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IN THE HIGH COURT OF MANIPUR
AT IMPHAL
Review Petition No. 2 of 2020

M/S AASRAY CONCEPT FOODS, represented by its Karta/ representative Shri Ashish Deorah, aged about 41 years, S/O (L) Ashok Kumar Deorah, resident of C-802 Spanish Garden, RG Baruah Road, Guwahati – 781005, Assam.

… Petitioner

-Versus-

1. The State of Manipur, represented by the Principal Secretary, Social Welfare, Govt. of Manipur, Secretariat Building, Babupara, P.O. & P.S. Imphal, District Imphal-West, Manipur– 795001.
2. The Director of Social Welfare, Govt. of Manipur, Office of the Department of Social Welfare, Secured Office Complex, near 2nd Bn. Manipur Rifles, P.O. & P.S. Imphal.
3. The Director, Rausheena Udyog Limited, Guwahati, C/O The Director of Social Welfare, Govt. of Manipur, Office of the Department of Social Welfare, Secured Office Complex, near 2nd Bn. Manipur Rifles, P.O. & P.S. Imphal.
4. The Director, M/S Continental Milkose (India) Ltd., New Delhi. C/O The Director of Social Welfare, Govt. of Manipur, Office of the Department of Social Welfare, Secured Office Complex, near 2nd Bn. Manipur Rifles, P.O. & P.S. Imphal.

… Respondents

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the review petitioner	::	Shri Anjan Sahu, Advocate
For the respondents	::	Shri S. Nepolean, GA; Shri H.S. Paonam, Sr. Advocate
Date of Hearing	::	**23-11-2020**
Date of Judgment & Order	::	**01-12-2020**

JUDGMENT AND ORDER

[1] Heard Shri Anjan Sahu, learned Advocate appearing for the review petitioner; Shri S. Nepolean, learned GA appearing for the State

respondent and Shri H.S. Paonam, learned Sr. Counsel appearing for the private respondents.

[2] The instant review petition is directed against the judgment and order dated 23-7-2020 passed by this Court in writ petition being WP(C) Nos.252 & 272 of 2020 dismissing them.

[3.1] The facts and circumstances which have led to the filing of the present review petition are, in short, that the Director, Social Welfare, Government of Manipur issued a Tender Notice dated 29-05-2019 inviting bids from the competent and eligible manufacturers for supply of Micronutrient Blended Energy Dense Food, followed by a Request for Proposal containing the terms and conditions thereof which were questioned by the petitioner by way of a writ petition being WP(C) No.499/2019 wherein this Court vide order dated 19-06-2019 directed that the respondents should not open the Technical bids till 26-06-2019.

[3.2] An amendments was made in the RFP by issuing two corrigenda dated 21-06-2019 and accordingly, the said writ petition came to be withdrawn with a liberty to file a fresh petition. The State respondents further modified paragraph 4(i) of the RFP. The petitioner submitted a representation dated 01-07-2019 to the Director of Social Welfare, Government of Manipur regarding the clarification of the last 3 financial years, followed by a representation dated 06-02-2020 requesting it to furnish the status of the tender process.

[3.3] It was learnt by the petitioner in the 3rd week of May, 2020 that

the contracts had been awarded to the respondent Nos.3 & 4 vide orders/ letters dated 09-04-2020. Being aggrieved by the said orders/ letters dated 09-04-2020, the writ petition being WP(C) No.252 of 2020 was filed by the petitioner contending inter-alia that the contracts were awarded to them in a completely arbitrary manner, without finalizing the tender, with an intention to favour them. The averments made in the writ petition were denied by the State respondents and their stand was that the tender process was carried out in accordance with the prevailing norms. The amendments in paragraph 4 of the RFP were made after a representation submitted by the petitioner, followed by the corrigendum dated 29-06-2019. After the petitioner's request being accepted by the State respondents, another corrigendum dated 03-07-2019 was issued by the Director (Social Welfare), Government of Manipur. Thereafter, the Technical bids were opened on 03-09-2019 in the presence of the representatives of all the bidders including that of the petitioner. In view of a representation dated 30-11-2019 being submitted by the petitioner, a meeting was convened on 04-12-2019 to consider it. As the petitioner's claim could not be verified, the technical bid's evaluation was reverted and while reverting the bids and re-downloading the documents submitted online by the petitioner on 21-12-2019, its representatives were present and therefore, there was no question of violation of the procedure set by law. Even after tender process being completed, on account of the lockdown being imposed in the country with effect from 25-03-2020, the final result of the tender could not be uploaded in time. A meeting of the

Higher Tender Committee (HTC) was held on 07-04-2020 and its approval was conveyed to the Director (Social Welfare), Government of Manipur vide a letter dated 08-04-2020 and accordingly, the supply orders was issued on 09-04-2020. Since the petitioner was not qualified in the technical bid as its annual turnover for the financial year 2017-2018 was less than Rs.10 crore, the petitioner had no right to question the final result of the tender process.

[3.4] In the meantime, the petitioner filed the writ petition being WP(C) No.272 of 2020 questioning the proceedings dated 21-12-2019 and the summary reports dated 05-06-2020 and 08-06-2020. The validity and correctness of the orders/ letters dated 09-04-2020 were also questioned as had been done in the WP(C) No.252 of 2020. Both the writ petitions were considered together and were dismissed vide a common judgment and order dated 27-03-2020 passed by this Court. The relevant paragraphs read as under:

> *[13] As regards the first issue, the case of the petitioner is that no reasons have been assigned by the Tender Evaluation Committee in its proceedings dated 21-12-2019 for rejecting the technical bid of the petitioner which has been denied by the State respondents. It is not in dispute that the technical bids were re-evaluated on 21-12-2019 after the same being reverted on the request of the petitioner and that too, with the approval of the Government, as is evident from the Notification dated 06-01-2020 of the Director (Social Welfare), Government of Manipur. It has been stated in the said notification that the proceedings of the Tender Opening and Evaluation Committee had been sent to the Administrative Department for approval by the Government and that the result thereof would be uploaded, once the approval was conveyed. On perusal of the proceedings dated 21-12-2019, it is seen that the reasons for rejecting the technical bid of the petitioner are nowhere stated*

therein. But it is stated in the said proceedings that the check lists of the documents submitted by the bidders were enclosed therewith as Annexure-A, B, C, D and E for reference which formed part of the said proceedings. A copy of the Annexure-B which pertains to the documents submitted by the petitioner, has been placed on record and on perusal thereof, it is further seen that the requirement of turnover of Rs.10 crore was not met by the petitioner. The remarks as given against the paragraph 13 of the said check list read as under:

"A) Issued by Joint Director (SW) Assam

1) *Completion Certificate dated 30.09.2016 includes supply order dated 10.12.2016 which is contradictory.*
2) *Proposed to be included in F.Y. 2015-16, actually should be in F.Y. 2016-17.*
3) *Turnover for F.Y. 2015-16 is less than 10 crores.*
4) *Supply Order dated 10.12.2016 amounting to Rs. 5.89 crore should be accounted in F.Y. 2016-17 (wrongly included in F.Y. 2015-16)*

B) Completion Certificate dated 05.12.2018 issued by Director/WCB, Arunachal Pradesh

1) *Two supply orders dated 27.03.2016, one included in FY, 2015-16 & another included in FY, 2016-17*
2) *Two supply orders dated 31.03.2016 are included in FY 2015-16 & another in FY, 2016-17*
3) *As per the Certificate for supply dated 05.12.2018 signed by Director, Deptt. of Women & Child Development, Govt. of Arunachal Pradesh, two supply orders claiming to be for the FY 2017-18 are dated 07.04.2018. The total amount involved under the two supply orders is Rs. 3,17,18,075/- inclusion of these supply orders and accounting it under 2017-18 is incorrect considering that the supply orders relates to 2018-19. Further, it is inappropriate to include turnover for supplies made in a given year i.e., 2018-19 in the turnover of the preceding year, 2017-18. Therefore, the turnover for 2017-18 as indicated in the certificate for supplies dated 05.12.2018 is incorrect and cannot be included in the turnover for 2017-18. Considering this, the requirement of turnover of Rs. 10 crore for 2017-18 is not met by the firm."*

Since the check list did form part of the proceedings, it cannot be said that the reasons have not been assigned therein for rejecting the technical bid of the petitioner and therefore, the

contention of the learned counsel appearing for the petitioner has no merit and substance and cannot be countenanced by this Court. Moreover, pursuant to the letter dated 20-01-2020 of the State Government, the Tender Evaluation Committee held its meeting on 29-01-2020 to consider the representations of the petitioner in the light of the information/ documents uploaded by the petitioner. After having examined them by the Committee, many discrepancies were detected in the information/ documents uploaded by the petitioner. The Committee came to the conclusion that the claim of the petitioner for fulfilling the minimum turnover of Rs.10 crore in each of the last three financial years, was not supported by the relevant documents and hence, the petitioner's claim was not acceptable to it. The representations of the petitioner as referred to in the Government letter dated 20-01-2020 and considered by the Tender Evaluation Committee in its meeting held on 29-01-2020 are nothing but the representations dated 15-01-2020 and 16-01-2020 as is evident from the proceedings dated 07-04-2020 of the Higher Tender Committee. The representation dated 15-01-2020 is the one addressed to the Chief Secretary, Manipur praying for re-consideration of the petitioner's technical bid.

[14.1] So far as the second issue is concerned, it has been submitted by the counsel appearing for the petitioner that being aggrieved by the proceedings dated 29-11-2019 of the Tender Evaluation Committee, a writ petition being WP(C) No.990 of 2019 was filed by the petitioner. During the pendency of the writ petition, a Notification dated 06-01-2020 was issued by the Director (Social Welfare), Government of Manipur informing that the technical bids were re-opened on 21-12-2010 and were re-evaluated by the Committee. Having knowledge about this letter, the said writ petition was withdrawn by the petitioner. Even after the expiry of about a month from 06-01-2020, the petitioner did not receive any information about the outcome of the said re-evaluation but the petitioner came to know from the reliable sources that its bid had been rejected by the Committee. In order to know the status of its technical bid, the petitioner submitted a representation dated 06-02-2020 to the Director (Social Welfare), Government of Manipur. No information about the contents of the proceedings was given to the petitioner nor was it uploaded in the website. On the contrary, the petitioner came to know in the third week of May,

2020 that the contracts had already been awarded to the private respondents vide orders/ letters dated 09-04-2020 which are under challenge in the first writ petition by the petitioner contending that they were issued without following due process of law and with a malafide intention to favour the private respondents. In order to substantiate his argument, he has relied upon the guidelines issued by the Government of India as well as that of the Central Vigilance Commission. The Government of India issued a manual known as Manual for Procurement of Goods, 2017 wherein clause i) provides for principles of transparency relating to procurement of goods. Clause 4.13.4 (v) provides for declaration of successful bidders with the requirement of informing the failed bidders. If any bidder is aggrieved by the procurement process, the bidder shall be permitted to submit a representation in writing and on receipt thereof, a decision shall be taken either to withhold the opening of financial bids or give a reply expeditiously. Clause 3.0 of the Appendix 3 provides for a process to be handled either fully online/ emails/ SMS etc. or partly online and partly offline. Rule 144 (viii) provides that at every stage of procurement, the procuring authority must place on record, in precise terms, the consideration which weighed with it while taking the procurement decision. Rule 164 (iv) provides that suitable provision should be kept in the bidding documents to enable a bidder to question the bidding conditions, bidding process and /or the rejection of its bid. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder. The Central Vigilance Commission, Government of India also issued certain guidelines in respect of the common irregularities/ lapses observed in award of contracts for improvement thereof. Clause 12 emphasizes the need of opening tenders in the presence of the bidder's representatives. In one of the orders dated 10-12-2004, it has been stated by the CVC that the intimation of rejection to the firms whose bides have been evaluated but found not to meet the qualification criteria, along with the return of the unopened price bid, will enhance transparency and plug the loop-holes in the tendering system.

[14.2] The stand of the State respondents was that the information as sought for by the petitioner vide its representation dated 06-02-2020 regarding the status of the

petitioner's bid, could not be furnished to the petitioner due to pending approval of the Higher Tender Committee on the proceedings of the Tender Evaluation Committee. In reply to the contention of the petitioner that even after the orders/ letters dated 09-04-2020 being issued in favour of the private respondents, the petitioner was not informed nor was the information uploaded in the website and it was uploaded only after the filing of the first writ petition, it has been stated by the State respondents that after the imposition of the lockdown, there was a complete standstill in almost all the offices except those classified as essential services. Only 4-5 officers of the Directorate of Social Welfare used to attend office to look after urgent matters and on top of that, the Department was busy in trying to arrange safe place for homeless drug users, lactating mothers etc and in planning for opening a dedicated quarantine centre for transgender who need to be quarantined on their return from other States to Manipur. When the State Government conveyed the decision of the Higher Tender Committee, the Department considered it necessary to place the supply order immediately in public interest. Therefore, the Department could not upload the outcome of the tender on the e-tender portal in time due to lack of supporting staff, excessive workload, restriction on free movement due to lockdown etc. When the Department realized that the final result was yet to be uploaded, the digital signature of the Joint Director (Social Welfare) and Joint Director (ICDS) were found to be invalid and after their signature being re-validated, the e-tender portal was updated on 05-06-2020.

[15] In a democratic country like ours, the sharing of information is paramount as seen from the statement of objects and reasons, the preamble and relevant provisions of the Right to Information Act, 2005. In this regard, it will be useful to refer to some of the decisions rendered by the Hon'ble Supreme Court. In ***State of Uttar Pradesh Vs. Raj Narain, (1975) 4 SCC 428*** *the Hon'ble Supreme Court observed –*

> *"74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its*

bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security…

In **Dinesh Trivedi vs. Union of India, (1997) 4 SCC 306,** the Hon'ble Supreme Court held –

"16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute…

17. Implicit in this assertion is the proposition that in transaction which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.

19. What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But is equally important to be alive to the dangers that lie ahead. It is important to realized that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyze the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.

In People's Union for Civil Liberties Vs. Union of India, (2004) 2 SCC 476, *the Hon'ble Supreme Court held that right of information is a facet of the freedom of "Speech and expression" as contained in Article 19(1)(a) of the Constitution*

*of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions**.***

The above decisions have been referred to and relied by the Hon'ble Supreme Court in ***Central Board of Secondary Education & ors. Vs. Aditya Bandopadhyay & ors, (2011) 8 SCC 497****.*

[16] In spite of the fact that the Notification dated 06-01-2020 states that the proceedings of the Tender Evaluation Committee dated 21-12-2019 were sent to the Administrative Department for approval of the State Government and that the result would be uploaded once the approval of the State Government was conveyed, the result thereof was not uploaded by the State respondents. Had the information about the rejection of the petitioner's technical bid been uploaded in the website, the whole controversy could have been avoided then and there. Two representations dated 15-01-2020 and 16-01-2020 were submitted by the petitioner, the first being the one addressed to the Chief Secretary, Manipur praying for re-consideration of its technical bid. The said representations were considered by the Tender Evaluation Committee in its meeting held on 29-01-2020 and in the said proceedings of the Committee, it is stated that the claim of the petitioner for fulfilling the minimum turnover of Rs.10 crore in each of the three financial years, was not supported by the relevant documents and hence, the claim was not accepted by the Committee. It is further stated that the price bids of the qualified firms namely the private respondents were opened on 29-11-2019 at the Directorate of Social Welfare. The said proceedings dated 29-01-2020 also appear to have not been intimated to the petitioner which probably prompted the petitioner to submit the representation dated 06-02-2020 enquiring about the status of the tender process. No reply thereto appears to have been given by the State respondents. On 07-04-2020 in its meeting, the Higher Tender Committee approved the proceedings of the Tender Evaluation Committee and recommended the procurement of Micronutrient Fortified Energy Dense Food by the private respondents subject to the conditions mentioned therein. From the aforesaid facts and circumstances, it is absolutely and admittedly clear that the rejection of the petitioner's technical bid was not communicated to the petitioner nor was it uploaded in the website and on top

of that, the final result of the tender process was not uploaded in the official website before filing of the first writ petition. Then, the short question that calls for consideration by this Court is as to what will be consequence thereof in the given facts and circumstances of the present cases. Relying upon the decisions rendered by this Court in the cases referred to hereinabove, it has been submitted by the counsel appearing for the petitioner that since the action of the State respondents was arbitrary and malafide, the tender process ought to be quashed and set aside, to which the counsel appearing for the respondent No.3, in order to counter it, has relied upon the decision rendered in Shrilekha Vidhyarthi (supra) to contend that there was no malafide or arbitrariness in the State action. The facts and circumstances of the cases which have been decided by the Hon'ble Supreme Court are not exactly the same as that of the present cases. But it may be noted that there can be no dispute as regards the law laid down by the Hon'ble Supreme Court in the aforesaid decisions relied upon by the counsels appearing for the parties. Therefore, the details of the said decisions are not referred to herein, as the issues involved herein will have to be decided by this Court on the facts and circumstances of the present case, as is evident from the decision rendered by the Hon'ble Supreme Court in Shrilekha Vidhyarthi (supra) wherein the Hon'ble Supreme Court held:

> *"36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable may itself attract the vide of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplated governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power*

must remember, always."

