

GAHC040003612024



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

Case No. : WP(C)/115/2024

M/s Orion Health Foods Private Limited
1st Floor, juhar Market, AC Lane, Near UCCO Bank, Shillong 793001 Meghalaya,
India represented by Shri Ankur Jhunjhunwala, S/o Uttam Jhunjhunwala, resident of
1st Floor, Juhar Market, AC Lane Near UCO Bank, Shillong, 793001 Meghalaya,
India

VERSUS

The State of AP and 2 Ors
represented by its Secretary, Women and Child Development Department, Govt of
Arunachal Pradesh, C Sector, Itanagar, Arunachal Pradesh 791111 2:The Secretary
Age: 0
Occupation :
Women and Child Development Department
Govt of Arunachal Pradesh
C Sector
Itanagar
Arunachal Pradesh 791111

3:The Director
Age: 0
Occupation :
Women and Child Development Department
Govt of Arunachal Pradesh
C Sector
Itanagar
Arunachal Pradesh 79111

Advocate for the Petitioner : Gallen Taloh

Advocate for the Respondent : GA (AP)

Linked Case : IA(C)/55/2024

M/s Orion Health Foods Private Limited

Age: 0

Occupation :

Address:1st Floor

Juhar Market

AC Lane

Near UCCO Bank

Shillong 793001 Meghalaya

India represented by Shri Ankur Jhunjhunwala

S/o Uttam Jhunjhunwala

resident of 1st Floor

Juhar Market

AC Lane Near UCO Bank

Shillong

793001 Meghalaya

India

VERSUS

The State of AP and 2 Ors

Age: 0

Occupation :

Address:represented by its Secretary

Women and Child Development Department

Govt of Arunachal Pradesh

C Sector

Itanagar

Arunachal Pradesh 791111

2:The Secretary

Age: 0

Occupation :

Address:Women and Child Development Department

Govt of Arunachal Pradesh

C Sector

Itanagar

Arunachal Pradesh 791111

3:The Director

Age: 0

Occupation :

Address:Women and Child Development Department

Govt of Arunachal Pradesh

C Sector

Itanagar
Arunachal Pradesh 791111

Advocate for : D Goswami
Advocate for : GA (AP) appearing for The State of AP and 2 Ors: Advocate ,

, appearing for 2,

3, respectively.

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

ORDER

08.04.2024

Heard Mr. A.K. Sahewalla, learned counsel for the applicant/petitioner.
Also heard Mr. R.H. Nabam, learned Addl. Advocate General for the respondent nos. 1, 2 and 3.

This is an application praying for amendment of the WP(C) 115/2024. The applicant has prayed for amendment which are as follows:-

In the Cause Title at page 3 after "Declaring and Adjudging the Terms and Conditions laid down by the respondent authorities for selection of successful Bidder in Notice Inviting e-tender bearing no. DWCD-14/4/2021[C-11400] dated 20.02.2024 as illegal, arbitrary, unreasonable and discriminatory." The following be inserted as

"-AND-

IN THE MATTER OF:-

Declaring and Adjudging the corrigendum under tender reference No. DWCD-14/4/2021[C-11400] as illegal, arbitrary, unreasonable and discriminatory.

-AND- IN THE MATTER OF:-

Illegal and arbitrary action of the respondents by illegally disposing off the representation filed by the petitioner company vide letter No. DWCD-14/4/2021[e-185953 dated 13th March 2024 and thereby being illegal, arbitrary, unreasonable and discriminatory and moreover ground. without any reasonable

In the Cause Title after the Respondent No.3 the following respondents be inserted as Respondent No. 4, 5, 6 and 7 as follows: -

4. The Joint Director, Women and Child Development Department, Government of Arunachal Pradesh, C- Sector, Itanagar, Arunachal Pradesh 791111.

5. M/s Aasray Foods Pvt. Ltd., a company incorporated under the Companies Act, 1956 at 22, Amarabathi Path, 1st Floor, Christian Basti, GS Road, Guwahati - 781101, India and is represented by Shri Amrit Deorah, son of Late Ashok Kr. Deorah, resident of Flat No. CC801-C3802, Spanish Garden, Zoo Road, P.O. Dispur, Guwahati 781005, Dist- Kamrup(M) Assam

6. M/s Rausheena Udyog Limited, a company incorporated under the Companies Act, 1956 and having its office at Mahamaya Road, Dibrugarh being represented by its Director Shri. Saroj Kr. Agarwal.

7. M/s Continental Milkose (India) Limited., a company incorporated under the Companies Act, 1956 and having its office at Flat No.5D, Priyanka Apartment, GC Goswami Road, Panbazar, Guwahati (Assam) and is represented by its Director, Shri Shyam Sundar.

