

GAHC010139102024



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

Case No. : WP(C)/3526/2024

M/S CONSULTING ENGINEER (NG) AND 2 ORS
A PARTNERSHIP FIRM BEING REPRESENTED BY ITS PARTNER,
MS. PRIYANKA DAS, AGED ABOUT 34 YEARS, HAVING ITS REGISTERED
OFFICE AT- HOUSE NO. 46A, SIMANTA PATH, P.O.- PILINGKATA, BASISTHA
CHARIALI, GUWAHATI- 781029, KAMRUP(M), ASSAM.

2: PRIYANKA DAS
WIFE OF SRI PRANAB DAS

RESIDENT OF HOUSE NO. 46A

BASISTHA CHARIALI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781029.

3: SURESH KUMAR DUTTA
SON OF LATE TIRTHA NATH DUTTA

RESIDENT OF GARAMUR

NEAR JORHAT ENGINEERING COLLEGE

P.O.- GARAMUR
P.S.- JORHAT

DISTRICT- JORHAT
PIN- 785007

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY,

DEPARTMENT OF ANIMAL HUSBANDRY AND VETERINARY,
ASSAM SECRETARIAT (CIVIL), DISPUR,
GUWAHATI- 781006.

2:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF ANIMAL HUSBANDRY AND VETERINARY
ASSAM SECRETARIAT (CIVIL)

DISPUR
GUWAHATI- 781006.

3:THE SECRETARY CUM DIRECTOR

OFFICE OF THE DIRECTOR

ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT

CHENIKUTHI
GUWAHATI
ASSAM
PIN- 781003.

4:THE TENDER EVALUATION COMMITTEE
REPRESENTED BY THE CHAIRMAN.

5:M/S FRIEND ENTERPRISE
REPRESENTED BY ITS PROPRIETOR

SRI BHASKARJYOTI BARUAH

HAVING ITS OFFICE AT MORANKARI HANDIQUE GAON

NAMTI DOLL
SIVASAGAR

DISTRICT- SIVASAGAR
ASSAM.

6:M/S MEDICOS AND ENGINEERING
REPRESENTED BY ITS PROPRIETOR

MR. FOIZUDDIN AHMED

HAVING ITS OFFICE AT HATIPOTI

P.S.- GELAKI
DISTRICT- SIVASAGAR
ASSAM.

7:JAYANTA KHAUND
PROPRIETOR
K.B. ROAD

WARD NO. 11
P.S.- NORTH LAKHIMPUR

DISTRICT- NORTH LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR R SINGHA, MS S PATOWARY

Advocate for the Respondent : SC, A.H and V. DEPT., MR. D NATH,MS P RABHA (R-6),MS M BARMAN (R-6),MRS. A GAYAN (R-6),MR H K DAS (r-5),MR N K SARMA (r-5),MS D MAHANTA (r-5),M NARZARY,DR. J. D. KHAUND(R-7)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. R. Singha, Advocate.

For the Respondents : Ms. M. Katoky, Standing Counsel.
A H& V Department.
Mr. H. K. Das, Advocate.
Mr.D. Nath, Sr. Govt. Adv.

Date of Hearing : 10.09.2024.

Date of Judgment : 23.09.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. R. Singha, learned counsel for the petitioners. Also heard Ms. M. Katoky, learned Standing Counsel for the Department of Animal Husbandry & Veterinary, Government of Assam who is representing the respondent Nos. 1 to 4, Mr. H. K. Das, learned counsel appearing for the respondent No.5, 6 and 7 and

Mr. D. Nath, learned Senior Government Advocate for the State of Assam, who had assisted this Court on request for purpose of dealing with the provision of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Assam Rules, 1971.

2. The Director of Animal Husbandry and Veterinary Department, Guwahati had floated a Notice Inviting Tender on 23.02.2024 for the construction of a New Multicare Hospital including Logistics at Joysagar in Sivasagar District under SOPD-G. The petitioner and the private respondents submitted their Bids for the aforesaid work. The Bid Evaluation Committee, (hereinafter referred to as Evaluation Committee) after evaluation of the Bid, while declaring the Bids of the private respondent Nos. 5, 6 and 7 to be responsive, had declared the Bid of the petitioner to be non-responsive in its meeting dated 01.07.2024 for the reason that the labour license submitted by the petitioner is valid for Kamrup (M), District only. Being aggrieved by the impugned action on the part of the Evaluation Committee, the present writ petition is filed.

3. Mr. R. Singha, learned counsel for the petitioner argues the following:-

I. The ground of rejection of the petitioner's Technical Bid is absolutely fallacious in view of the fact that the copy of the labour license indicates that the labour license is valid for Kamrup (Metro) District, however, the license itself declares that the said license is valid for undertaking the work of contract and supply in the establishment of the Director of Animal Husbandry & Veterinary Department, Assam and therefore, the petitioner is eligible for undertaking any contractual work in Animal Husbandry & Veterinary Department. Therefore, the rejection is absolutely arbitrary and irrational.

II. The Minutes clearly reveal that the committee sought shortfall documents from the private respondent Nos. 6 and 7 and such a course of

action is not permissible under bidding terms and the same has been done only to facilitate the respondent Nos. 6 and 7 and the petitioner was not granted such benefit.

III. The petitioner had substantially complied with the requirement of a valid labour license inasmuch as his labour license is valid in terms of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act, 1970) and the Contract Labour (Regulation and Abolition) Assam Rules, 1971 (hereinafter referred to as Rules, 1971). The certificate of the principal employer clarifies that the petitioner's license permits, the use of contract labour under any work of the Veterinary Department.

IV. The petitioner had substantially complied with all the mandatory requirements, however, such facts have been ignored and an unfair process has been adopted to oust the petitioner from the race of the tender. Therefore, there is no fair play on the action of the authorities and such action is not permissible under the procedure prescribed in ITB, more particularly Clause 35.

V. Under different provisions of the Act, 1970 more particularly, the definition given under the Act, 1970, Section 12, Section 20 of the Act, and Rules 21, 24, 25, 32 of the Rule, 1971 and Form-IV, V and VI, a labour license can be issued when a contractor is already engaged or proposed to be engaged and such license is work specific and therefore, for all meaning and purport, insistence by the the respondent authorities of labour license is only for purpose of examining whether the bidder is having any earlier experience in contract labour or not.

VI. In terms of clauses 30, 31, 32 of the instruction to bidder and Clause 2 of Section IV of the bid document and also Section VI of Bidding forms, submission of a certificate is a non-essential condition therefore, even if it is assumed that the license is not valid, his license could not have

been rejected. Therefore, the action of the respondents in declaring the petitioner's bid as non-responsive is a result of arbitrary exercise of power.

4. Per contra, Ms. M. Katoky, learned Standing Counsel for the Animal Husbandry & Veterinary Department argues the following:-

I. The labour license of the petitioner is valid only for Kamrup Metropolitan District and therefore, the bid of the petitioner was rejected as per the terms of the NIT. The labour license of the petitioner being relatable to Kamrup Metropolitan District does not make the petitioner eligible to construct the Multicare Hospital at Sivasagar District as per the terms and conditions of the NIT.

II. Under Clause 30.2 of the bid document, the evaluation committee is within its right to call for the historical documents and such shortfall documents were sought for from respondents Nos. 6 and 7 in the exercise of power under Clause 30.2 of the BID documents and as per Assam Public Procurement Rules, 2020 and after examination of historical documents, it was found that EPF Challan and labour license of the respondent Nos. 5, 6 and 7 were valid for all over Assam and therefore, though such documents were not submitted, they were requested to provide the shortfall documents. As no historical documents prescribe that the petitioner had a license covering the whole State of Assam, or relatable to Sivasagar district, the petitioner was not requested to submit any further document.