[17] Coming to the facts of the case, it is not in dispute that the Director (Social Welfare), Government of Manipur, issued a Tender Notice dated 29-05-2019 inviting bids from the eligible bidders for supply of Micronutrient Blended Energy Dense Food, followed by the RFP dated 29-05-2019 containing the eligibility criteria, of which para 4(i) which is relevant for the present case, reads as under:

"4(i) The bidder should have turnover of manufacturing and supplying of Micro Nutrient Fortified Energy Dense Food/ Supplementary Nutrition under ICDS Scheme of Ministry of Women and Child Development, Govt. of India against orders placed in their own names, directly by the Department of Women and Child Development/ Department of Social Welfare of any State Government/ UT Government of not less than Rs. 25,00,00,000/- (Rupees twenty five crores only) in each of the last 3 financial years i.e., 2017-18, 2015-17 and 2015-16. The bidder should submit Annual Turnover Statement for the last 3 years of sale, exclusively from manufacturer and supply of Micro Nutrient Fortified Energy Dense Food/ Supplementary Nutrition directly to the Department of Women and Child Development/Department of Social Welfare duly certified by a Chartered Accountant and also submit order copies of the same issued by the Departments. In case of Mahila Mandal/Self Help Group/ Village Community (Who are original manufacturers) the turnover shall be relaxed to Rs.2,50,00,000/- (Rupees two crore fifty lakhs only)."

The last date for submission of bids was fixed at 3 pm of 25-06-2019, while the time of opening technical bids was fixed at 3.30 pm of the same day. Being aggrieved by the RFP dated 29-05-2019, the petitioner filed a writ petition being WP(C) No.499/2019 questioning it. During the pendency of the said writ petition, the Director (Social Welfare), Government of Manipur issued a corrigendum dated 21.06.2019 making certain amendments in various clauses of the RFP, because of which the last date of submission of tender and the opening of technical bids were fixed on 04.07.2019 and the said writ petition was withdrawn with a liberty to file a fresh petition, if so advised. The petitioner submitted a representation dated 01.07.2019 to the Director (Social Welfare), Government of

Manipur seeking a clarification as regards the last three financial years as contained in the corrigendum dated 29.06.2019. After the request being considered by the State respondents, the corrigendum dated 03.07.2019 was issued by the Director (Social Welfare), Government of Manipur which was followed by the representation dated 16.07.2019 requesting for inclusion of the financial year, 2018-2019 while considering the annual turnover of the company during the last three financial years. A corrigendum dated 31-07-2019 was issued by the Director (Social Welfare), Government of Manipur making amendment of paragraph 4 of the RFP. Thereafter, the Director (Social Welfare), Government of Manipur wrote a letter dated 08-08-2019 to the private respondent No.3 stating that the last three years would mean the years, 2016-17, 2017-18 and 2018-19 and that if the audit for the year, 2018-19 was not completed, the annual turnover statements for the years, 2015-16, 2016-17 & 2017-18 could be submitted by the bidders. A Notification dated 05-11-2019 was issued by the Director (Social Welfare), Government of Manipur informing all the concerned that the technical evaluation would be done on 07-11-2019 at the Directorate Head Quarter and accordingly, the meeting of the Tender Evaluation Committee was held on 07-11-2019 for opening technical bids, the proceedings of which indicated that the Committee, after examining the documents attached to the technical bids submitted by the bidders, found the private respondents having qualified in the technical bids and recommended them for the financial bids. It is also stated in the proceedings that the check list statements for the documents submitted by the bidders were enclosed therewith. A copy of the proceedings along with annexure-B relating to the petitioner has been placed on record by the respondent No.1 & 2 along with their written argument. The financial bids were opened on 29-11-2019 and in the proceedings thereof, it is stated that both the private respondents quoted the same rate for supply of Micronutrient Fortified Energy Dense Food as Daliya sweet and therefore, the Committee recommended both of them for procurement of Micronutrient Fortified Energy Dense Food as indicated against them. Pursuant to a representation dated 30.11.2019 of the petitioner, a meeting was convened on 04.12.2019 to consider it in the presence of the other bidders. During the course of the meeting, the representative of the petitioner claimed that some of their bid

documents were not evaluated by the Committee. Their claim could not be verified without reverting the e-tender process, for which an approval of the Government was sought for and was duly granted on 18-12-2019. At the time of reverting the bid process and re-downloading the documents submitted online by the petitioner on 21.12.2019, the representatives of the petitioner were present. After having examined the documents, the Committee found the same result and accordingly, similar proceedings as that of the proceedings dated 07-11-2019 were prepared wherein the check lists of the documents submitted by the bidders are stated to be enclosed with the observation that there was no change in the particulars of the technically qualified firms even after re-evaluation and therefore, the private respondents were recommended. The proceedings dated 21-12-2019 were submitted to the Higher Tender Committee for approval. So far as the petitioner is concerned, it is stated therein that many discrepancies were detected in the information furnished by it. The petitioner submitted two representations dated 15-01-2010 and 16-01-2020 which were considered by the Committee on 29-01-2020 but the same were not accepted by the Committee on the ground that the petitioner did not fulfill the requirement of minimum turnover of Rs.10 crore in each of the last three financial years. Thereafter, a representation dated 06.02.2020 was submitted by the petitioner enquiring about the status of the tender process. The proceedings of the Tender Evaluation Committee was approved by the Higher Tender Committee in its meeting held on 07-04-2020 and the private respondents were recommended for procurement of Micronutrient Fortified Energy Dense Food for use in AWCs under ACDS subject to the conditions mentioned therein. Consequently, two orders/ letters dated 09-04-2020, impugned herein, were issued to the private respondents to supply the items mentioned therein.

[18] From the aforesaid undisputed facts, it is seen that the Tender Notice was issued on 29-05-2019 inviting bids from the eligible bidders, followed by the RFP. The technical bids were opened on 07-11-2019 and while the private respondents were found having qualified, the petitioner was found not qualified therein and accordingly, the private respondents were recommended for the financial bids which were opened on 29-11-2019. The petitioner was aware of the fact that its technical had been rejected and therefore, it submitted a representation

dated 30.11.2019, on the basis of which a meeting of the Committee was convened on 04.12.2019 to consider it but the documents alleged to have been submitted by the petitioner could not be verified. The tender process was reverted on 18-12-2019 with the approval of the State Government and the technical bids were re-evaluated on 21.12.2019 in the presence of the representatives of the bidders. After having examined the documents, the Committee found the same result and accordingly, proceedings similar to that of the proceedings dated 07-11-2019 were prepared and submitted to the Higher Tender Committee for approval. The petitioner submitted a representation dated 15-01-2010 to the Chief Secretary, Manipur praying for re-consideration of its technical bid, followed by a representation dated 16-01-2020 which were considered by the Committee on 29-01-2020 but the same were not accepted by the Committee. A representation dated 06.02.2020 was submitted by the petitioner enquiring about the status of the tender process. The grievances of the petitioner at that juncture was that the petitioner was not informed about the rejection of its technical bid or for that matter, the petitioner was not informed about the outcome of the proceedings dated 21-12-2019. As has been observed hereinabove, it is admitted by the State respondents that the petitioner was not informed about the proceedings dated 21-12-2019 nor was it uploaded in the website. But it may be noted that the petitioner was fully aware of it and therefore, the representation dated 15-01-2020 was submitted to the Chief Secretary for re-consideration of its technical bid and moreover, in its representation dated 06-02-2020, it has been specifically stated by the petitioner that it came to know about the rejection of its technical bid. If that be so, there was no point of waiting for the information. The petitioner could have applied for a copy thereof under the provisions of the Right to Information Act, 2005 and challenged it before the appropriate forum at that point of time which the petitioner failed to do that. The reason given by the State Government was that it could not give the information, as it was awaiting the approval of the Higher Tender Committee for approval. The proceedings of the Tender Evaluation Committee were approved by the Higher Tender Committee in its meeting held on 07-04-2020 and consequently, the orders/ letters dated 09-04-2020 were issued to the private respondents to supply the items as mentioned therein. This time too, no information

was given to the petitioner nor was it uploaded in the website and the State action was contrary to the guidelines of the Government of India. It has been specifically stated in RFP that the bids are invited in accordance with the guidelines issued by the Government of India. The reasons given by the State respondents appear to be not plausible. The approval of the Government was conveyed on 08-04-2020 and on the next day, i.e, 09-04-2020, the letters were written to the private respondents. It may be noted that these exercises were done during the lockdown due to COVID-19 crisis and since the uploading of the final result was not a difficult task, they could have done it on 09-04-2020 itself on which the letters dated 09-04-2020 were written. If the information could not be uploaded that day in the website, the State respondents could have written a short letter to the petitioner informing that its technical bids had already been rejected by the Committee. The fact that the State respondents did not intimate the rejection of the technical bid of the petitioner, despite the existence of the guidelines as contained in the manual, has clearly demonstrated that the State respondents were not bothered at all with the said guidelines or the information was not uploaded at many stages of the tender process deliberately so that the petitioner could have no occasion to ventilate its grievances before the appropriate forum. The State respondents appear to be fed up with the manner in which the petitioner kept on submitting representation after representation. But if the rejection of the petitioner's technical bid was intimated to it in time or it was uploaded in the official website, non-uploading of the final result would not have created this sort of controversy. These circumstances warrant that in future, the State Government is incumbent to incorporate, in any NIT issued by any of the Departments of the State Government, the requirement of uploading the information relating to the tender process from time to time. In any case, the tender process stood completed; the work orders had been issued and the private respondents are alleged to have started supplying the food items. In the normal course, this Court could have interfered with the tender process because the State respondents had failed to follow the guidelines but in the peculiar facts and circumstances of the present case, this Court is not inclined to do so for the reason that the petitioner did not approach this Court at the right time, even after it knew that its

bids had been rejected by the Committee. Instead of doing that, the petitioner submitted a representation dated 15-01-2020 for re-consideration of its technical bid which was considered and rejected by the Committee in its meeting held on 29-01-2020 and thereafter, the proceedings of the Tender Evaluation Committee were approved by the Higher Tender Committee on 07-04-2020 but both the proceedings dated 29-01-2020 and 07-04-2020 are not under challenge in these writ petitions. Moreover, since the technical bid of the petitioner had already been rejected by the Committee with reasons as has been observed by this Court in the preceding paragraph while considering the first issue and the petitioner was aware of it as observed hereinabove but it failed to challenge it at the right time, non-intimation of the result of the tender process cannot be said to be the ground for quashing and setting aside the tender process. It is nowhere specifically stated in the RFP that the proceedings of the Tender Evaluation Committee shall be either intimated to the bidders or uploaded in the website from time to time except the general guidelines, as contained in the manual of the Government of India, wherein there is no specific provision that in the event of the guidelines not being followed by the State respondents, the tender process will stand vitiated and will be liable to be quashed and set aside. Considering the materials on record and the submissions of the learned counsels appearing for the parties and having regard to facts and circumstances of the present case, this Court is of the view that the writ petitions are devoid of any merit and are accordingly liable to be dismissed.