The paragraph after the last line of para 3 of the Writ Petition following words be inserted which reads as follows: -

"The petitioner company on going through the website of the respondents on 15-03-2024 learnt that out of the five tenders, one tender was not admitted, as because the original copy of the EMD was not submitted and as such, as of now there are four participants in the tender bid process and as such, the respondent No. 5, 6 and 7 has been arrayed as parties in this writ.

A copy of the tender summary report downloaded from the website of the respondents on 15-03-2024 is annexed hereto and marked as ANNEXURE:- IIA."

The paragraph No. 12 of the Writ Petition be substituted and, in its place, new paragraph 12 be as follows: -

"12. That the petitioner company states that the corrigendum brought into surface, by which the clause 21.I and serial No. 4 at Annexure B were amended are also wrong and arbitrary in as much as there has been no correlation with terms of the NIT, indeed the amendment during the subsistence of the litigation is a glaring example of their admission of some wrong in the NIT. In fact There has been nothing on record to disclose the reason for changing the terms of the NIT, nor there is any indication as to why the tenderers having net worth of 35 crores are preferred for awarding the contract. In fact, there has been no discernible reason as to why the respondents have chosen to adhere to such terms of the NIT which has no bearing to the matter at hand, more so when the entire tender is for a sum of Rs. 10 Crores. It is further submitted that mere presumption that overall value of the contract may increase to a certain extent during one year subject to the number of beneficiaries and amount of fund released by the Ministry. Further, the respondents No. 4's apprehension that once the contract is awarded to the successful bidder, the bidder has to employ

its own funds to manufacture, deliver and supply the food items continuously as the designated destinations for a period of one year which may extend to another year or till the finalization of the next contract on same rate, terms and conditions are all on the basis of surmises and conjuncture, The petitioner company states that the opinion of the government respondent is unfair, irrational, unreasonable and hit by article 19(1) of the Constitution. The petitioner company further states that the tender conditions mentioned in Clause no. 21 (1) of the bid document requires the bidder to have a net worth of Rs. 35 crores in order to have the qualifying points in terms of Annexure-B. It is submitted that designing such tender conditions in a manner that altogether restricts participants of such persons engaged in the concerned trade or profession is highly discriminatory, and violative of the equalities clauses enshrined in article 14 as well as the right to livelihood guaranteed under the Constitution of India. However, the qualification points of the same tender document favours bidders who have a net-worth of more than Rs. 20 Crores, and makes it impossible for bidders with net worth below Rs. 25 crores to qualify at all. Now, as per the qualification points in Annexure-B of the bid document, any bidder with a net worth of up to Rs. 20 crores shall score 5 points, whereas up to 25 crores is 10 points. Similarly, up to 30 crores is 15 points and up to 35 crores is 20 points. The qualification marks required as per the bid document are 90, and a bidder will lose at least 15 points, if its net worth is less than 25 Crores, and will eventually loose in the bidding process. It is also submitted that mere presumption that business having lesser net worth would fail to deliver, cannot be the justification for excluding such entrepreneur from the realm of the contract. This is done in all probability with an ulterior motive just to debar the bidders from qualifying the technical bid, so as to

enable the blue-eyed boys of the authority to get the direct benefit from the tender qualification points. It is also shocking that a tender whose tentative value is Rs. 10 Crores should require participants to have much higher net worth. This is even more shocking since the successful bidders will be required to deposit a security deposit with the department. This clause also directly contradicts CVC guidelines issued by the Government of India. The petitioner company craves leave of this Hon'ble court to refer and rely on the guidelines at the time of hearing, if need be.

The paragraph No. 20 of the Writ Petition be substituted and, in its place, new paragraph 20 be inserted as follows: -

"That the petitioner company states that the tender conditions mentioned in Clause no. 21 (1) of the Part - I of the bid documents pertaining to Notice Inviting e- tender bearing no. DWCD-14/4/2021[C-11400] dated 20.02.2024 earlier required the bidder to have a net worth of Rs. 10 crores, however by way of a corrigendum dated 10th March 2024, the same was changed and as of now the same is being read as "the net worth of the tenderer shall be as indicated in Sl. No. 8 of qualification points at Annexure-B 'in place and instead of "The net worth of the tenderer shall not be less than Rs. 10,00,00,000/- (Rupees ten crores) only on 31/03/2023 as reflected in the audited balance sheet. Relevant certificate issued by a Chartered Accountant/ Statutory Auditor should be enclosed." However, the qualification points of the same tender document favours bidders who have a net-worth of more than Rs. 20 Crores, and makes it impossible for bidders with net worth below Rs. 25 crores to qualify at all. Now, as per the qualification points in Annexure B of the bid document, any bidder with a net worth of up to Rs. 20 crores shall score 5 points, whereas up to 25

crores is 10 points. Similarly, up to 30 crores is 15 points and up to 35 crores is 20 points. The qualification marks required as per the bid document are 90, and a bidder will lose at least 15 points, if its net worth is less than 25 Crores, and will eventually lose in the bidding process. This is done in all probability with an ulterior motive just to debar the bidders from qualifying the technical bid, so as to enable the blue-eyed boys of the authority to get the direct benefit from the tender qualification points. It is also shocking that a tender whose tentative value is Rs. 10 Crores should require participants to have much higher net worth. This is even more shocking since the successful bidders will be required to deposit a security deposit with the department. The petitioner begs to further state that the point system enunciated at Annexure-B is itself articulated just to help and / or deprive the eligible bidders to bid and cross the barrier of the technical bid of 90 points out of the total 100 points. In fact, the action must be based on some rational and relevant principles and must not be guided by irrational or irrelevant consideration and it is also important to note that every action or terms of the agreement must not be guided by irrational or Irrelevant consideration. This clause also directly contradicts CVC guidelines issued by the Government of India. The petitioner company craves leave of this Hon'ble court to refer and rely on the guidelines at the time of hearing, if need be.

The paragraph No. 21 of the Writ Petition may be substituted and, in its place, new paragraph 21 be inserted as follows:

"That the petitioner company states that the doctrine of level playing field is a doctrine which is applicable herein this case at hand in as much as, the successful bidders are equally placed to the other qualified bidders / competitors who have met the requirements. It is submitted that the eligibility, condition has ousted the petitioner company and others and it is tailor-made to suit big

corporate houses. In fact the decision of the respondent government and its offices decision of tailor-made terms are all unfair, irrational, unreasonable, and hit by article 19(1) of the Constitution. It would be apposite to indicate that designing the tender conditions in a manner that altogether restricts participants of such persons engaged in the concerned trade or profession held to be highly discriminatory, and violative of the equality clauses enshrined in article 14 as well as the right to livelihood guaranteed under the Constitution of India. As such, the conditions stipulated in the clauses as well as the point system wherein the qualifying points is 90 out of 100 including the Annexure B as a whole is of the Part I of the bid documents pertaining to Notice Inviting e-tender bearing No. DWCD-14/4/2021[C-11400] dated 20.02.2024 is liable to be interfered with.

After the paragraph No. 21 of the Writ Petition, two new paras be inserted and be numbered as Para No. 21A and 21B which may read as follows:-

"21A. That the petitioner states that the general conditions provides some conditions which are also the eligibility conditions and the value of the tender being ten Crore in 21.I provided that the net worth of tenderer should not be less than 10 crore as reflected in the audited balance sheet, but the qualifying points which were provided in ANENXURE B wherein the petitioner has challenged and the Government respondent now want to substitute the serial No.8 of the qualifying points in place of 21.I of the general conditions is unfair, arbitrary, illegal and malafide in as much as the net worth of the bidder for doing a work cannot be variable and the same cannot be treated by points on different net worth. A party may be having net worth 100 times then required, but minimum net worth provided for the work is sufficient and one cannot get any extra points for having more net worth.

21B. That the petitioner submits that net worth of a tenderer for a work which is one of the eligibility criteria of a tender for the purpose of taking part in a tender cannot be variable in as much as net worth of a tenderer is fixed on the value of the contract and same cannot be substituted by different points of highest net worth which is unfair, arbitrary, illegal and malafide and is formulated with a view to favor some blue eyed boys and the said clauses restrict the competition in the tender as the number of tenderers who may be eligible to take part in the bid may be excluded due to the points provided in clauses 8 of the qualifying points and as such, the corrigendum is also liable to be set aside and quashed."

After words "why a writ in the nature of Certiorari be issued quashing and setting aside the impugned terms and conditions incorporated under ANENXURE B of the Qualification points pertaining to Notice Inviting e-tender bearing No. DWCD-14/4/2021[C- 11400] dated 20.02.2024" the following words be inserted "and / or why a writ in the nature of Certiorari be issued quashing and setting aside the impugned corrigendum issued on 13th of March 2024 by the Joint Secretary, Women and Child Development Department, Govt. of Arunachal Pradesh, Itanagar in the notice bearing No. DWCD-14/4/2021[C-11400] dated 20.02.2024".

I have perused the grounds for amendment of the writ petition and also considered the submissions of the learned counsel for the applicant and finds that same to be germane.

That apart Mr. R.H. Nabam, learned Addl. Advocate General, fairly submits that he has no objection to the prayer for amendment.

Accordingly, amendment sought for above in the WP(C) 115/2024 is allowed.

The interlocutory application stands allowed and disposed of.

JUDGE

Comparing Assistant