

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 298 of 2023

Date of Decision: 04.09.2023

M/s Kota Dall Mill

Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

For the Petitioner(s) : Dr. N. Mozika, Sr. Adv. with
Mr. M.L. Nongpiur, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Ms. S. Laloo, GA
Ms. A. Thungwa, GA
Mr. A.H. Kharwanlang, Addl. Sr. GA

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

ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT AND ORDER (ORAL)

1. The present writ petition has been filed challenging certain terms and conditions of the Expression of Interest (EOI), floated by the Director, Directorate of Social Welfare, Meghalaya, Shillong. The

contentions of the writ petitioner are that the said terms, militate against the National Food Security Act, 2013 and the General Financial Rules, 2017.

2. Dr. N. Mozika, learned Senior counsel assisted by Mr. M.L. Nongpiur, learned counsel for the petitioner submits that the EOI dated 18.08.2023, on the face of it is faulty, inasmuch as, first the schedule which is given therein, refers to the schedule which has since been amended, vide notification dated 25.01.2023, with regard to the prescription of nutritional standards. The other grievance as put up by the petitioner is with regard to the qualification points, which he submits is heavily in favour of the suppliers or bidders who have factories in the North Eastern States or who have supplied Micro Nutrients Fortified Dense Food to the Department for the last 3(three) years.

3. It is submitted that 85 points are necessary for qualification as per the EOI, but 15 points of the 100 possible points thereof, being in favour of the locally situated bidders, other bidders including the petitioner have been put in a disadvantageous position for qualifying in the said technical bid. Another contention that has been raised, is with regard to the requirement at Clause-6 of the EOI, which mandates

that documents, relating to past experience for supply of Micro Nutrients Fortified Dense Food to the Social Welfare Department at Rs. 10 Crores for the past 3(three) years, the years, 2019-20, 2020-21, 2021-22, be given. It is submitted that at present, the financial year 2022-23 is already over, as such there is no basis or logic in the fixation for the past 3(three) years as 2019-20, 2020-21, 2021-22. A grievance has also made, with regard to Clause-11 of the EOI, which gives preference to the qualified bidders having factories situated in Meghalaya. Further submissions are that there has been no production description of the materials to be supplied, and also that the entire EOI consists of a single bid system i.e. only a technical bid. In this backdrop he submits that, the EOI being faulty, the respondents are liable to be directed to retract or recall, and correct the same in accordance with the National Food Security Act, and in accordance with law.

4. Mr. A. Kumar, learned AG assisted by Ms. S. Laloo, learned GA at the outset submits that the absence of the financial bid is due to the fact that the maximum price of the materials is as per the rate fixed by the Government of India, as such all bidders who pass the technical bid, shall automatically stand qualified. It is further submitted

that the tender period is for 5(five) years, and the requirements being dynamic, the orders will be as per the requirements and as such, financial bids will not be feasible, and the suppliers who are qualified, depending on their capacity will be awarded suitable work orders.

5. The learned AG has drawn the attention of this Court to the Price Details, given in the EOI, more specifically at Clause-1 thereof, which contains the conditions with regard to the cost fixation that the bidders must be willing to adhere to. The learned AG has then referred to the other terms of the EOI at II (a), wherein it is provided that at any time prior to the deadline for submission of bids, the purchaser may for any reason, whether at its own initiative, or in response to a clarification requested by a prospective bidder, modify the bidding documents by amendment. He submits this clause on a clarification being sought by the bidders, the respondents are enabled to modify the bidding documents by amendment. He also refers to Clause (d) with regard to the Amendment of Bidding Documents, in response to a request reasonably made by prospective bids or bidders.

6. It is also submitted at the bar by the learned AG, that any amendment that has been brought in the Food Security Act with regard to the schedule, will be suitably inserted into the modified EOI, and

that if the bidders have any grievances, the same can be addressed to the respondents, who shall take up the same in right earnest.

7. Having heard the learned counsels for the parties, it is seen that the grievances of the writ petitioner at this stage, should and can be addressed by the respondents, as it involves a matter of great importance, which involves the food security of children and mothers.

8. This Court is not inclined to issue any interim orders for the suspension of the tender process at this stage but, however, the petitioner is allowed to prefer a representation on the grievances as made out in the writ petition, before the respondents, before the opening of bids which has been scheduled on 08.09.2023. Such representation shall be preferred by 06.09.2023, which shall be disposed of by the respondents positively by 07.09.2023.

9. With the above directions, this writ petition stands disposed of.

JUDGE

Meghalaya
04.09.2023
"V. Lyndem-PS"