[4] Being aggrieved by the said judgment and order dated 23-7-2020 passed by this Court in WP(C) Nos.252 & 272 of 2020, the petitioner preferred a petition for Special Leave to Appeal being SLP(C) Nos.9146-9147 of 2020 before the Hon'ble Supreme Court which were dismissed by the Hon'ble Supreme Court on 13-08-2020. After the SLP having been dismissed by the Hon'ble Supreme Court, the instant review petition has been filed before this Court on the inter-alia grounds that the petitioner could not question the reason for rejection of its technical bids as the

same was not communicated to it; that the reason for rejection of its bids was not tenable in the eyes of law; that the petitioner fulfilled the eligibility criteria including the Point No.13 which is alleged to have not been fulfilled by it; that there is a typographical error in the completion certificate issued by the Joint Secretary (SW), Assam as the actual supply order is dated 10-12-2015 as is evident from the corresponding supply orders annexed therewith as Annexure A/1; that as the order passed by the Government of Assam was in the financial year 2015-16, the turnover with regard to the material supply in the financial year 2015-16 is considered in the financial year 2015-16 and if any supply is made in the year 2016-17, the same be considered in the financial year 2016-17; that the petitioner had already submitted a certificate of the Chartered Accountant stating that the turnover of the petitioner is more than Rs.10,00,00,000/- crores for the financial years 2016-17, 2017-18 and 2018-19. The turnover of the financial year, 2015-16, regardless of whether it is fulfilled by the petitioner or not, is immaterial for the reason that the last three years would be 2016-17, 2017-18 and 2018-19. The supply order is dated 10-12-2015 and not dated 10-12-2016 as has already been clarified hereinabove. The relevant paragraphs of the main grounds read as under:

> *F. Because, the relevant portion of the said document i.e., PointNo. 13 is reproduced below:*
>
> *"Annual turnover of not less than Rs. 10,00,00,000/-(Rupees ten crores only) in each of the last 3 (three) financial years. The bidder should submit Annual Turnover Statement for the last 3 (three) years of sale exclusively from manufacturer and supply of Micro Nutrient Fortified Energy Dense Food*

Supplementary Nutrition direction to the Department of Women and Child Development/ Department of Social Welfare duly certified by a Chartered Accountant and also submit order copies of the same issued by the Departments in case of Mahila Mandal/ Self Help Group/ Village Community (Who are original manufacturers) the turnover shall be relaxed to Rs.2,50,00,000/- (Rupees two crore Fifty Lakhs only) (As amended in Point No. 4(i) of Corrigendum dated 31st July, 2019). Further the corresponding entry on the remarks of point no.13 has been reproduced below-"

A) Issued by Joint Director (SW) Assam.

1) Completion certificate dated 30-09-2016 includes supply order dated 10-12-2016 which is contradictory.

2) Proposed to be included in FY 2015-16, actually should be F.Y. 2016-17.

3) Turnover for F.Y. 2015-16 is less than 10 crores.

4) Supply Order dated 10-12-2016 amounting to Rs. 5.89 crores should be accounted in F.Y. 2016-17 (Wrongly included in F.Y. 2015-16).

B) Completion Certificate dated 05-12-2018 issued by Director of WCD, Arunachal Pradesh

1) Two supply orders dated 27-3-2016 one included in F.Y. 2015-16 & another included in F.Y. 2016-17.

2) Two supply orders dated 31-03-2016 are included in F.Y. 2015-16 & another F.Y. 2016-17.

3) As per the Certificate for supply dated 05-12-2018 signed by Director Deptt. Of Women & Child Development, Govt. of Arunachal Pradesh two supply orders claiming to be for the F.Y. 2017-18 are dated 07-04-2018. The total amount involved under the two supply orders Rs.3,17,18,075/- inclusion of these supply orders an accounting under 2017-18 as incorrect considering that the supply orders relates to 2018-19. Further it is inappropriate to turnover for supplies made in a given year i.e. 2018-19 in the turnover of the preceding year 2017-18. Therefore the turnover for 2017-18 as indicated in the certificate for supplies dated 05-12-2018 is incorrect and cannot be indicated in the turnover for 2017-18. Considering this, the requirement of turnover of Rs. 10 crore for 2017-18 is not met by the firm.

G. *Because, with regard to remark- A(1) corresponding to point no.13 which sets out the following- "Completion certificate dated 30-09-2016 includes supply order dated 10-12-2016 which is contradictory", it is humbly submitted before this Hon'ble Court that there is a typographical error in the completion certificate issued by the Joint Director (SW) Assam as the actual supply order is dated 10-12-2015. The correct date of the completion of the supply order is printed on the corresponding supply order already annexed in Annexure-A/1 and the corresponding order number is DSW(ICDS)G/97/2011/Pt/114 dated 10-12-2015.*

H. *Because, with regard to remark- A(2) corresponding to point no.13 which sets out the following-*
"Proposed to be included in F.Y. 2015-16, should be in F.Y. 2016-17", it is humbly submitted before this Hon'ble Court that as the order placed by the Govt. of Assam was in FY 2015-16, hence the turnover with regard to the material supplied in FY 2015-2016 is considered in FY2015-16 and if any supplies is made in FY 2016-17, the same is considered in financial year FY 2016-17.

I. *Because, with regard to remark- A(3) corresponding to point no.13 which sets out the following- "Turnover for F.Y. 2015-16 is less than 10 crores", it is humbly submitted before this Hon'ble Court that the petitioner had already submitted CA (Chartered Accountant) Certificate stating turnover of the petitioner as more than Rs.10 crores in FY 2016-17, FY 2017-18 & FY 2018-19. As the said RFP demanded turnover of Rs.10 crores each in last three years ie., FY 2016-17, FY 2017-18 & FY 2018-19 which is fulfilled by the petitioner. The turnover of FY 2015-16 regardless of whether it is fulfilled by the petitioner or not is immaterial for the consideration of technical bid for the reasons that the last three years would be 2016-17, 2017-18 and 2018-19 as the financial year ended in March 2019, the RFP having been issued in May 2019.*

J. *Because, with regard to remark- A(4) corresponding to point no.13 which sets out the following- "Supply Order dated 10-12-2016 amounting to Rs.5.89 crore should be accounted in F.Y. 2016-17 (wrongly included in F.Y. 2015-16)", it is humbly submitted before this Hon'ble Court that the supply order is dated 10-12-2015 and not 10-12-2016 as has already been clarified in the foregoing paragraphs as per*

Supply Order No. DSW(ICDS)G/97/2011/Pt/114 dated 10-12-2015 as attached in the technical bid, therefore, it was included in F.Y. 2015-16.

K. Because, with regard to remarks-B(1) and B(2) corresponding to point no.13 which set out the following-

"(1) Two supply orders dated 27-03-2016, one included in FY, 2015-16 & another included in FY, 2016-17.

2) Two supply orders dated 31-03-2016 are included in FY 2015-16 & another in FY, 2016-17", it is humbly submitted before this Hon'ble Court that yet again, there is a typographical error in the Completion certificate issued by the Director/ WCB, Arunachal Pradesh. However, it is submitted that the details of the supply order with correct dates had already been submitted for verification. The same is reproduced below-

Sl. No.	Tender year	Supply order No.	Date	Item
1.	2015-16	WCD-38/2015-16 (SNP)	31/3/2016	Kheer
		WCD-38/2015-16 (SNP)	31/3/2016 (mis-typed as 27/3/2016 in completion certificate)	Cereal Based Weaning Food
2.	2016-17	WCD-48/2016-17 (SNP)	27/3/2017 (mis-typed as 27/3/2016 in completion certificate)	Kheer
3.		WCD-48/2016-17 (SNP)	27/3/2017 (mis-typed as 31/3/2016 in completion certificate)	Cereal Based Weaning Food

L. Because, with regard to remark- B(3) corresponding to point no.13 which sets out the following-"Äs per the Certificate for supply dated 05.12.2018 signed by Director, Deptt. Of women & Child Development, Govt. of Arunachal Pradesh, two supply orders claiming to be for the FY 2017-18 are dated 07.04.2018. The total amount involved under the two supply orders is Rs. 3,17,18,075/- inclusion of these supply orders and accounting it under 2017-18 is incorrect considering that the supply orders relates to 2018-19. Further, it is inappropriate to include turnover for supplies made in a given year i.e. 2018-19 in the turnover of the preceding year, 2017-18. Therefore, the turnover for 2017-18 as indicated in the certificate for supplies dated 05.12.2018 is incorrect and cannot be included in the turnover for 2017-18. Considering this, the requirement of turnover of Rs.10 crore

for 2017-19 is not met by the firm", it is humbly submitted before this Hon'ble Court that the completion certificate issued by Director, Dept. of Women & Child Development, Govt. of Arunachal Pradesh is based on Tender Issue year and not the year of the actual goods supplied. The petitioner had considered the turnover of the above mentioned supply orders in FY 2018-19 only. Moreover, the petitioner in the technical bid had submitted another completion certificate No.WCD-01/2011-12(SNP) Pt.-11/1939 dated 20.06.2019 which clearly mentioned that M/S Aasray Concept Foods, had completed a supply of Rs. 5,31,94,470/- (five Crores Thirty One Lakhs Ninety-four Thousand Four Hundred Seventy Rupees Only) of rice Based Kheer (Ready to Eat) as Energy Dense Food and Rs.1,09,80,480/- (One Crore Nine Lakhs Eighty Thousand Four Hundred Eighty Rupees Only) of Cereal based Weaning Food in the year 2018-19. After totaling the said amounts, the resultant amount comes to Rs. 6,41,74,950/- (Six Crores Forty One Lakhs Seventy Four Thousand Nine Hundred Fifty Only) in the year 2018-19, apart from the other supplies made in the same year.

The turnover of Rs. 10 crores in FY2017-18 is met by the following work orders & completion certificates in lakhs-

Sl. No.	State	Order No.	Order Dt.	Experience Certificate No.	Dated	Worth of the supply orders
1.	Mizoram	D.24012/3/2017-DTE(SNP)	21.03.2017	NIL	06.09.2017	128.3
2.	Mizoram	D.24012/3/2017-DTE(SNP)	27.10.2017	NIL	04.12.2017	139.18
3.	Arunachal	WCD-48/2016-17(SNP)	27.03.2017	WCD-01/2011-12(SNP)pt-I	05.12.2018	518.78
4.	Arunachal	WCD-48/2016-17(SNP)	27.03.2017	WCD-01/2011-12(SNP)pt-I	05.12.2018	221.64
5.	Meghalaya	SW/SNP.3/2016/8387-8435	20.12.2017	SW/CW/MISC-49/2013/12875	17.01.2020	174.66

[5] In ***Kamlesh Verma Versus Mayawati & Ors., (2013) 8 SCC 320,*** the Hon'ble Supreme Court, while considering the issue as to

whether the review petitioner therein has made out a case for reviewing the judgment and order and satisfies the criteria for reviewing the same in review jurisdiction, had considered the scope of the review jurisdiction. After referring to its earlier decisions, the Hon'ble Supreme Court has held:

> ***"20**. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
>
> ***20.1.** When the review will be maintainable:*
>
> ***(i)** Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
>
> ***(ii)** Mistake or error apparent on the face of the record;*
>
> ***(iii)** Any other sufficient reason.*
>
> *The words "any other sufficient reason" have been interpreted in **Chhajju Ram v. Neki** and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius** to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated **in Union of India v. Sandur Manganese & Iron Ores Ltd.***
>
> ***20.2.** When the review will not be maintainable:*
>
> ***(i)** A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
>
> ***(ii)** Minor mistakes of inconsequential import.*
>
> ***(iii)** Review proceedings cannot be equated with the original hearing of the case.*
>
> ***(iv)** Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness*

or results in miscarriage of justice.

(v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error*

(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

(ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived**."***

The above decision of the Hon'ble Supreme Court has been referred to and relied upon by this Court in many cases. On top of that, it has been referred to by the Hon'ble Supreme Court in one of its recent decision rendered in **Akshay Kumar Singh Vs. State (NCT of Delhi), (2020) 3 SCC 431** wherein the Hon'ble Supreme Court has held that it is no longer res intrega that the scope of review is limited and review cannot be entertained except in case of error apparent on the face of the record. Review is not a rehearing of the appeal over again. In a review petition, it is not for the Court to re-appreciate the evidence and reach a different conclusion.

[6.1] It is not in dispute that the Director, Social Welfare, Government of Manipur issued a Tender Notice dated 29-05-2019 inviting bids from competent and eligible manufacturers for supply of Micronutrient Blended Energy Dense Food, followed by a Request for Proposal containing the

terms and conditions thereof. One of the eligibility criteria was that the bidder should have a turnover of Rs.10 crore each for the financial years, 2015-16, 2016-2017 and 2017-18 which was changed to the financial years, 2016-17, 2017-18 and 2018-19 pursuant to the request made by the petitioner. The petitioner participated in the tender by submitting its bids. The Technical bids were opened on 03-09-2019 in the presence of the representatives of all the bidders including that of the petitioner. A representation dated 30-11-2019 was submitted by the petitioner, because of which a meeting was convened on 04-12-2019 for its consideration. As the petitioner's claim could not be verified, the technical bid's evaluation was reverted and while reverting the bids and re-downloading the documents submitted online by the petitioner on 21-12-2019, its representatives were present and therefore, there was no question of violation of the procedure set by law. The technical bids were re-considered but the petitioner was found to have not fulfilled the eligibility criteria in respect of the turnover for the financial year, 2017-18 and accordingly, its bid was rejected by the Tender Committee. A meeting of the Higher Tender Committee (HTC) was held on 07-04-2020 for consideration of the proceedings of the Tender Committee and its approval was conveyed to the Director (Social Welfare), Government of Manipur vide a letter dated 08-04-2020 and accordingly, the supply orders was issued on 09-04-2020.

[6.2] The tender process came to be challenged by the petitioner mainly on three grounds that no reason was assigned by the Tender

Committee for rejection of its technical bids; that the petitioner was not informed about the rejection of its technical bids nor was it uploaded in the website and that no copy of the proceedings of the Tender Committee and in particular, the annexure thereto, was furnished to it. After having appreciated the submissions and the materials on record, this Court dismissed the writ petitions filed by the petitioner and being aggrieved by it, the instant review petition has been filed on the grounds mentioned hereinabove and that too, after its SLP being dismissed by the Hon'ble Supreme Court.

[6.3] The observation of the Tender Committee is that the completion certificate dated 30-09-2016 and the supply order dated 10-12-2016 are contradictory for the reason that the completion certificate cannot be said to have mentioned the supply order dated 10-12-2016 which is later in point of time and therefore, the amount mentioned in the supply order dated 10-12-2016 should be counted for the financial year, 2016-17. But it has been submitted by the counsel appearing for the petitioner that it was a typographical error and that the supply order 10-12-2016 ought to be read as the supply order dated 10-12-2015 as is evident from the supply order itself and therefore, the amount mentioned therein should be counted for the financial year, 2015-16. It has further been submitted by him that it will make no difference whether the amount mentioned therein should be counted for the financial year, 2015-16 or not for the reason that the turnover of Rs.10 crore each ought to be for the financial years, 2016-17, 2017-18 and 2018-19. So far as the financial year, 2017-18 is

concerned, it has been observed by the Tender Committee that as per the certificate dated 05-12-2018 signed by Director, Deptt. of Women & Child Development, Government of Arunachal Pradesh, two supply orders, claiming to be for the FY 2017-18, are dated 07-04-2018 for a total amount of Rs.3,17,18,075/- and therefore, their counting for the financial year 2017-18 is incorrect, as the same relate to the supply for the financial year, 2018-19. The petitioner made an attempt to explain it by submitting that the completion certificate is based on the year of the tender being issued and not the year when the actual goods are supplied. Moreover, it has further been submitted that the annual turnover of a Firm/ Company is ascertained by the certificates issued by a Chartered Account which the official respondents have failed to consider it.

[6.4] As has been held by the Hon'ble Supreme Court, the review petition can be entertained, when the error is apparent on the basis of record. On perusal of the averments made in the review petition, it is seen that the petitioner has failed to point out any error crept in the judgment and order which is apparent on the face of record except repeating the grounds which have been considered by this Court in the writ petitions. The error apparent on the face of record can be understood mainly with reference to the findings arrived at by this Court contrary to what is there in the document. The explanation given by the petitioner in the review petition is not an error apparent on the face of record but is a matter of appreciation which cannot be the ground for reviewing the judgment and order by this Court. As seen from the review petition, the

error appears to be in the document itself filed by the petitioner, on the basis of which the Tender Committee has made its observation which was accepted by this Court. It is the petitioner which could have it rectified before it was filed before this Court. Such error as contended by the petitioner may be a ground for an appeal before the appropriate forum which is also impermissible now for the reason that the petition for special leave to appeal preferred by the petitioner against the judgment and order, has already been dismissed by the Hon'ble Supreme Court.

[7] In view of the above and for the reasons stated hereinabove, the review petition is devoid of any merit and is accordingly dismissed with no order as to costs.

Before parting from this Case, this Court is of the opinion that the counsel appearing for the petitioner, Shri Anjan Sahu being a young advocate, the manner in which he has rendered assistance to this Court, can be appreciated and it is hoped that he will keep it up for the years to come in future. The Senior Advocates practicing before this Court are expected to provide opportunities to their juniors so that they can exhibit their talents.

JUDGE

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Victoria