III. As per Clause 2(A)(d)(iii) under Section IV of the bid document, the bidders are at liberty to submit labour license according to their choice having validity, either in the concerned District or all over Assam after obtaining it from the Department of Labour and Welfare.

IV. In terms of the tender document, submission of the labour license is a mandatory requirement and it is to be submitted along with the bid as

per Clause 2.A(d)(iii) under Section IV of the bid document.

V. The documents sought from respondent Nos. 5, 6 and 7 are historical documents which imply that those documents were already supplied earlier or available in the record of the Director of Animal Husbandry & Veterinary Department, and therefore, seeking a new/future document from the petitioner i.e. new labour license for Sivasagar District or all over Assam does not arise.

5. Mr. H. K. Das, learned counsel for the respondent Nos. 5, 6 and 7 while supplementing the argument advanced by the learned counsel for the Department, argues:-

I. The employer department is the best judge to understand and appreciate its requirements and interpret the tender document. In the case in hand, they had taken a specific stand that they would treat a labour license to be valid when it is either applicable to the whole State of Assam or to the District where the project is being carried out. Therefore, a writ Court, in the absence of any malafide or perversity in the understanding or appreciation or in the application of the term of such tender requiring a valid contract license, may not interfere with such decision of the tender committee. In support, the decision of the Hon'ble Apex Court in the case of ***Utkal Suppliers –Vs- Maa Kanak Durga Enterprises and others*** reported in ***(2021) 14 SCC 612*** is pressed.

II. Under the provisions of Section 20 of the Act, 1970 and Rule 21 of the Rules, 1971, the State of Assam has already notified the authority to issue a license under the aforesaid Act, 1970 and in terms of the notification, the license can be issued for the area covering the whole State of Assam by the Labour Commissioner and so far covering a District by the Assistant Labour Commissioner.

III. The tender condition itself discloses that the authorities are

within their jurisdiction to find out the historical document and ask for shortfall documents. That being the position, the explanation given by the State for asking the respondents to supply the shortfall of documents may not be interfered in the exercise of this Court's jurisdiction under Article 226 of the Constitution of India, more particularly, when there is no arbitrariness, illegality or discrimination. In support, the decision of the Hon'ble Apex Court in the case of **Bharat Coking Coal Limited and Others –Vs- AMR Dev Prabha and Others** reported in **(2020) 16 SCC 759**, is pressed.

6. Countering the arguments of the learned counsel for the respondents, Mr. Singha, learned counsel for the petitioner contends:-

I. A valid labour license in terms of the clause of the NIT would mean a labour license granted under the provision of Section 12 of the Act, 1970 and Rule 21 of the Rules, 1971 and therefore, when the petitioner admittedly has a labour license, the same would satisfy the required tender condition.

II. As a fresh labour license is mandatory after the work is awarded, therefore, the basic object of providing a labour license is to ascertain the authorities themselves that the concerned bidder has the capability to provide the required labour registration certificate for the purpose of utilizing in the contract.

III. The petitioner further contends that the interpretation so made cannot be treated as an interpretation but is a hidden criterion inasmuch as the authorities ought to have declared in the tender condition itself that the only license issued by the State authorities or the authority where the work is situated shall only be considered as a valid license.

7. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the pleadings, the judgments

relied on by the parties, the record and the bid document.

8. On the backdrop of the argument let this Court first deal with the ITB.

9. The Bid document contains as many as **9 (nine)** Sections. Each Section has Clauses and Sub Clauses. The important Sections for the purpose of determination of the present litigation are Section II, which is instruction to Bidder, Section IV which deals with evaluation and qualification criteria of Bid and Section VI which deals with Bidding Forms.

10. Section II of the bid document deals with instructions to bidders. Clause A.5.5 mandates that the bid is to be submitted as per the format given in Section VI – (Bidding Forms).

