

Serial No. 22
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 133 of 2024

Date of Decision: 20.05.2024

Megindia Medical Supplier
Through its Proprietor (i.e., Mr. Rakesh Giri),
having its registered address at Fancy Valley,
Tura, West Garo Hills, Meghalaya,
PIN: 794 001

:::Petitioner

-Vs-

1.State of Meghalaya
Represented by its Commissioner and
Secretary, Department of Health Shillong,
Meghalaya

2.Tura Civil Hospital
Through its Superintendent
Tura, West Garo Hills, Meghalaya

3.Department of Health Services (M.I)
Through its Director,
Shillong, Meghalaya

4.The Tender Committee
Through its Member(s)
Tura Civil Hospital, Tura,
West Garo Hills, Meghalaya

5.The Deputy Commissioner
Tura, West Garo Hills District,
Meghalaya

6.Areng Medical Supplier
Tura, West Garo Hills District,
Meghalaya

:::Respondents

Coram:

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

Appearance:

For the Petitioner/Appellant(s) :Mr. K. Paul, Sr. Adv. with
Mr. C. Garg, Adv.
Mr. S. Chanda, Adv.
Ms. K. Decruse, Adv.

For the Respondent(s) :Mr. A. Kumar, AG with
Mr. A. Kharwanlang, Addl. Sr. GA (For R 1-5)
Dr. N. Mozika, Sr. Adv. with
Ms. K. Goyal, Adv.
Mr. V. Kapoor, Adv.
Mr. S. Datta, Adv.
Mr. A. Sharda, Adv.
Mr. M.L. Nongpiur, Adv. (For R 6).

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

JUDGMENT AND ORDER (ORAL)

1. This application under Article 226 of the Constitution has been preferred questioning the action of the respondents No. 1-5, in awarding the tender dated 03.10.2023, to the respondent No. 6 for supply and

installation of a 1.5 TESLA MRI Machine on Turnkey basis at Tura Civil Hospital, inspite of the tender committee having approved the bid of the petitioner.

2. The brief facts necessary are that the respondent No. 2 (Superintendent of Tura Civil Hospital), on 03.10.2023, had floated a tender inviting bids from eligible and qualified bidders for supply and installation of a 1.5 TESLA MRI Machine on Turnkey basis at Tura Civil Hospital. In response to the tender, only two bids were submitted, one by the petitioner and the other by the respondent No. 6, and the said bids were opened on 08.11.2023. A Tender Committee or Purchase Committee in this case, which had been duly constituted as per the directions of the Head Department, through the Executive Committee of the Tura Civil Hospital Management Society (HMS), then approved the purchase of the MRI machine to be supplied by the petitioner. However, it appears thereafter, the matter was then re-examined by the Hospital Management Committee, who then awarded the supply order to the respondent No. 6, on the primary ground that the price quoted by the respondent No. 6, was lower than that of the petitioner. The petitioner being aggrieved thereby, is seeking cancellation and recall of the impugned work order.

3. Mr. K. Paul, learned Senior counsel assisted by Mr. C. Garg, learned counsel for the petitioner has at the outset referred to clause – 15 of the bid

document, and submits that as per this condition, the decision of technical suitability by the committee was not to be opened for discussion, and that clause – 12 has also provided that, the respondent Hospital was not bound to accept the lowest quoted rate. In the instant case he submits, after the technical aspects had been satisfied, and the MRI machine to be supplied by the petitioner, which was of a reputed company, had been approved by the purchase committee, on an expert evaluation, it was not open to the respondents to reverse the decision and award the said work to the respondent No. 6. The learned Senior counsel has taken this Court to Annexure – 2 to the writ petition, which is a letter dated 20.11.2023, whereby the respondent No. 2, on the selection of the petitioner's machine had requested for additional grant of funds, to meet necessary expenditure to establish the fact that the tender evaluation had already been completed and that the petitioner was a successful bidder.

4. Learned Senior counsel then submits that on a letter dated 08.11.2023, from the respondent No. 6, the respondent No. 2(Superintendent of Tura Civil Hospital) by letter dated 19.12.2023, on the directions of the Deputy Commissioner (respondent No. 5), who was not a member of the Purchase Committee, called for a meeting on 21.12.2023, to discuss the matter with regard to the MRI tender. Strangely he submits, a reappraisal was conducted under the Chairmanship of the Deputy

Commissioner, and a decision was arrived at to award the work to respondent No. 6, due to lower cost. The learned Senior counsel submits that, in the meeting that was held on 21.12.2023, all the members present were part of the Hospital Management Society of Tura Civil Hospital, which was not the duly constituted Purchase Committee, as an independent expert, who was a member of the purchase committee was not present. He contends that the Deputy Commissioner, who was not a member of the purchase committee, after the evaluation had been done, by calling for the meeting and overturning the decision, is absolutely illegal. He further contends that, the petitioner's offered product being found to be better suited, and the price not being a factor, as it was not a case of the settlement of the tender being given to the lowest bidder, the action of the respondent No. 5(Deputy Commissioner) as an appellate authority over a duly constituted purchase committee, is liable to be interfered with by this Court.

5. Though it was pointed out that the petitioner was present at the time the reappraisal of the products was conducted on 21.12.2023, it has been submitted that the presence of the petitioner in the said meeting cannot in any manner be taken to mean that the tender process could be re-opened in the manner in which it was done. He lastly submits that, the impugned

settlement of the tender with the respondent No. 6, being vitiated, the same is also liable to be recalled or set aside.

6. In support of his submissions, apart from other citations, the learned Senior counsel has relied upon the judgment *Bharat Cuisine Services Institute & Anr. vs. State of H.P. & Ors.* reported in *2024 SCC OnLine HP 8*, on the point that a technical evaluation committee, after evaluating technical bids becomes functus officio and as such, there can be no question of re-evaluation of tenders by other committee.

7. Mr. A. Kumar, learned Advocate General assisted by Mr. A. Kharwanlang, learned Addl. Senior Government Advocate on behalf of the State respondents No. 1-5 has submitted that the NIT was issued by the Hospital Management Society, of which the respondent No. 5, is the Chairman, which therefore makes the society, the decision-making authority, with regard to the acquisition of the MRI machine for Tura Civil Hospital. It is further submitted that, it is undisputed that, both the machines offered by the petitioner and by the respondent No. 6, met the technical specifications, and as the price of the MRI offered by the petitioner exceeded the price of the MRI, offered by the respondent No. 6, by over 1 crore, a conscious decision was taken to opt for the MRI, that cost less. It has also been submitted that, the letter referred to and relied upon by the petitioner dated 20.11.2023, whereby the Superintendent of

Tura Civil Hospital, requested for additional funds, to acquire the MRI offered by the petitioner, was unauthorized, and no reliance could be placed on the same.

8. The learned Advocate General then submits that, the writ petitioner though very much present in the meeting held on 21.12.2023, has suppressed the same and has not made any mention of the same in the writ petition. He submits that the petitioner having participated in the said meeting, wherein the appraisal of both the machines was conducted and thereafter, the supply of the MRI awarded to the respondent No. 6, cannot at this stage turn around and challenge the same. The learned Advocate General then contends that the respondents being the owners of the project, should have the liberty to decide what is best for the State, especially in this case, where for an equivalent product, the same was being settled with the lowest bidder. The learned Advocate General has in its affidavit set out a series of judgments, with regard to judicial review in such matters. He finally submits that the petitioner having suppressed the fact that, it has participated in the meetings dated 22.11.2023 and 21.12.2023, and being aware that the machine offered by the respondent No. 6, was better in features and also of lesser price, no interference is called for by this Court, as the present case does not fall within the narrow jurisdiction exercised by Courts in respect of tender matters.

9. Dr. N. Mozika, learned Senior counsel assisted by Ms. K. Goyal, learned counsel for the respondent No. 6, while supporting the submissions of the learned Advocate General, has however advanced the argument that the opening of bids on 08.11.2023, did not conclude the tender process, inasmuch as thereafter, meetings were held of the bidders and the Tender Committee on two occasions i.e. on 22.11.2023 and 21.12.2023, whereafter, the final settlement of the tender was arrived at. The petitioner, he contends, has misrepresented and concealed materials before this Court when in fact it is not disputed, that the MRI offered by the respondent No. 6, apart from meeting all the technical specifications, was also much cheaper than the MRI offered by the petitioner. As such, he submits on both counts, the offer of the respondent No. 6 being more feasible, no vested right has accrued to the petitioner to assail the tender process. Learned Senior counsel then reiterates the submissions that the petitioner having participated in the meetings after the initial bid opening, cannot insist that the tender process had concluded on 08.11.2023 when the bids were opened, when in fact it was a continuous process which culminated in the settlement of the work with the respondent No. 6. It is lastly submitted that the respondent No. 6, has already commenced civil works for installation of the MRI and as the project is in public interest, the same can

brook no delay. Reliance has also been placed on various decisions on the scope of judicial review in such matters.

