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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1740 of 2018**

- Agriculture Insurance Company Of India Limited, Head Office 13th Floor, Ambadeep 14, Kasturba Gandhi Marg , Connaught Place , New Delhi - 110001 , Through Its Regional Manager , Raipur Shri Vishal J . Kharbade , S/o Shri Jagannath Kharbade, Aged About 46 Years, Regional Office Jeevan Prakash , Jeevan Beema Marg (2nd Floor) Pandri Raipur - 492004 Chhattisgarh.,

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Agriculture And Biotechnology, Mantralaya, Mahanadi Bhawan, Naya Raipur District Raipur Chhattisgarh.
2. Directorate Of Agriculture Through The Director , Directorate Of Agriculture, Krishak Nagar, Labhandi, Raipur District Raipur Chhattisgarh
3. Bajaj Allianz General Insurance Co. Ltd. Through The Managing Director Bajaj Allianz General Insurance Co Ltd. Head Office At 1st Floor, G E Plaza, Airport Road , Yerawada Pune 411006.,

---- Respondent

For Petitioner	Dr. NK Shukla, Senior Advocate with Mr. Saurabh Sharma, Advocate
For Respondent /State General	Mr. YS Thakur, Additional Advocate
For Respondent 3	Mr. Abhishek Sinha, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Prashant Kumar Mishra**

Per, Ajay Kumar Tripathi, Chief Justice

31/7/2018

1. Heard.
2. The Director of Agriculture, Chhattisgarh Government, invited tender dated 18.4.2018, a copy of which is Annexure P/1. This was with the object of empanellment and award of contract of crop insurance to Insurance companies as part and parcel of the implementation of what is known as "*Pradhan Mantri Fasal Bima Yojna*" for the *Kharif* season for the year 2018. Some more details and terms and conditions of the NIT was putout on the website. Details thereof is Annexure P/2.
3. As per the NIT, 21.5.2018 was the date when the bids were required to be submitted up-till 3:00 p.m. 4:00 pm of 21.5.2018 was fixed for opening of the technical bid and at 11.30 am, on 22.5.2018, the financial bid was required to be opened. Bids were invited for five Clusters of different geographical areas of the State. There were many bidders and on the basis of offers so made, the tenders were finalised on 22.5.2018.
4. In the present case, the petitioner namely Agriculture Insurance Company of India Limited were found to be successful bidder for Cluster Nos. 2& 3. There is no

problem so far as their bid being the lowest bid is concerned. The whole problem arose thereafter because the decision of the Tender Finalisation Committee dated 22.5.2018 came to be upturned by the State Level Committee, where they decided to cancel all bids for Cluster No.1, 2, 3 & 5. So far as cluster No.4 was concerned, the bids as received was decided to be finalised.

5. The dispute has arisen in the present case because the petitioner, who were initially successful bidder for Clusters Nos.2 & 3, were prevented or barred from consideration so far as bid for Cluster No.4 was concerned. The authorities relied on certain terms of the contract, which is part of the General Information and Guidelines and since that is the core issue of the dispute, the provision is reproduced hereunder :

“Selection of Insurance Company as Implementing Agency (IA):

One insurance company can be selected maximum for two cluster only through the bidding process and will be designated as the implementing agency for the said cluster. Each and every insurance company should submit their financial bid separately for each cluster in a separate envelope, mentioning the name of cluster

on the envelope. No insurance company will be eligible for more than two cluster after finalization of bid. If any implementation agency win for two cluster then their financial bid for any other cluster shall not be open."

Emphasis supplied

6. Getting back to the facts, since on 22.5.2018, the Tender Finalisation Committee took recourse to the above provisions and found that the petitioner was a successful bidder for two of the Clusters namely Cluster Nos.2 & 3, therefore, their bid was not considered for any other cluster. Hence, the only bid which was left as part of the initial Notice Inviting Tender was in relation to cluster No.4 alone. On the date i.e. 24.5.2018, when the State Level Committee decided to go for a fresh NIT with regard to Cluster Nos.1, 2, 3 & 5, this petitioner had no contract in hand despite being successful bidder for two Clusters in the earlier exercise so done. Because of the bar created by the respondent authorities for considering the bid of the petitioner in relation to Cluster No.4, the petitioner decided to approach the High Court and seek direction upon the respondents that even their offer in relation to Cluster No.4 be considered.

7. Argument of learned counsel on behalf of the petitioner is that the clause which created a bar against an Insurance Company for being considered for more than two Clusters no doubt operated on 22.5.2018, when all the bids were opened and the petitioner was found to be L-1 with regard to Cluster Nos.2 & 3. He would have had no grievance against his non-consideration with regard to the other three clusters provided the Tender Committee's decision in relation to the first NIT was accepted and acted upon. The entire facts and decision changed on 24.5.2018 when the State Level Committee perceiving some kind of cartelisation amongst the bidders decided to cancel all the NITs except in relation to Cluster No.4. Fresh notices were issued inviting tenders in relation to Cluster Nos.1,2, 3 and 5. Those notices are not the subject matter of the dispute or consideration before us.
8. Submission of learned counsel is that may be on 22.5.2018 by virtue of clause of debarment of an Insurance Company being granted more than two clusters was valid but since on 24.5.2018, there was no valid finalisation of bid in relation to the two clusters and the State Level Committee on 24.5.2018 annulled all those offers in relation to four of the Clusters, therefore, as a natural corollary even the petitioner's bid should have been considered for Cluster

No.4 because for all practical purposes, the Notice Inviting Tenders got limited to only one cluster that was cluster No.4. By enforcing and holding the bar created from participation of an Insurance Company being successful in two Clusters would have held valid provided the decision with regard to all the five Clusters stood its ground and was not annulled by the State Level Committee.