11. Clause C deals with the preparation of bids. Clause C.11.1.v, amongst others, prescribes that the Bid document shall comprise duly filled forms along with all attachments as per forms provided in Section VI (Bidding Forms). Clause C. 16.1 prescribes that the bidders shall, amongst others complete any other Form(s) included in Section VI and Clause C. 16.2 prescribes that complete registration document in accordance with Clause A.5.2. Under Section II should be submitted by the bidders to establish his eligibility.

12. Clause C.17 deals with documents establishing the bidder's qualification. Clause C.17(1) provides that the documentary evidence of the bidders' qualification to perform the contract shall required to be established to the employer's satisfaction that the bidder meets each of the qualification criterion specified in Section IV. Clause C.17.2 provides that bidders should submit all required information and documents, and fill all the forms as prescribed in Section VI.

13. Section IV of the Bid document deals with the evaluation and qualification criteria. It prescribes that the employer shall evaluate a bid and qualify the bidders in accordance with ITB E.35 and E.36 and no other criteria shall be used and that the bidder shall provide all the information requested in the forms

included in Section VI.

14. Clause 2.A under Section IV deals with qualification criteria. Clause 2A(a) to (h) deals with different conditions to be qualified for bidding. Clause 2.A.(ii) prescribes the registration certificate with uptodate GST Challan. Clause **2.A.(iii) prescribes qualification, condition of having EPF with upto date payment challan with upto date labour license and ESIC.** Clause 2.A.(iv) prescribes requirement of uptodate professional tax submission certificate for qualification.

15. Another important Section shall be Section VI. This Section deals with Bidding Forms and it prescribes for Technical Proposal Forms consisting of 10 forms. Amongst other, it prescribes Forms as regards Completion of Similar Contracts, Completion of Electrical Works, License for Executing Anti-Termite Works, License for Executing Fire Fighting Work, Execution of Minimum Quantities of Works. However, a labour licence is not a part of it.

16. Clause E under Section II deals with evaluation and comparison of Bids and this Section contain Clause E.27 to E.36.

17. Clause-E. 35 deals with evaluation of bids. Clause E.35.1, prescribes that the evaluation committee shall use the criteria and methodologies and no other evaluation criteria or methodology shall be permitted. The required consideration is enumerated in Clause (a) to (e) under Clause E. 35.2. Sub Clause (e) is important for the present litigation which prescribes that the additional evaluation factor shall be as specified under Section IV (Evaluation and Qualification criteria).

18. Clause E.30.2 empowers the Evaluation Committee to request the bidder to submit necessary information or documents which are historical in nature like audited statements of accounts, tax clearance certificate, PAN, etc. within a reasonable period of time. Clause E.30.3 further empowers the evaluation committee to rectify immaterial non-conformities or omissions on the basis of the

information or documentation received from the bidder under the aforesaid Clause E.30.2.

19. The principle for determination of responsiveness of a bidder is dealt under Clause E.31. In terms of the Clause E.31.2, a bid shall be deemed to be substantially responsive, if it meets the requirement of the **bidding documents** without any material deviation, reservation, or omission. Clause E.31.4 mandates that the Evaluation Committee shall examine the technical aspects of the bid in particular to confirm that all requirements of bidding documents have been met without any material deviation, reservation or omission.

20. Clause E.32 deals with nonconformities, errors and omissions. Clause E.32.1 provides that when bid is substantially responsive, the Evaluation Committee may waive any nonconformities in the bid. Clause E.32.2 also mandates that when a bid is substantially responsive, the employer or authorized representative may request the bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify non material nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid.

21. Thus, Clause E. 35 under Section IV, Clause 2.A.(iii) under Section II and the Forms under Section VI are very vital for the determination of present lis.

22. Thus, it is clear from the aforesaid provision that requirement of a labour license is an essential qualification under Clause 2.A.(iii). From the aforesaid discussion, it is also clear that in terms of Clause E.35, the evaluation shall be confined only to the requirement under Clause E.35.2.(a) to (e). Clause E.35.2. (e) deals with the additional criteria. The additional criteria are enumerated in Clause 2.A.(iii) and prescribes amongst other "a labour license". However, Such clause does not specify any characteristic of such license, though, from the affidavit of the employer it is seen that such license is a contract labour license.

