

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.864 OF 2016

Smart Chip Pvt. Ltd.,]
Through its Authorised Signatory]
Registered Office :]
714, Raheja Chambers,]
213 Nariman Point, Mumbai.]
Corporate Headquarter :]
D-216, Sector 63, Noida, Uttar Pradesh] Petitioner

Versus

1. State of Maharashtra,]
Through Principal Secretary,]
Transport Department, 4th Floor,]
Main Building, Mantralaya,]
Mumbai – 400 032, Maharashtra.]
2. Commissioner of Transport,]
State of Maharashtra,]
Administrative Building, 4th Floor,]
Government Colony,]
Opp. Dr. Babasaheb Ambedkar Garden,]
Bandra (East), Mumbai – 400 051.]
3. Rosmerta Technologies Limited,]
Through its Managing Director,]
137, Udyog Vihar, Phase-I,]
Gurgaon, Haryana – 122 016.] Respondents

Mr. D.K. Singh, a/w. Ms. Mansa Bhatia,
Mr. Saurabh Agrawal and Mr. Rajesh Prajapati, for
the Petitioner.

Mr. M.D. Naik, A.G.P., for Respondent Nos.1 and 2.

Mr. Kevic Setalwad, Senior Counsel, a/w.
Mr. Prashant Raul, i/by Mr. Sanjeev P. Kadam, for
Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

RESERVED ON : 16TH JUNE 2016.

PRONOUNCED ON : 27TH JUNE 2016.

JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. Rule. Rule is made returnable forthwith. By consent, heard finally at the stage of admission.

2. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner is invoking extra-ordinary writ jurisdiction of this Court against the act of Respondent Nos.1 and 2 of treating Respondent No.3 as a qualified Bidder, despite Respondent No.3 being debarred and black-listed by the State Government of Sikkim, which act of Respondent Nos.1 and 2, according to the Petitioner, is illegal, arbitrary, malafide and in violation of the express terms of the Tender Document dated 17th August 2015. The Petitioner is, therefore, seeking a writ in the nature of mandamus directing Respondent Nos.1 and 2 to declare Respondent No.3 to be a disqualified Bidder and reject its technical and financial bid and further directing Respondent Nos.1 and 2 to declare the Petitioner as “L-1 Bidder” and, therefore, entitled to get contract under the said tender bid.

3. Brief facts, as are necessary, for deciding this Writ Petition can be stated as follows :-

. The Petitioner herein is a part of Multinational Group having Head Quarter in Paris and operates in 54 countries, including India, for nearly 60 years in various sectors and providing “State of Art Technologies” to several sectors such as Banking, Airport, Police, Health, Security etc. Petitioner has also been a pioneer company, having more than 4,000 employees, in offering “State of the Art Smart Card Solutions” for various applications in the field of e-Governance and is the first company to have successfully implemented Smart Card Based Driving License Project in 1999 in the entire State of Gujarat and Sikkim.

4. In August 2014, Respondent No.1, the State of Maharashtra, through Respondent No.2, the Transport Commissioner, had released the “Request for Proposal” (*RFP*) for Tender No.TCO/COMP/D-11/2014-15/ON/16004, for selection of a vendor for providing manpower, hardware, software, consumables etc. for the preparation of SCOSTA Certified Smart Card Registration Certificates across all offices of the Transport Department in the State of Maharashtra on Build, Own, Operate and Transfer Basis (*BOOT*). Despite several extensions of the date for submission of the tender documents, the said tender was cancelled by the competent authority in May 2015, which act, according to the Petitioner, was merely to facilitate Respondent No.3, the existing Contractor, to continue with its efforts to get the work without any tendering process.

5. Thereafter, on 29th June 2015, Respondent No.2 issued a fresh RFP Tender Notice No.TCO/COMP/D-11/2015-16/ON.7552 for selection of a vendor for the same project. On 6th August 2015, three Bidders, including the Petitioner, submitted online bids as per the terms of the tender process. The last date for submitting the hard copies of the respective bids of the Bidders was 10th August 2015. However, till that date, only two Bidders, including the Petitioner, had submitted the hard copies and hence, according to the Petitioner, in order to enable Respondent No.3 to submit such hard copy, which Respondent No.3 had not submitted till then, Respondent No.2, in a arbitrary and illegal manner, deviated from the terms of the RFP and allowed Respondent No.3 additional time to file the hard copies till 5 pm on 13th August 2015. However, as, till 14th August 2015, Respondent No.3 did not submit such hard copy, Respondent No.2, by way of Corrigendum, cancelled the tender process on the ground that there was lack of sufficient number of valid bids. By the said Corrigendum, a revised time-table for submission of bids was published.

6. It is the case of the Petitioner that as per Clause No.1.4.3 of the RFP, Respondent No.2 intended to follow a two stage, three cover process, for selection of the successful Bidder for the project. Certain terms and conditions were laid down for Pre-Qualification Criteria in order to entertain the Technical Bid. The essential criteria, as laid down in

Clause 1.5.11 of the RFP was to the effect that, *“the Bidder (individual or all the members of the Consortium) should not have been black-listed by Central Government or any State Government Organization / Department in India at the time of submission of the Bid”*. In proof of this pre-qualification condition, the Bidders were required to file an undertaking in the format provided for in Appendix-XVI of the RFP. As per Clause 1.25.3(ii) of the RFP, in the event the successful Bidder was found as having been debarred by the Transport Department of any State as on the date of submission of the Bid, the Security Deposit of such Bidder was to be forfeited and en-cashed wholly or partly.

7. As per further terms and conditions of the RFP, especially, Clause 1.7.3, only when a Bidder was deemed to be qualified, the technical proposal of the said qualified Bidder was to be considered for further evaluation. As per Clause 1.22.5.4, Respondent No.2 has right to reject the Bid of any Bidder where any material misrepresentation was made.

8. It is submitted by the Petitioner that, on 26th August 2015, the on-line Bids for the said tender were submitted by Respondent No.3 and the hard copies of the Bids were submitted thereof on 27th August 2015. According to the Petitioner, Respondent No.3 was debarred / black-listed by the Government of Sikkim vide order dated 10th April 2015 and hence Respondent No.3 cannot meet the Pre-Qualification Criteria in terms of

Clause 1.5.11 of the RFP. However, Respondent No.3 filed a false declaration in the format provided for in Appendix-XVI of the RFP and concealed the order dated 10th April 2015 passed by the Government of Sikkim, debarring it from participating in the tendering process, for fixing the HSRP on motor vehicles in the State of Sikkim.

9. Thus, according to the Petitioner, in view of the specific order dated 10th April 2015 passed by the State Government of Sikkim debarring Respondent No.3 from participating in the tendering process, the tender bid of Respondent No.3 could not have been considered, but, ought to have been outrightly rejected by Respondent No.2, as Respondent No.3 was not qualifying the essential criteria laid down in the RFP. Despite that, in a meeting of the Technical Evaluation Committee, held on 8th October 2015, the Technical Bid of Respondent No.3 was accepted, ignoring the notice sent by the Petitioner to Respondent No.2 bringing the said fact to its notice. Not only that, even the Financial Bid of Respondent No.3 also came to be accepted, Respondent No.3 being declared the lowest Bidder "L-1". A decision to that effect was taken in the meeting dated 19th March 2016. In the said meeting, the Petitioner was declared as "L-2".

10. The grievance of the Petitioner is that though the Bid of Respondent No.3 was not liable to be considered, being a disqualified Bidder, the said Bid was not only considered and accepted. Hence this act of Respondent

Nos.1 and 2 smacks of malafides, arbitrariness and is in violation of the fundamental rights of the Petitioner guaranteed under Articles 14 and 19(1)(g) of the Constitution of India. The Petitioner is, therefore, constrained to approach this Court seeking direction that Respondent Nos.1 and 2 declare Respondent No.3 as disqualified Bidder and reject its Technical and Financial Bids and award the contract to the Petitioner, who is the next lowest Bidder.

11. To substantiate the grievances raised in the Petition, learned counsel for the Petitioner has relied upon Clause 1.5.11 of the RFP, which reads as follows :-

“1.5.11 The Bidder (individual or all the members of the Consortium) should not have been blacklisted by Central Government or any State Government organization / department in India at the time of submission of the Bid.”

12. Further he has relied upon Clause 1.22.5.4.2 of the RFP, which provides for Respondent No.2's right to reject the Bid in case of the Bidder acquiring disqualification; and Clause No.1.25.3 providing for forfeiture of the Security Deposit in case it is found that successful Bidder has made misleading or false representation in the forms, statements and

attachments submitted or attached to the Bid. The learned counsel for the Petitioner has also drawn attention of this Court to Appendix-XVI, which pertains to the format for declaration to be submitted by the Bidder about not being debarred / black-listed by the Central Government / any State Government Department in India as on the date of submission of the Bid.

