

GAHC010127182024



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

Case No. : WP(C)/3262/2024

M/S NEZONE TOURS AND TRAVEL
REPRESENTED BY ITS PROPRIETOR MUNIN PATOWARY,
AGED ABOUT 52 YEARS, S/O- KARUNAKANTA PATOWARY,
R/O- SENAPATH PATH,
OPP. GOSWAMI SERVICE, WARD NO. 13,
M.R.D. ROAD, SILPUKHURI, GUWAHATI,
KAMRUP(M).

VERSUS

THE FOOD CORPORATION OF INDIA AND 2 ORS
TO BE REPRESENTED BY ITS GENERAL MANAGER,
ASSAM REGION, PALTAN BAZAR,
GUWAHATI-08.

2:THE ASSTT. GENERAL MANAGER
FCI (HK)
PALTAN BAZAR
GUWAHATI-08.

3:THE SECRETARY TO THE GOVT. OF ASSAM
FOOD AND CIVIL SUPPLY DEPARTMENT
DISPUR
GUWAHATI-06

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : SC, F C I

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

25.06.2024

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner, who submits that Clause 10 of the NIT dated 06.06.2024 requiring a tenderer to own at least 2 of the 10 cars that are to be taken on hire by the respondents, as reflected in the Notice Inviting Tender (NIT) dated 06.06.2024, issued by the Food Corporation of India (FCI), should be set aside. He submits that in the earlier NITs issued by the FCI, there was no requirement for a tenderer to own any of the cars that were to be given on hire to the FCI. However, in the present NIT dated 06.06.2024, while all other details with regard to providing 10 cars to the FCI on hire, are similar to past NITs, the added requirement of a tenderer owning at least 2 of the 10 cars, is violative of the petitioner's right to equality under Article 14. He accordingly submits that the said Clause requiring a tenderer to own at least 2 of the 10 cars to be given on hire to the FCI for 2 years, should be set aside.

2. Mr. B.K. Singh, learned counsel for the FCI submits that no right of the petitioner is violated just because the FCI wants to ensure that the tenderers own at least 2 of the 10 cars, that have to be hired out to the FCI for a period of 2 years, in terms of the NIT dated 06.06.2024. He accordingly submits that the writ petition should be dismissed.

3. I have heard the learned counsels for the parties.

4. The petitioner's case is that it's right to equality has been violated by the FCI requiring a tenderer to own at least 2 of the 10 cars that are to be hired by

the FCI for 2 years. This Court does not find that any right of the petitioner has been violated by the FCI, just because the NIT clause requires the tenderers to own at least 2 of the 10 cars that are to be given on hire to the FCI for a period of 2 years. It is prerogative of the FCI if they want to hire cars from tenderers which are owned by the tenderers or hired by the tenderers. The reasons could be many, including the ability to make the tenderer accountable.

5. In the case of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Another***, reported in ***(2016) 16 SCC 818***, the Supreme Court has held as follows-

“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.”

6. In ***Michigan Rubber (India) Ltd. vs. State of Karnataka & Others***, reported in ***(2012) 8 SCC 216***, the Supreme Court has laid down the following principles while considering the conditions of a tender at paragraph-23, which is as follows :

“(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or

unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.”

7. This Court does not find the impugned Clause of the NIT requiring tenderers to own at least 2 of the 10 cars to be arbitrary or in violation of public interest. Further, the petitioner cannot claim a fundamental right to carry on business with the respondent FCI.

8. In view of the reasons stated above and judgments of the Supreme Court, this Court does not find any ground to interfere with the impugned Clause in the NIT, requiring a tenderer to own at least 2 of the 10 cars to be given for hire to the FCI. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant