid document have been correctly interpreted and no infirmity or illegality has been committed in the process and therefore there is no requirement of any interference by this Court in exercise of its powers of judicial review.

2. Before going to the issue which is required to be adjudicated, it would be convenient if the facts of the case are narrated in brief.

3. Three numbers of writ petitions have been filed by the same petitioner with regard to a notice inviting tender dated 17.01.2022 issued by the Assam Sarva Shiksha Abhiyan Mission for procurement of Evaluation and Practice books. There are three categories in the said supply, namely, supplies for Class I and II [WP(C)/1876/2022], Class V [WP(C)/1878/2022] and Class VI & VIII [WP(C)/1877/2022].

4. It is the case of the petitioner that it has got a manufacturing plant in the State of Andhra Pradesh to manufacture notebooks, colour print etc. and was eligible for participation in the aforesaid tender process. The petitioner had participated in the aforesaid tender process for all the three categories. The petitioner expected that it being an experienced and reputed manufacturer of notebooks etc., it would be allotted the works. However, the Tender Evaluation Committee vide the minutes dated

25.02.2022 had rejected the bid of the petitioner as being technically non-responsive. In the said evaluation, the bids of the respondent nos. 5 and 6 were held to be technically responsive.

5. It is the case of the petitioner that by wrong interpretation of the qualification criteria appearing in Section VI-A, the decision to hold the technical bid of the petitioner as non-responsive has been taken. The petitioner alleges that there is misinterpretation of Clauses 3 (vi)(x)(xi) of Section VI-A read with Clause 11.2(a) of bid document. The writ petitions have accordingly been filed by challenging the note dated 25.02.2022.

6. On the other hand, the respondents contended that the protection made by the petitioner in these three cases are not correct. The very allegation on which the writ petition has been structured, namely, misinterpretation of the clauses of Section VI-A of the bid document is incorrect. The respondents further contended that the technical bid of the petitioner was not supported by valid documents and therefore the rejection of the bid of the petitioner on at the stage of technical evaluation was correctly done.

7. This Court has been apprised that though a prayer was made for an interim order on the ground that at the time of filing of the writ petition, no final orders of allotment was issued, the learned Single Judge vide order dated 15.03.2022 was not inclined to pass a blanket order of stay and had made an observation that all further action would be subject to the outcome of the writ petitions. This Court has also been apprised that against the order dated 15.03.2022 of the learned Single Judge, the present petitioners had preferred three numbers of writ appeal, being WA/139/2022, WA/157/2022 and WA/158/2022 in which the Hon'ble Division Bench had passed an order dated 27.05.2022 whereby the matters were remitted back to the learned Single Judge. However an observation was made that no bills are to be released to the suppliers till the disposal of the writ petition. It has been informed that thereafter, final orders of supply were issued and the learned counsel for the private respondents have

informed that the supplies have been done in terms of the contract. In fact, three numbers of Interlocutory Applications have been filed by the private respondents for directions to release payments.

8. I have heard Shri KN Choudhury, learned Senior Counsel assisted by Shri R. Chakraborty, learned counsel for the petitioner. I have also heard Shri B. Choudhury, learned Standing Counsel, SSA whereas Ms. PR Mahanta, learned counsel has appeared for the respondent no. 5 and Shri R. Borpujari, learned counsel has appeared for the respondent no. 6. The records placed before this Court have also been carefully examined.

9. Shri Choudhury, the learned Senior Counsel for the petitioner has drawn the attention of this Court to the Bid Document. He submits that under Clause 11, the description of the documents to establish the eligibility and qualification of the bidders have been stated. As per Clause 11.2(a), the bidder is required to have the minimum capacity of supplying similar quantity or more within the specified time limit in the NIT and the same is required to be authenticated by a certificate by the competent authority and the supply capacity for the last three financial years turnover is required to be mentioned. The years have been identified as 2018–19, 2019–20, 2020–21. Under sub Clause (b), the minimum average annual turnover of a bidder is to be Rs.1.81 Crore during the last three financial years which have been mentioned above. Under clause 16, clarifications could be sought for from the bidders.

10. Submitting that the petitioner had fulfilled all the requirements of the bid document, the learned Senior Counsel has referred to an Annexure 13, which is a Capacity Certificate dated 27.01.2022 issued by the Government of Andhra Pradesh, Department of Industries. The data for the relevant three years have also been given in the said Certificate. Since the controversy would revolve around the year of 2019–20 regarding the annual turnover which would be discussed later in the judgment, the learned Senior Counsel has drawn the attention of this Court to an Annexure 6 of the

writ petition which pertains to supplies for year 2019–20 for an amount of Rs. 7.22 crores (approx).

11. With regard to the aforesaid period 2019–20, the learned Senior Counsel has also referred to Annexure 7A which is a communication dated 12.01.2022 in which it has been certified that the petitioner had supplied notebooks in the year 2019–20 for an amount of Rs.17.98 crores (approx). Reference has also been made to Annexure 12, which is the Solvency Certificate dated 22.12.2021 issued in favour of the petitioner.

12. Shri Choudhury, the learned Senior Counsel submits that from the impugned minutes of meeting dated 25.02.2022, it is revealed that the bid of the petitioner was rejected at the technical evaluation on the following grounds.

- i. Information regarding past supply for three years pertains to supplies to the Government Department for two years only and for one year, it was to a private unit.
- ii. The Completion Certificate which was submitted was from private organization instead of Government / Semi-Government Offices.
- iii. The Bank Solvency Certificate was submitted in favour of the State Project Director, Samagra Shiksha, Vijayawada, Andhra Pradesh.

13. The learned Senior Counsel submits that none of the three grounds on which the bid of the petitioner has been rejected at the technical stage are factually correct and therefore not tenable in law. He further submits that there has been gross misinterpretation of the relevant clause of the tender document. So far as the first ground is concerned, it is submitted that the supply order dated 23.08.2019 annexed as Annexure 6 pertains to the year 2019–20 for an amount of Rs.7.22Crores (approx) and therefore the aforesaid ground is not tenable. He submits that for the period in question, there are two supply orders and even if the supply made to ITC is overlooked, the supply order dated 23.08.2019 to the Andhra Pradesh Social Welfare

Residential Educational Institutions Society cannot be overlooked.

14. As regards, the second ground, it is submitted that the Government of Andhra Pradesh has issued a Capacity Certificate whereby the capacity to manufacture for the relevant three years has been mentioned.

15. With regard to the Solvency Certificate, the learned Senior Counsel for the petitioner has submitted that the certificate dated 22.12.2021 at Annexure 12 meets the requirement substantially which has been given in the bid document. He submits that the description/format of such certificate was vague and therefore the same cannot be rejected on the ground that it was not in a particular format.

16. The learned Senior Counsel accordingly submits that the impugned decision by which the bid of the petitioner was rejected at the technical stage be interfered with and a fresh evaluation be made regarding the price offered by the bidders. In support of his submissions, the learned Senior Counsel for the petitioner has relied upon the case of ***W.B. State Electricity Board Vs. Patel Engineering*** reported in **(2001) 2 SCC 451**. In the said case, a bidder should not be allowed to suffer because of certain errors in the tender document over which the bidder will not have any control.

17. *Per contra*, Shri B. Choudhury, the learned Standing Counsel, SSA has submitted that the facts projected in the writ petition and the submissions made on behalf of the petitioner are not liable for any consideration. He submits that the impugned decision has been rendered after consideration of all the relevant factors and there is no allegation of any bias or *mala fide* in such decision. He submits that the conditions in the tender documents are required to be scrupulously followed, which has been done in the instant case.

18. By drawing the attention of this Court to the supply order of the year 2019–20, it is submitted on behalf of the Mission that a bare perusal of the same would show that the said order dated 23.08.2019 is with regard to certain supplies made to a Society. He submits that when the requirement is with regard to supply to be made to

Government Department, such supplies to any private entity cannot meet the requirement of the tender conditions.

19. Similarly, with the ground of the Solvency Certificate, he submits that even a cursory glance of the Certificate annexed would reveal that the same has been issued not by any Bank, but by a Thrift and Credit Society. That apart, the Certificate has been given with respect to a tender purpose pertaining to the Samagra Shiksha, Vijayawada in the State of Andhra Pradesh. The learned Standing Council accordingly submits that such Certificate cannot meet the requirement of the tender process. He further submits that it has got nothing to do with the format but with the contents of the Certificate. He submits that the entire purpose of requiring such a Solvency Certificate is to ascertain the financial soundness of the bidder as the work in question is a major one which involves a huge amount of money.

In support of his submission, Shri Choudhury, the learned, Standing Counsel of the Mission relies upon the case laws of ***Silppi Constructions Contractors*** reported in **(2016) 16 SCC 489** and ***Agmatel India Private Limited*** reported in **(2022) 5 SCC 362**.

20. The Hon'ble Supreme Court in both the aforesaid cases has laid down the importance of adhering to the tender conditions by the bidders and non-conformity with any such tender conditions is required to be dealt with in accordance with law.