9. The Court while analysing the clause in relation to debarment created against an Insurance Company comes to a considered opinion that debarment will not apply in case of the present petitioner with regard to Cluster No.4 for the simple reason that there was no finalisation of the bid and there was no winning agency for the two Clusters because the wins were set to naught by cancellation of those tenders. When the State Level Committee decided to stick with regard to Cluster No.4, it would have been in all fairness of things that the offer made by the present petitioner with regard to Cluster No.4 should have been opened and considered since there were no successful bid in any other clusters since NITs stood cancelled and was re-advertised.

10. Learned counsel for the State takes simple line of argument that on 22.5.2018 when the bids were opened

and finalised with regard to the five Clusters, the petitioner was successful bidder in two of the Clusters and therefore, the petitioner's bids were not opened in relation to the other two Clusters, which were Cluster Nos.4 & 5.

11. Since the State authorities have themselves laid down the condition of non-consideration of any more bids of an Insurance Company, who were successful in more than two Clusters, despite the decision of the State Level Committee to go for cancellation of the Clusters except for cluster No.4, the State authorities decided in their understanding that they were not bound to open the offer of the petitioner company so as to ensure that they were not shown to be in violation of their own terms and conditions of the Notice Inviting Tender.

12. Respondent No.3, which is Bajaj Allianz General Insurance Company Ltd, have also been arrayed as party-respondent in the present writ petition. The reason why they have been impleaded as a party is that in relation to Cluster No.4, they happened to be L-1 and therefore, they are necessary party and they have also been noticed and have filed their return.

13. When the writ petition was taken up earlier on 29.6.2018, a Division Bench of this Court after issuing notice to the

concerned respondents including private respondent No.3 ordered that the tender process with reference to Cluster No.4 shall not be finalised. This interim order continued to operate and is still in operation till the time of final hearing.

14. When the matter was taken up on 10.7.2018, after having given an extended hearing to all the parties, the Court *prima facie* was of the opinion that keeping in mind the decision of the State Level Committee to cancel the previous NITs in relation to Cluster Nos.1, 2, 3 & 5, the bar which is created against the petitioner for non-consideration of his offer with regard to Cluster No.4 was unwarranted. The Court, therefore, directed the State that even the financial bid of the present petitioner be opened and the position be made known to the Court subsequently on the next date.

15. It seems that not being happy and satisfied with the said direction dated 10.7.2018 issued by the Division Bench, respondent No.3 decided to file an SLP, which is SLP(C) No.18951/2018. The Court is now informed that vide order dated 27.7.2018, the said SLP stands disposed off with liberty to the parties to assist the High Court in final disposal of the matter on merits.

16. The stand of the private respondent is that the writ petition of the petitioner should not have been entertained because there was delay on his part in assailing the decision of non-consideration of his bid in relation to Cluster No.4. In terms of the second NIT, he participated and only after having failed to win contract for any of the Clusters, he has decided to approach the High Court in relation to finalization of the award of cluster No.4. This delay should be enough to dismiss his writ petition.
17. The other limb of the argument of learned counsel for the private respondent is that the Courts should be loath in matter of examining award of contracts. They are not the appellate or superior authority, who can sit over such decision making. The decision not to consider the offer and bid of the petitioner was totally in harmony and conformity with the terms and conditions of the Notice Inviting Tenders. Since the petitioner had successfully bid for two Clusters, his bid was rightly not opened with regard to cluster No.4 and the private respondents having been successful for Cluster No.4, no impediment should be created nor can the right be taken away by allowing opening of the bid of the petitioner in relation to the said Cluster.

18. In this regard reliance has been placed on the decision rendered by the Apex Court in the matter of **JSW Infrastructure Limited and another Vs. Kakinada Seaports Limited and others**, (2017) 4 SCC 170.
19. The argument of learned counsel for the private respondent is fit to be rejected in the given facts of the case. The ratio and decision of the Hon'ble Apex Court is not applicable in the facts of the present case for the reasons to follow.
20. It is not the terms and conditions of the contract, which has been reproduced in earlier part of the order, which is the bone of the contention. It is the interpretation which has been sought to be given by the Tendering Committee. The question is whether the same has been read in consonance and harmony with the object and purpose for which such bars have been created.
21. The bar with regard to preventing an Insurance Company from bidding for more than two Clusters may have a public object behind it but that bar can only operate provided an Insurance Company has been awarded and tender has been finalized after participation in favour of the tendering party. The fact in this case is that the petitioner was initially declared as successful bidder for two Clusters but

that success became not only elusive, but also nullified because the State Level Committee did not accept the recommendation of the Tender Committee and annulled all the clusters minus Cluster No.4 and these Clusters included two of the Clusters in which petitioner was successful. If the decision of the Tender Committee was re-visited by the State Level Committee, then in all fairness of things, all parties, who had participated in the tender even in relation to Cluster No.4 including the present Petitioner should have been allowed to participate fairly. Barring him on the basis of non-existent tender or an annulled successful tender cannot be held out against him and prevent him from consideration with regard to Cluster No.4.

22. In totality, therefore, in the given facts that since the petitioner no longer was the successful bidder, after the annulment of the contract with regard to Clusters in question, the bar which was held out against him was no longer existent and his bid was required to be considered by the Tender Committee in the changed circumstances.

23. In the end, we therefore hold that the direction issued by this Court as on 10.07.2018 was warranted and necessitated now that the offer of the petitioner has been also opened by the State authority in relation to Cluster

No.4. The decision in relation to the said Cluster will now be taken on the available offers including the offer of the present petitioner.

24.The writ petition stands allowed in terms of the above.

25.Certified copy today itself.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge

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