23. Be that as it may, from the clauses enumerated hereinabove, there is no doubt in the mind of this Court that contract labour license is not only an essential qualification but the same is also a part of evaluation of Bid process. There is nothing under the ITB which suggest any specification and/or characteristic of a labour license except suggesting in Clause 2.A.(iii) under Section IV, that labour license is a qualifying criteria without prescribing that such labour license shall be treated as valid in a situation as projected by the employer in their affidavit. In fact, so far relating to the other licenses such as Electrical License, Anti Termite License, Fire Fighting License, a specific questionnaire is put in the respective forms under Section VI to the effect that whether the bidder is having such certificate and if not, the same is to be submitted at the time of signing of the agreement. Thus, the aforesaid licenses which are prescribed under Section VI and necessary for bid evaluation, can also be submitted after contract is awarded and at the time of signing of such contract.

24. There is no quarrel to the proposition of law as urged by the learned Counsels for the respondents that an employer of a project having authored the tender document, is the best person to understand and appreciate its requirement and interpret his document and that the constitutional Courts must defer to such understanding and appreciation of the tender document except when there is malafide or perversity in the understanding or appreciation or in the application of terms of the tender condition. It is equally well settled that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting a statute and that the High Court should not interfere when there are differences in contractual interpretation. In the case in hand, the respondent employer is interpreting a contract labour license to be valid, for the purpose of the tender in question, when it is issued by the regional licensing authority under whose jurisdiction the contract is to be executed or issued by a licensing authority, who has jurisdiction to issue license for whole of

the State. Thus, they are treating all the valid licenses issued by the licencing authorities, other than the aforesaid two licensing authorities to be invalid. In short, a valid license under the Act 1970 and Rules, 1971 is being interpreted to be invalid for the purpose of their contract. Generally, such interpretation should not be interfered in the exercise of power of judicial review. When there are differences in contractual interpretation. However, this Court cannot ignore the fact that respondent authorities had not disclosed such intention in the ITB.

25. Thus, even if, it is assumed that the employer is at liberty to interpret a valid license issued under the Act, 1970 and Rules, 1971 to be invalid, however, when they intend to do so, to have a fair play and transparency and credibility of the bidding process, they will have to disclose such a criteria inasmuch as for ensuring transparency and fairness, all evaluation criteria are required to be explicitly explained in the tender document more particularly, for the reason that the employers have interpreted an otherwise valid license issued by a statutory authority to be an invalid license. Such disclosure would have reinforced the importance of adherence to principles of equality and non discrimination in public procurement. In the case of **Dutta Associates Pvt. Ltd. –Vs- Indo Merchatiles Pvt. Ltd. and Ors.** reported in **1997 (1) SCC 53**, the Hon'ble Apex Court held that all criteria for evaluating bid must be clearly mentioned in tender notice. Any undisclosed or hidden criteria that affect the outcome of the bidding process, is unfair and contrary to the principles of transparency and credibility. It is important to record that hon'ble Apex Court in **Michigan Rubber (India) Limited –Vs- State of Karnataka and Others** reported in **(2012) 8 SCC 216** at paragraph 23 held that actions of the State are amenable to the judicial review so far the same relates to contractual matter, only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. Therefore, in such a situation, this Court shall not be powerless to interfere with the decision making process when it is arbitrary and

unfair.

26. Another important aspect of the matter having relevance and inextricably connected with the opinion expressed in the forgoing paragraphs, in the considered opinion of this Court, is the nature of license that can be issued under the scheme of the Act, 1970 and the Rules, 1971. Such a licence is contract/work specific and therefore, a separate license shall required to be issued under the statute to the bidder, who will be engaged in the contract by the principal employer after completion of the bidding process and therefore, the labour license insisted under the ITB can be a qualifying criteria but cannot be the labour license on the basis of which the contract in question can be actually executed. Therefore, insistence of such clause can at best be for the purpose of ascertaining whether the bidder is having expertise in engaging contract labour by following the prescription under the Act, 1970 and the Rules, 1971, which can have a bearing on the responsiveness of the bid. The basis of such finding of this Court is being dealt with in the following paragraphs.