21. Shri Borpujari, learned counsel for the respondent no. 6 has endorsed the submission of the learned Standing Counsel of the Department. By referring to the prayer made in the writ petition, he submits that there is no prayer / grievance *qua* the decision declaring the technical bids of the private respondent to be responsive. He submits that Clause 11.2 (a) (b) & (c) are mandatory requirement which apparently have not been fulfilled by the bid offered by the petitioner. Referring to Section VI-A of the bid document which is with regard to the Qualification Criteria, he submits that Clause 3(vi) pertains to the Bank Solvency Certificate and Clause 3 (xi)

pertains to Certificate of Completion of delivery from Government/Semi-Government Offices. He has also referred to Section 9 of the bid document which has laid down a proforma for Performance Statement for the last three years and submits that such proforma is to be filled up by the bidder by scrupulously following the eligibility criteria. In the instant case, he submits that the Solvency Certificate of the petitioner is by a Thrift and Credit Society which cannot be equated with the Bank. He submits that even if a liberal interpretation is given to the expression "Bank" and a Private Bank is included, the same would also not meet the requirement as the certificate in question is issued by a Society. That apart, he submits that the said Certificate was for another tender process pertaining to the State of Andhra Pradesh and therefore the same would not be acceptable for the present work in question.

22. Shri Borpujari, the learned counsel further submits that there is no allegation of any *mala fide* against the authorities or in the decision making process and there is no complaint regarding the private respondents. It is also submitted that the supplies have already been made and only the payment has been held up because of the present proceeding.

23. Shri Borpujari, in support of his submissions relies upon the case of ***N.G. Projects Limited*** reported in ***(2022) 6SCC 127***, in which the earlier case of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail*** reported in ***(2016) 16 SCC 818*** has been relied upon. Reliance has also been placed upon the case of ***Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers. Vs. New J.K. Roadways, Fleet Owners and Transport Contractors and Others.*** reported in ***(2020) SCC OnLine SC 1035***.

24. It is submitted that apart from the fact that no illegality has been able to be demonstrated in the decision-making process, the authorities are to be given some elbow space so that there can be free play in joints.

25. Ms. Mahanta, the learned counsel for the respondent no. 5 adopt the

submissions made by Department and by Shri Borpujari the learned counsel for the respondent no. 6. She also submits that the work entrusted to her clients has been completed in all respects without there being any complaints and only the payments have been held up due to the present proceeding.

26. Rejoining his submission, Shri Choudhury, the learned Senior Counsel for the petitioner has submitted that the State Level Purchase Committee has acted in an unreasonable manner in rejecting the technical bid of the petitioner. He submits that even ignoring the Certificate relating to the ITC, the other Certificate cannot be overlooked as the Society in question would be deemed to be a Government Department. As regards the Solvency Certificate, he submits that the Society in question was a Financial Society and in absence of any format and the description being vague, the Certificate would not have been rejected.

27. He also submits that taking into account the nature of the procurement, which is supply of books, he submits that strict interpretation of the tender conditions may not be necessary. As regards the case laws cited by the respondents, he submits that the embargo on passing interim order which was laid down in the case of ***N G Constructions (Supra)*** has been explained in a subsequent case of ***Jai Bholenath Construction Vs. The Chief Executive Officer, Zilla Parishad, Nanded & Ors.*** reported in ***2022 LiveLaw (SC) 542***. He further submits that the decision rendered in the case of ***N G Constructions (Supra)*** pertains to an amendment of the Specific Relief Act wherein a particular clause has been inserted and such observation are to be limited only to works of infrastructure.

28. Reliance has also been placed upon the case of ***Ramana Dayaram Shetty Vs. International Airport Authority*** reported in ***1979 AIR 1628*** with regard to the liberal construction of the expression "Government". This submission has been made with regard to the objection with the certificate issued by the Society.

29. The rival submissions made by the learned counsel for the parties have been

duly considered and the materials placed before this Court have been carefully examined.

30. The issue which requires consideration and determination is the legality of the decision making process of the State Level Purchase Committee in its meeting held on 25.02.2022, by which, the technical bid of the petitioner was rejected.

31. As noted above, the aforesaid rejection where mainly on the following grounds, namely, the information or prior supplies for three years were to be from Government Department wherein such information from Government Department was only for two years. The Completion Certificate was from a private organization instead of Government/Semi-Government Offices. The Bank Solvency Certificate was in favour of certain other entity.

32. Before venturing to decide on the issues which has arisen for consideration, this Court is aware of the limited ambit and scope for exercise of judicial review in matters pertaining to tenders and distribution of State largesse. It is a settled law that in such matters and for that matter in exercise of powers conferred by Article 226 of the Constitution of India, it is only the decision making process which is liable to be examined. It has further been clarified that it is the legality of such process and not the soundness which can be matters of adjudication by this Court, exercising writ jurisdiction.

33. The State Level Purchase Committee in the meeting had rejected the bid of the petitioner at the technical stage by citing three reasons which have been noted above. The first reason is with regard to the information for the last three years regarding supply to Government Departments. The documents which were before the Committee and have been placed on record before this Court would reveal that the information was required for the last three years, which was to be in connection with supplies to Government Departments. However, for the year 2019–20, such supplies were to an entity which cannot be said to be a Government Department. Though

much emphasis has been laid upon the amount involved in the said supply, namely Rs.7.22 crores (approx.), the requirement is not on the quantity involved but with regard to the beneficiary of such supplies. Similarly, the requirement of Completion Certificate is apparently not met by the petitioner as a private organization is involved instead of Government / Semi-Government Offices.

34. So far as the Bank Solvency Certificate is concerned, apparently, the Certificate has not been issued by any Bank. Even if a liberal view is taken that the Bank in question may not be a Nationalized Bank, the entity in question is a Society which cannot be equated with a Bank. That apart, even overlooking this aspect of the matter in its entirety with regard to the expression "Bank", the said Certificate has been issued with regard to a tender process pertaining to the State of Andhra Pradesh. The entire object of a Solvency Certificate being to have a *prima facie* satisfaction on the financial health of the bidder, such objective shall not be served by means of a Certificate of the present nature which has been submitted by the petitioner.

35. An argument has been sought to be developed on behalf of the petitioner that the interpretation given to the clauses of the tender with regard to the eligibility criteria are not correct. Such argument does not appear to be acceptable inasmuch as, the interpretation of the respondents regarding the Bank Solvency Certificate and the Completion Certificate appearing in Section VI-A of the tender document appears to be a reasonable one. That apart, it is a settled law that the author of the tender document would be the best person to interpret the various clauses of the tender and until and unless such interpretation is absolutely unreasonable and *ex-facie* fallacious, this Court shall not embark upon the same field which is within the exclusive domain of the authorities. Interference may be called for only in exceptional case where such interpretation is wholly unreasonable and against the plain meaning.

36. In the case of ***Caretel Infotech Limited Vs. Hindustan Petroleum Corporation Limited and Ors.*** reported in ***(2019) 14 SCC 81***, the Hon'ble

Supreme Court has laid down that even in case of Government contracts, an unnecessary and close scrutiny of minute details contrary to the view of the tendering authority is unwarranted. In the said case, the emphasis to be given to the author of the tender document in interpreting any terms of the contract has been reiterated. For ready reference, paragraphs 37 and 39 are extracted hereinbelow-

“37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and Public Sector Enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the Public Sector.

38. ...

39. Another aspect emphasised is that the author of the document is the best person to understand and appreciate its requirements. In the facts of the

present case, the view, on interpreting the tender documents, of respondent No. 1 must prevail. Respondent No. 1 itself, appreciative of the wording of clause 20 and the format, has taken a considered view. Respondent No. 3 cannot compel its own interpretation of the contract to be thrust on respondent No. 1, or ask the Court to compel respondent No. 1 to accept that interpretation. In fact, the Court went on to observe in the aforesaid judgment that it is possible that the author of the tender may give an interpretation that is not acceptable to the Constitutional Court, but that itself would not be a reason for interfering with the interpretation given. We reproduce the observations in this behalf as under:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”

37. Though the learned Senior Counsel for the petitioner may be correct that the decision rendered by the Hon'ble Supreme Court in the case of ***N G Constructions (Supra)*** pertains only to infrastructure project and has been rendered in view of the amendment in the Specific Relief Act and which has also been explained in the subsequent decision of ***Jai Bholenath Constructions (Supra)***, this Court is not required to go to that aspect inasmuch as, there was no interim restraint for the work in question and as submitted by the learned counsel for the respondents, the supplies are completed in all respects and only the payments are held up in view of the orders

of this Court.

38. In the case of ***Central Coal Field Limited and Anr. Vs. SLL-SML (Joint Venture Consortium) and Ors.*** reported in ***(2016) 8 SCC 622***, the Hon'ble Supreme Court, after discussing all the relevant case laws had laid down that normally, 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 any contractual dispute. It has further been held that such functions are essentially commercial in nature where the principles of equity and natural justice stay at a distance.

39. This Court has also found force in the argument made on behalf of the respondents that no allegations of *mala-fide* has been made in the decision making process. No allegations have also been made against accepting the bids of the private respondents to be technically responsive.

40. Under the aforesaid facts and circumstances and discussions made above, this Court is of the opinion that no case for interference has been able to be made out by the petitioner for exercise of extra-ordinary jurisdiction by this Court under Article 226 of the Constitution of India. In that view of the matter, all the three petitions stand dismissed. Consequently, the interim restrictions regarding holding back of the payments for the supplies made by the respondent nos. 5 and 6 stand vacated.

41. No order as to cost.

JUDGE

Comparing Assistant