13. To prove that Respondent No.3 was not qualified Bidder, the Petitioner has placed reliance on the letter dated 10th April 2015 issued by Motor Vehicles Division (Transport Department), Government of Sikkim, addressed to Mr. Sandeep Malik, Director of Respondent No.3, wherein Respondent No.3 was informed that the Government of Sikkim has decided not to entrust to Respondent No.3 the responsibility of affixing High Security Registration Plates to his company and thereby rejecting the Bid submitted by Respondent No.3.

14. According to learned counsel for the Petitioner, this letter produced at Exhibit-E, Page No.182 of the paper-book, is more than sufficient to prove that Respondent No.3 was debarred from participating in the tendering process by the Government of Sikkim and this was done in view of the show cause notice issued by Delhi Government for alleged violation of certain terms of the Contract Agreement by Respondent No.3 and a Committee constituted by the Delhi Government had found the allegations to be true. According to learned counsel for the Petitioner, this document

clearly goes to prove that Respondent No.3, being debarred by the Government of Sikkim from participating in the tendering process, the acceptance of his Bid by Respondent Nos.1 and 2 is in clear violation of Clause No.1.5.11 of the RFP in this case and hence this action of Respondent Nos.1 and 2, on the face of it also, being arbitrary, manifestly illegal and in violation of the terms and condition of the tender document, is required to be quashed and set aside.

15. In support of his submissions, learned counsel for the Petitioner has also relied upon various authorities of the Hon'ble Supreme Court laying down the scope of the judicial review of the administrative action, which authorities will be considered in the course of the Judgment.

16. On behalf of Respondent No.2, an affidavit-in-reply is filed on record, of the Deputy Transport Commissioner (Computer) denying all the adverse allegations and contending, inter alia, that on the receipt of the complaint received from Advocate Abhishek Samant on 18th March 2016, demanding black-listing of Respondent No.3 on the ground that Respondent No.3 was already black-listed by Government of Sikkim, the Tender Scrutiny Committee of Respondent No.2, in its meeting dated 19th March 2016, decided to call upon the relevant information from both the authorities, i.e. Government of Sikkim and Government of Delhi. In response thereto, reply was received from the Transport Department,

Government of Sikkim, vide e-mail dated 2nd April 2016, clearly stating that the Government of Sikkim has not black-listed Respondent No.3. Thus, it is urged that whatever grievances raised by the Petitioner herein are not at all substantiated or even, prima facie, proved on record. The Petition, therefore, being misconceived, needs to be dismissed.

17. On behalf of Respondent No.3, its Authorized Representative has, in his affidavit-in-reply, categorically stated that Clause No.1.5.11 of RFP is not applicable to the present Respondent, as Respondent No.3 has not been black-listed by any State or Central Government. The Government of Sikkim has clarified the said fact vide its letter dated 2nd April 2016. Moreover, Respondent No.3 has already challenged, by filing Writ Petition (C) No.53 of 2015, the act of Government of Sikkim of not accepting his Bid document of HSRP. The said Writ Petition is pending and subjudice before the High Court of Sikkim. As regards the show cause notice issued by Delhi Government for alleged violation of certain terms of the Contract Agreement, it is submitted by Respondent No.3 that the said dispute is also the subject matter of Arbitration Proceedings, which are pending before the Arbitral Tribunal, in which the Delhi Government is restrained from taking any action, pursuant to the show cause notice dated 10th March 2014.

18. Thus, according to Respondent No.3, there is absolutely no

substance in the contention of the Petitioner that it was not fulfilling the Pre-Qualification Criteria or has committed any misrepresentation. According to Respondent No.3, neither the Government of Sikkim nor Government of Delhi has issued any show cause notice to Respondent No.3 stating as to why it should not be black-listed and no prior hearing to the stage of alleged black-listing had taken place. Not only that, even the Government of Delhi has neither terminated nor suspended the contract given to Respondent No.3.

19. It is also urged that the present Petition is filed at a belated stage, only after opening of the Financial Bid and when it was clear that Respondent No.3 was declared as “L-1” and, therefore, entitled to get the contract. According to Respondent No.3, therefore, the present Petition is an attempt to obstruct Respondent No.3 from getting the contract arising out of the tender notice and hence the same is liable to be quashed.

20. On this Petition, having heard at length learned counsel for the Petitioner and the Respondents, we are of the opinion that a very short question is raised for our consideration, *'as to whether Respondent No.3 fulfills the Pre-Qualification Criteria, as laid down in Clause 1.5.11 of RFP, which pertains to whether Respondent No.3 has been black-listed by Central Government or any State Government Organization / Department in India at the time of submission of the Bid ?'* If it is proved to be so, then,

the Petition succeeds. If not, the Petition fails.

21. However, before advertng to this factual aspect, as learned counsel for the Petitioner has relied upon number of authorities of the Hon'ble Supreme Court of India on the aspect of the scope of the judicial review of administrative action regarding the award of Government contract, it would be necessary to make a reference, *albeit*, briefly to those decisions.

22. The first decision relied upon by learned counsel for the Petitioner is that of ***Harminder Singh Arora Vs. Union of India & Ors., (1986) 3 SCC 247***, wherein, relying on its own observations in ***Ramana Dayaram Shetty Vs. International Airport Authority of India, (1979) 3 SCC 489***, it was held as follows :-

“14. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse ... must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such

standard or norm in any particular case or cases, the action of the government would be liable to be struck down, unless it can be shown by the government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.”

23. The learned counsel for the Petitioner has then relied upon ***Siemens Public Communication Networks Private Limited & Anr. Vs. Union of India & Ors., (2008) 16 SCC 215***, wherein the Hon'ble Supreme Court has reiterated the law relating to the scope of judicial review by relying upon its earlier decision of ***Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India & Ors., (2006) 10 SCC 1***, relied upon by learned counsel for the Petitioner in this case also and observed that the decision making process of Government or its instrumentality should exclude remotest possibility of discrimination and favoritism. It should be transparent, fair and bonafide and in the public interest and if it is so, the Court will not interfere in exercise of power of judicial review, even if there is a procedural lacunae. It was further held that principles of equity and natural justice do not operate in the field of such commercial transactions.

24. Learned counsel for the Petitioner has lastly taken recourse to the landmark decision of the Hon'ble Supreme Court of India in the case of ***Michigan Rubber (India) Limited Vs. State of Karnataka & Ors., (2012)***

8 SCC 216, wherein, after considering its long line of decisions, including ***Reliance Airport (Supra)*** and ***Jagdish Mandal Vs. State of Orissa & Ors.,(2007) 14 SCC 517***, relied upon by learned counsel for the Petitioner, it was held that the principle of law is well settled and well recognized by now to the effect that;

“21.In Jagdish Mandal v. State of Orissa, the following conclusion is relevant :

“22.Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek

damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached';

- (ii) Whether public interest is affected.*

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer / contractor or distribution of State largesse

(allotment of sites / shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

23. *From the above decisions, the following principles emerge :*

- (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 the 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 the 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 a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions :

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say : “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”?

and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

25. Being fully conscious of well-recognized legal principles of Judicial Review, we find that the only issue raised for consideration in this Petition is, '*whether Respondent No.3 was fulfilling the Pre-Qualification Criteria in terms of Clause 1.5.11 of the RFP?*' The said Clause is reproduced for ready reference as under:-

“1.5.11 The Bidder (individual or all the members of the Consortium) should not have been blacklisted by Central Government or any State Government organization / department in India at the time of submission of the Bid.”

26. Thus, the essential criteria is that the Bidder should not have been **“black-listed”** by the Central Government or State Government Organization/Department in India at the time of submission of the Bid. The process of black-listing is by now well settled. As black-listing of any Contractor is considered to be in the nature of a civil death, as having serious implication for such an entity or a person, it is held that such action cannot be taken without following the principles of natural justice. Such action, therefore, must be preceded by issuance of show cause notice and an opportunity of hearing being extended to such entity or a person.

27. In the instant case, even a cursory perusal to the letter issued by

the Government of Sikkim dated 10th April 2015, on which the entire reliance is placed by learned counsel for the Petitioner to support his contention that Respondent No.3 was disqualified from tendering his Bid, nowhere reflects that Respondent No.3 was black-listed by the Government of Sikkim or any process for such black-listing was initiated against Respondent No.3. As this letter dated 10th April 2015 is pivotal for deciding this Petition, the relevant contents thereof can be reproduced. It may be stated that this letter is addressed to the Director of Respondent No.3 Mr. Sandeep Malik. It reads as under :-

“It has come to the notice of State Government that M/s. Rosmerta Technologies Ltd. is a part of consortium that has bagged the contract for fixation of HSRP for Delhi and that Delhi Government has issued a show-cause notice for alleged violation of certain terms of the contract agreement and a committee constituted by the Delhi Government had found the allegation to be true. This being a serious lapse, the State Government has decided not to entrust the responsibility of affixing High Security Registration Plates to your company.

Therefore, you are hereby informed that conferred to clause 2.23.5 of Section IV of bid document of HSRP, your bid cannot be accepted by the State Government.”

28. Thus, even a cursory perusal of the letter nowhere reveals that

either Respondent No.3 is black-listed or any process for black-listing is undertaken or intended to be undertaken by the Government of Sikkim or even by the Government of Delhi against Respondent No.3. At the most, what the letter says is that Respondent No.3 is a part of Consortium that has bagged the contract for fixation of HSRP for Delhi and Delhi Government has issued show cause notice for alleged violation of certain terms of the Contract Agreement and a Committee constituted by Delhi Government had found the allegation to be true. But the letter nowhere states that on account of it, Respondent No.3 is debarred or black-listed. It is given only as a reason for not accepting Respondent No.3's Bid for that particular project.

29. As regards these contents of the letter, the affidavit filed by Respondent No.3 goes to show that the show cause notice issued by Delhi Government is subject matter of the Arbitral Proceeding and Arbitral Tribunal has issued an interim order dated 1st April 2016, restraining Delhi Government from taking any action pursuant to the said show cause notice dated 10th March 2014. A copy of that order issued by the Arbitral Tribunal to that effect is produced at Exhibit-D, Page No.237, of the paper-book.

30. The letter dated 10th April 2015 issued by the Transport Department of Government of Sikkim only alleges that in view of the show cause

notice issued by the Delhi Government to Respondent No.3 relating to violation of certain terms of the Contract Agreement, the Government of Sikkim has decided not to entrust the responsibility of affixing High Security Registration Plates to Respondent No.3 and, therefore, the Bid submitted by Respondent No.3 was not accepted by the Government of Sikkim. Thus, these contents in the letter also nowhere reflect that Respondent No.3 is either black-listed or debarred from tendering process. Only action taken against Respondent No.3 by this letter is that its Bid was not accepted for that particular tender or contract, but nowhere the said letter reveals that Respondent No.3 was, hence, debarred or black-listed from participating in tendering process.

31. Though learned counsel for the Petitioner has relied upon the meaning attributed to the word “Debar”, as given in The Law Lexicon, to mean *“excluding from admission or right; precluding from doing certain acts”*, this letter dated 10th April 2015 issued by Government of Sikkim does not even preclude or exclude Respondent No.3 from participating in tendering process. The letter only pleads inability of Government of Sikkim from accepting its Bid document of HSRP Project, in view of Clause 2.23.5 of Section 4 of that particular Bid document.

32. Therefore, this letter dated 10th April 2015 cannot be of any help to the Petitioner to prove that Respondent No.3 was either debarred or

black-listed, as contemplated under the law, from participating in other tendering processes. Whatever action was taken by Government of Sikkim against Respondent No.3 by this letter dated 10th April 2015 was in respect of a distinct particular contract and limited to that contract only, of not accepting his Bid for that particular project. Nothing more than that can be read in the said letter so as to infer that the Government of Sikkim or for that matter even Government of Delhi has either precluded or debarred, much less black-listed Respondent No.3, which is the essential condition to disqualify Respondent No.3 in the present Tender Bid.

33. It is also pertinent to note that the Transport Department of Government of Sikkim vide its letter dated 2nd April 2016 produced by Respondent No.2 at Exhibit-5, on Page No.205 of the paper-book, makes the things further clear. It is stated therein that the action of Sikkim Government of not accepting the Tender Bid of Respondent No.3 is challenged by Respondent No.3 in the High Court of Sikkim and the said show cause notice is subject matter before the High Court of Sikkim in Writ Petition No.53 of 2015. In the said Writ Petition, an interim order is passed on 12th February 2016 allowing Respondent No.2 to go ahead with notice inviting tenders, but not to take any final decision. The copies of the Writ Petition and orders passed therein are also produced on record by Respondent No.3.

34. This letter dated 2nd April 2016 issued by the Government of Sikkim to Respondent No.2 states further in categorical terms that, *“the State Government of Sikkim has not black-listed M/s. Rosmerta Technologies Limited”* i.e. Respondent No.3 herein.

35. Thus, in this case, there is absolutely not a single document to prove that, at the time of submission of the Bid in this case, Respondent No.3 was either debarred or black-listed, either by Central Government or any State Government Organization / Department in India. In view thereof, there is no breach of the essential Pre-Qualification Criteria laid down in Clause 1.5.11 of RFP (tender document). In such situation, in our considered opinion, there is absolutely no merit or substance in the Petition filed by the Petitioner challenging the action of Respondent Nos.1 and 2 of entertaining the Technical and Financial Bids of Respondent No.3. The reliefs, therefore, claimed by the Petitioner cannot be granted.

36. The Petition, hence, stands dismissed. Rule is discharged accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]