10. After hearing the learned counsels for the parties, to the mind of this Court, in exercise of limited jurisdiction as far as judicial review of such tender matters are concerned, the only issue to be examined is the decision-making process adopted by the respondents in settling the tender with the respondent No. 6, after having found the petitioner's product to be more suitable.

11. In this regard therefore, it would be useful to scrutinize the materials that have been placed for consideration, from the initial stage that is the floating of the tender and the constitution of the Purchase or Tender Committee, hereinafter referred to as the Committee. The NIT was issued on 03.10.2023, by the Hospital Management Society, Tura Civil Hospital, for supply and installation of a 1.5 TESLA MRI machine, and conditions were given therein which is to be noted, at clause – 12 and 15, of the General Conditions and clause – 10, with regard to Bid Evaluation, which are very relevant for the purposes of this discussion, and are reproduced herein below.

***“12. The Hospital Management Society, Tura Civil Hospital
is not bound to accept the lowest quoted rates and reserves
the right to reject any tender or part thereof without***

assigning any reason and without any liability or liquidated damages.

15. The decision of the committee on technical suitability and quality shall not be opened for discussion. Every bidder must go through the terms and conditions of bid carefully and understand them before submitting the bid. No excuse that the conditions have not been read or understood will be entertained later.

10) BID EVALUATION

Awarding of tender will be based upon the following:

- *Price*
- *Functionality*
- *Value added benefits*
- *Vendor performance*
- *Upgradability*
- *Patient comfort and safety*
- *Service and support*
- *Clinical applications*
- *Training and technical support of assigned personnel till they are fully equipped to handle the Equipment.*

The evaluation shall be done on total cost of the entire supply including warranty services, whenever applicable, as per the bid document and after technical evaluation and suggestion by a committee of technical expert. Lowest rate is not the criteria for evaluation, rather the contract will be awarded to the bidder who can provide the best quality products and services including training, Bidders are to submit copies of supply orders or installation

reports of similar items as quoted by them, bidders quoting on behalf of their principal manufacturers.”

12. Thereafter, vide letter dated 12.10.2023, the Joint Secretary, Health and Family Welfare Department, instructed the respondent No. 3, to direct the respondent No. 2, to constitute a Purchase Committee, through the Executive Committee of the Tura Civil Hospital Management Society, for procurement of the said MRI machine, and that the said committee was to include at least one member for technical expertise in the relevant field. It is seen thereafter that the respondent No. 2, on the bids being received, issued a notice on 07.11.2023, for opening of the tenders by the Tender Committee on 08.11.2023, and as per the minutes of the meeting, which was chaired by the Additional Deputy Commissioner, who was the Chairperson of the Tender Committee, it was unanimously decided to approve and purchase the MRI machine, to be supplied by the petitioner. It is noteworthy to mention herein that, the approval was arrived at on the products having met the technical specifications as desired, as is evidenced by a document annexed at Page – 64 of the affidavit-in-opposition filed by the respondent No. 5. From the materials, it is seen that on the decision being finalized, the respondent No. 2, vide letter dated 20.11.2023, had also

requested for placement of additional funds for procurement of the MRI machine, to be supplied by the petitioner.

13. From the narrative as given above of the events that had occurred, it would seem that the tender process in the normal course of business would have stood concluded, with the selection of the product of the petitioner, notwithstanding the cost, for which provision had been made in the bid document itself, that the lowest rate was not to be the criteria for evaluation rather more consideration would be given to the bidder, who could provide the better product and services. However, it is seen that the respondent No. 6, by a letter dated 18.11.2023, addressed a letter to the respondent No. 5, the Deputy Commissioner, requesting his attention to their bids, on the ground that they were the lowest bidder. Thereafter, vide letter dated 19.12.2023, the respondent No. 2, on a direction of the respondent No. 5, invited the tender and technical expert committee and others, to attend a meeting on 21.12.2023.

14. What unfolded thereafter, as can be seen from the minutes of the meeting dated 21.12.2023, is that, the respondent No. 5, chaired the said meeting in his capacity as the Chairman of the Hospital Management Society, and embarked upon the exercise of examining the comparative statements and presentations of the products against the required specifications, and thereafter as the Chairman concluded that the

respondent No. 6, being the lowest bidder was preferred for procurement of the MRI machine. This decision thereafter culminated in the issuance of the work order dated 09.03.2024, in favour of the respondent No. 6. From the proceedings, it can easily be discerned that the decision of a duly constituted tender committee with expert members, had been superseded by the decision of the Hospital Management Society, under the chairmanship of the respondent No. 5. From the recorded minutes, it is also relevant to note that, an expert one Shri. Amitabh Dutta, who was a member of the tender committee, who had given his expert opinion as to the suitability of the petitioner's MRI, in the tender opening meeting dated 08.11.2023, was not present.

15. In this scenario, this Court need not go far, to arrive at a conclusion, as to whether the impugned action of the respondents in reversing the decision is sustainable in law. From the conditions of the NIT itself, which had been quoted above, firstly it has been provided that, the lowest bid would not be the only consideration for acceptance, which is further reinforced by the clause, with regard to Bid Evaluation. Secondly, clause – 15, has categorically provided that, the decision of the committee, on technical suitability shall not be opened for discussion. What has transpired however, is that the respondent No. 5, as Chairman of the Hospital Management Society has literally re-opened the technical evaluation and

awarded the tender to the respondent No. 6, and has even gone to the extent of recording his opinion as to the virtues of the MRI offered by the respondent No. 6, in his affidavit at Para – 19. As held in the celebrated case of *Tata Cellular vs. Union of India* reported in (1994) 6 SCC 651, in such matters, the Supreme Court at Para – 77 thereof, which is relevant had held as under.

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?***
- 2. Committed an error of law,***
- 3. committed a breach of the rules of natural justice,***
- 4. reached a decision which no reasonable tribunal would have reached or,***
- 5. abused its powers.***

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.***
- (ii) Irrationality, namely, Wednesbury unreasonableness.***

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

16. Placing the facts of the instant case in its proper perspective and by application of the principles in the afore quoted judgment, the impugned action of the respondents, is such a case that warrants judicial review of the decision-making process. What strikes at the very root of the matter is that, inspite of the stipulations or conditions of the NIT, and the findings of the tender committee, the respondent No. 5, had opened the tender for re-evaluation, despite the fact that he was not a constituent of, or a member of the duly constituted tender committee, and further on a ground that had been specifically addressed in the NIT, that the lowest bidder was not the criteria for selection, had selected the respondent No. 6, on this consideration. Though submissions have been advanced that, the petitioner had participated in the re-evaluation process, and had also suppressed the same before this Court, though the same is deprecated, in the larger picture

considering the actions of the respondent No. 5, the same is of no consequence.

17. The contention of the respondent No. 6, that the tender process had not concluded with the opening of the bids on 08.11.2023, and the same was continuous is not accepted, in view of the facts and circumstances of the case.

18. The authorities placed by the respondents with regard to the restrictions in the interference in tender matters, and that the respondents be given latitude and that there be fair play in the joints, are of no assistance in the facts and circumstances of the present case, and as such are not discussed.

19. Accordingly, the award of the contract for supply and installation of a 1.5 TESLA MRI machine at Tura Civil Hospital, in favour of the respondent No. 6, is quashed and set aside, as also the consequential work order dated 09.03.2024.

20. This Court in setting aside the award of the contract is not oblivious to the fact that, an MRI machine once installed at Tura, will be a boon to the populace of the several districts in Garo Hills, and any further unaccounted delay will severely impact the health care situation. As such, it is also directed that, the concerned respondents take immediate steps, to

ensure that an MRI machine is installed at the Tura Civil Hospital, at the earliest through a transparent and fair process.

21. Writ petition accordingly stands allowed and is disposed of.

22. No order as to costs.

Judge

Meghalaya
20.05.2024
“D.Thabak-PS”