27. The Act, 1970 was enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The Act is made applicable to every establishment and to every contractor when they employ contract labour for certain period. In terms of the definition given under the Act, 1970, an establishment is any office or department of government or local authority or any place where any industry, trade, business, manufacture or occupation is carried on. Thus, in the case in hand, the establishment shall mean either the District office of Animal Husbandry and Veterinary Department, Sivasagar or the Directorate of Animal Husbandry & Veterinary Department, Government of Assam. Principal employer has been defined, in relation to any office or department of government or a local authority, to be the Head of that office or the Department or any other office as the government or the local authority may

specify on this behalf. In the case in hand, there is no specific notification on this behalf and therefore, the principal employer shall mean the Animal Husbandry and Veterinary Department of the State of Assam.

28. Section 12 of the Act, 1970 debar the contractor under this Act, to undertake or execute any work through contract labour except in accordance with the license issued in this behalf by the licensing officer.

29. In terms of Section 35 of the Act, 1970 the State of Assam has enacted the Rules, 1971. Chapter-III of the Rules, 1971 deals with registration and licensing.

30. In terms of Rule 21 of the Rules, 1971 application for a license is to be filed by the contractor in Form-IV before the Licensing Officer of the area, in which the establishment is located, in relation to which he is a contractor. Such application is required to be accompanied by a certificate of the principal employer in Form-V and a licence is to be issued in Form -VI. The Form IV and the relevant portions of Form V and VI are quoted herein below:-

“FORM-V

FORM OF CERTIFICATE BY PRINCIPAL EMPLOYER

*Certified that I **have engaged/propose to engage the applicant*** the applicant.....(name of the contractor) **as a contractor in my establishment.** I undertake to be bound by all the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and Contract Labour (Regulation and Abolition) Assam Rules, 1971 in respect of the employment of Contract Labour by the applicant in my establishment.*

Place:

Date:

Signature of Principal Employer

Name and Address of the Establishment”.

FORM-IV

[See Rule 21(1)]

APPLICATION FOR LICENSE

3. Particulars of establishment where contract labour is to be employed:-

(a) Name and Address of the establishment;

4. Particulars of contract labour-

(b)Duration of the proposed contract work (give particulars of

proposed date of commencing and ending);

(c) Name and address of the Agent or Manager of Contractor at the work site;

7. Whether the contractor has worked in any other establishment within the past five years. If so, give details of the Principal Employer, establishments and nature of work.

8. Whether a certificate by the Principal Employer in Form V is enclosed".

"FORM-VI

[See Rule 25 (1)]

Government of Assam.

***Office of the
Licensing Officer,***

Sl No.

Licence No.

Date.

Fee Paid Rs.....

LICENCE

1.

2. This licence is for doing the work of (nature of work to be indicated) in the establishment of (name of the principal employer to be indicated) at(place of work to be indicated)

3."

31. It is seen from the aforesaid quoted and highlighted provision of Form IV that the application for license seeks disclosure of the particulars of the contract, which includes the nature of work in which the contract labour is employed or is to be employed in the establishment, duration of the proposed contract work with proposed date of commencement and end. The name of the manager at the worksite is also to be declared. Another important aspect is that it is to be declared by the contractor whether the contractor has worked in any other establishment within the last five years, and if so to give the details of the principal employer, establishment and nature of works.

From the Form-V, it is seen that a certification can be granted when a person is either already engaged as contractor in the establishment by the principal employer or principal employer is proposing to engage the applicant as a contractor in the establishment.

Form VI, the license also clarifies that in the license, the nature and the place of the work, period of such work and the name of the principal employer is to be indicated.

32. Therefore, in the considered opinion of this Court, a license can be granted when the contractors have already been engaged or proposed to engage a contractor and relatable to the work contract.

33. Rule 32 of the Rules, 1971 shall also support such conclusion inasmuch as Rule 32 prescribes that when an establishment requires employment of contract labours immediately, and such employment is estimated to last not more than 15 days, temporary licenses can be granted by the licensing officer having jurisdiction over the area in which the establishment is situated.

34. To summarize, under the scheme of the Act, 1970 and Rules, 1971, a labour license can be granted against a specific contract. The certification issued by the employer requires the name of the specific contract. The application to be filed by the contractor for license, also requires the specification of the work and duration. Therefore, in terms of the Act, 1970, a license shall be required in the case in hand after the work is awarded or after bidder is selected i.e. when the employer proposes to engage the successful bidder or after they engage the contractor. On the basis of such certification (Form V), the contractor is to apply for a labour license giving details of the work in question and the period etc. This Court is also of the opinion that in the aforesaid scheme of the Act, 1970 and the Rules, 1971, the contract license sought under the tender condition cannot be but for the reason to examine and satisfy the employer themselves that the concerned bidder has the capability to engage contract labour and can provide the labour licence for the purpose of utilizing it in the contract. Mr. D. Nath, learned counsel has also expressed his opinion that such condition of license might be incorporated for the purpose of ascertaining that the Bidder is having experience of engaging contract labour with valid Licence. That being the

position, it will be further discrimination to insist upon a specific kind of licence without any disclosure to that effect in the ITB.

35. While acknowledging the principle that the award of contract, like the present one, is essentially a commercial transaction and therefore, the employer can choose its own method to arrive at a decision, in the given facts and findings recorded hereinabove, this Court is of the unhesitant view that though the employer shall be within its domain to interpret a document which suits their consideration, however, such exercise of power should not lead to violation of Article 14 of the Constitution of India.

36. To summarize, and therefore, in the case in hand, though the employer is within its competence to accept only the certificate issued by the Central authority or the Regional authority of the region where work is to be executed, however, such condition ought to have been disclosed in the tender itself, more particularly for the reason that firstly, the license issued by the authority to the petitioner is also a valid license in terms of the Act, 1970 and the Rules, 1971 and secondly, such a valid license is proposed and/ or decided to be invalid by the employer. Another aspect of the matter is that a contract license is required to be issued for the work in question under the scheme of the Act, specific to the work and therefore, the ground of rejection is not sustainable being arbitrary and unreasonable and there is perversity in appreciation of the provisions of the Act, 1970 and the Rules, 1971 and above that, such criteria in the considered opinion of this Court, is a hidden criteria which was not disclosed to all the contractors. The action of the respondent in declaring subsequently that such license shall be an invalid license without disclosure of such intention is against the principle of Article 14 of the Constitution of India inasmuch as Article 14 demands fairness in action by the State. Non-arbitrariness is the essence, substance and heartbeat of fair play.

37. As regards the exercise of power under the tender for calling the historical

document, this Court do not find any infirmity for calling such historical document for the reason that not only the Evaluation Committee is having power to call such historical document but also the documents called are past documents issued by the instrumentalities of State and admittedly the petitioner did not have any historical document as regards contract license issued by licensing authorities, which is relatable either to the whole of the State or to the place where the contract is being executed.

38. For the reasons recorded herein above, it is held that the impugned decision to declare the Bid of the petitioner to be non-responsive for want of a valid Contract Labour license is arbitrary, unfair and unreasonable and therefore, violative of the petitioner's right under Article 226 of the Constitution of India.

39. Accordingly, the writ petition stands allowed by setting aside and quashing the impugned decision dated 01.07.2024 of the Evaluation Committee. Matter is now relegated to the Bid Evaluation Committee to take a fresh decision in terms of the determination made hereinabove. Parties to bear their own cost.

JUDGE

Comparing Assistant