Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 238 of 2018 Date of Order: 13.02.2020

M/s Benson Medical Equipment Pvt. Ltd., **Vs.** The North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences (NEIGRIHMS) and Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. D. Borah, Adv.

For the Respondent (s) : Mr. K. Paul, Adv. (For R 1-3)
Mr. T.T. Diengdoh, Sr. Adv. with
Mr. C.T. Sangma, Adv. (For R 4)

i) Whether approved for reporting in Law journals etc. Yes

ii) Whether approved for publication in press: No

1. The brief facts of the case as set out by the petitioner company is that an online open tender dated 25.08.2015 was floated by the respondent No. 1, wherein online tenders in two bids system were invited from established, experienced manufacturers or their authorized representatives for the Supply, Installation and Commissioning of Gas Pipeline and Manifold system (including operation for 10 years) on turnkey basis. 26.10.2015 was fixed as the last date for submission of tenders/bid documents online and also for opening of Techno-commercial bids of the tenderers.

2. An important criteria laid down, pursuant to the General Instructions to the tenderers, namely clause 19.2, was with regard to the Earnest Money Deposit (EMD) which stipulated that the tenderers/bidders registered with the National Small Industries Corporation Limited (NSIC) were eligible for exemption from payment of the EMD amount of Rs. 30 lakhs. The petitioner sought exemption in view of the fact that the firm was registered with the NSIC, and in possession of the NSIC Government Purchase Enlistment certificate for Supply, Installation, Testing and Commissioning of Gas Pipeline and Manifold system. As such, the petitioner participated in the tender process without deposit of the said EMD amount. However, vide tender summary report dated 27.11.2015 which was uploaded on 31.05.2016, the bid of the petitioner was rejected on the ground that the offered stores against Bill Of Quantities (BOQ) for certain items as contained in the tender were not listed in the store details of the NSIC certificate of the petitioner, thus rendering the petitioner's bid invalid and ineligible.

3. The said action of the respondents was challenged before this Court by way of a writ petition being WP (C) No. 294 of 2016, which was rejected vide order dated 07.07.2017, by the learned Single Judge of this Court. The petitioner then preferred a writ appeal against the said order which was numbered as WA No. 40 of 2017 which was allowed, with certain directions to the respondents 1, 2 & 3, to take a reasoned and considered decision by a speaking order, in relation to the claim of the petitioner seeking exemption, keeping in reference the stipulations of the tender document. Thereafter, the respondents again by order dated 22.12.2017 rejected the claim of the petitioner for seeking exemption from payment of EMD on the ground that the NSIC certificate of the petitioner was not in consonance with the MSME Act, 2006. This was put to challenge by the petitioner by way of WP (C) No. 3 of 2018 but on the recall of the order dated 22.12.2017 by the respondents, the writ petition was closed on 07.02.2018. Thereafter, on reconsideration the respondents vide the impugned order dated 11.06.2018 rejected the bid of the petitioner on the ground that the claim of exemption of EMD did not meet the provisions notified in respect of clause 19.2 of the e-bidding documents. The said supply order was then issued in favour of the

respondent No. 4 on 14.06.2018. The petitioner being aggrieved by the said rejection of the bid and the representation is again before this Court by means of the instant writ petition.

4. I have heard Mr. D. Borah, learned counsel for the petitioner, Mr. K. Paul, CGC for the respondents Nos. 1 to 3 and Mr. T.T. Diengdoh, learned Senior advocate assisted by Mr. C.T. Sangma, learned counsel for the respondent No. 4.

5. Mr. D. Borah, learned counsel for the petitioner at the outset submits that the manner in which the tender process was conducted right from the time before the Technical bids were opened, was done in a very clandestine and bizarre manner by the respondents, inasmuch as, the respondents themselves on 24.11.2015, had sought clarification from the NSIC, as to whether the petitioner company was eligible for exemption from payment of EMD in light of the NSIC certificate submitted by the petitioner and the Public Procurement Policy for Micro and Small Enterprises Order, 2012 notified by the Government of India. The learned counsel submits that the communication by the respondents, was completely unwarranted and uncalled for and in fact, calls for the conduct of the respondents to be questioned by this Court. Learned counsel then draws the attention of this Court to document dated 24.09.2015 (Annexure-P/5 of the writ petition) and MSME certificate dated 17.08.2016 (Annexure-P/6) to illustrate the fact that the petitioner is eligible for the benefits of the MSME Policy including exemption from payment of EMD. Learned counsel submits that thereafter on the bid being rejected by the respondent vide tender summary report dated 27.11.2015, the petitioner approached this Court by way of WP(C) No. 294 of 2016 and subsequently on dismissal of the writ petition filed writ appeal No. WA No. 40 of 2017. Learned counsel submits that this Court vide judgment and order dated 06.10.2017, allowed the writ appeal and set aside the tender summary report dated 27.11.2015, wherein the respondents had summarily rejected the claim of the petitioner seeking exemption from payment of the Earnest Money Deposit, based on the NSIC certificate. Learned counsel further submits that this Court, in the Division Bench, directed the respondents No. 1, 2 & 3 to take a reasoned and considered

decision in relation to the claim of the petitioner seeking exemption from payment of Earnest Money Deposit, by way of a speaking order, especially keeping in view and reference the stipulations of the tender documents.

6. Learned counsel submits that in terms of this Court's order, the petitioner again submitted their candidature, this time by annexing the report of one of NSIC's nodal agencies namely; Consultancy Development Centre (CDC) wherein the CDC conducted an assessment and based on the assessment report recommended the registration of the petitioner as a Service Provider of SITC of Medical Gases and Vacuum Pipeline System on turnkey basis. To illustrate this, the learned counsel refers to Annexure-P/18 of the writ petition, which contained the assessment report dated 13.08.2015. Learned counsel further contends that this fact is also reflected in the Stores Details certificate of the NSIC dated 06.10.2017 annexed at Annexure P/17, which he submits has clearly mentioned that the petitioner was a service provider for Supply, Installation, Testing and Commissioning of Medical Gases and Vacuum Pipeline System on turnkey basis. Learned counsel submits that in spite of the submission of all the relevant documents, the respondents No. 1, 2 & 3 vide the impugned order dated 11.06.2018 (Annexure P/22) which was received by the petitioner on 22.06.2018 rejected the petitioner's claim for exemption from payment of the Earnest Money Deposit on the ground that the conditions notified at clause No. 19.2 of the e-bidding documents were not satisfied.

7. Learned counsel in assailing the impugned order strongly contends that the grounds of rejection as stated in the impugned order dated 11.06.2018 was not decided in the light of the judgment of this Court passed in WA No. 40 of 2017 and order dated 30.01.2018 passed in WP(C) No. 3 of 2018, inasmuch as, the impugned order is cloaked with malice and was passed on irrelevant considerations, while ignoring the relevant factual aspects of the claim of the petitioner as well as the tender documents. Learned counsel submits that the respondents rejected the bid of the petitioner on the ground that the petitioner never produced the acknowledgment of the Entrepreneurs Memorandum (EM-II) before the Tender Committee, and as such the veracity of the same could not be

verified. It is also submitted that the respondents failed to acknowledge or consider the fact that the petitioner had also submitted a copy of the CDC and EM-II assessment report issued by the CDC New Delhi which was the Nodal Agency of NSIC for issuance of a NSIC Enlistment certificate. Learned counsel points out that in the said certificate, it has been clearly mentioned that the petitioner was recommended for registration as a Small Scale Unit and Service Provider of Supply, Installation, Testing, Commissioner of Medical Gases and Vacuum Pipeline System on turnkey basis, which the NSIC considered before granting the NSIC certificate dated 24.09.2015.

8. Learned counsel submits that the awarding of the impugned supply order in favour of the respondent No. 4 on 14.06.2018 itself in the most hasty manner clearly points out to the collusion of the respondents 1 to 3 with the respondent No. 4, inasmuch as, without even awaiting for the delivery of the impugned order 11.06.2018 to the petitioner, who received it on 22.06.2018, the supply order was issued on 14.06.2018.

9. Learned counsel to strengthen his allegations of collusion of the respondents No. 1 to 3 & 4 would submit that the respondent No. 4 firm itself was not an eligible tenderer in view of Section II, clause 27.5 (x) and Section V, clauses 7 & 8 of the tender document, which stipulates that tenderers who stand de-registered/banned/blacklisted by any Government authority will not be eligible for bidding in this tender process and also those bidders who had Court cases pending against them. Learned counsel submits that in this regard an FIR dated 04.12.2012 (Annexure-2 of the rejoinder affidavit) had been lodged against the respondent No. 4 under Sections 287/304-A/304/34 of the I.P.C. and the said firm after inquiry was blacklisted vide order dated 04.02.2013 issued by the Government of NCT of Delhi, Health & Family Welfare Department which made the firm ineligible in terms of the tender document contained in Section II clause 27.5 (x) and Section V clause 7. The respondents No. 1 to 3 he submits, ignored this fact and in flagrant violation of the tender conditions, awarded the contract to the respondent No. 4, which clearly shows the collusion between the respondents No. 1 to 3 and 4, in the entire transaction.

10. The learned counsel refers to the amendment made in the tender document namely clause 8, by the respondent No. 3, which he submits was done without any authority and is another instance that clearly shows the collusion among the respondents 1 to 3 and 4 to somehow accommodate the respondent No. 4. Learned Counsel to further his submissions on this aspect, has also placed an order of the Competition Commission of India dated 16.04.2012 which had found the respondent No. 4, to be involved in bid-rigging and cartelization in contravention of Section 3 (3) (d) of the Competition Act, 2002 and had been imposed a penalty at the rate of 5% of the average turnover. These facts, the learned counsel contends, in normal course as Clause 8 originally stood, would have rendered the respondent No. 4 ineligible to be a bidder, but with the amendment, the way was paved for the respondent No. 4 to take part in the tender process, notwithstanding the abovementioned deficiencies.

11. These instances the learned counsel submits, conclusively reflect the collusion in facilitating the award of the contract to the respondent No. 4 despite the fact that the respondent No. 4 was ineligible to participate in the impugned tender process. In support of his submissions, learned counsel has placed reliance on the following judgments ***Pyrkhatbha Shabong vs. State of Meghalaya,*** decided on 06.06.2017 in WP (C) No. 303 of 2016, ***Power Carriers (India) Pvt. Ltd. & Ors. vs. G.M. Lanong & Ors***. reported in 2017 (1) GLT (ML) 612 and Judgment dated 22.01.2016 of the High Court of Madhya Pradesh in the case of HEC Infra Project Ltd. vs. State of M.P. & Ors.

12. In reply to the submissions of the counsel for the petitioner Mr. K. Paul, learned counsel for the respondents No. 1 2, & 3 submits that the North Eastern Indira Gandhi Regional Institute of Health & Medical Sciences, Shillong (NEIGRIHMS), on approval of the Standing Finance Committee under the Chairmanship of Secretary, HFW, had floated an e-Tender, dated 24/08/22015, for processing of the requirement of 1) Medical Gas Manifold System for 500 bedded Hospital including 100 ICU Beds on complete turnkey basis for the Institute 2) Provision of Manpower and engagement of professional for a period of 10 years and cost thereof 3)

Works as per CPWD norms including building and associated works, Schedule of Stores and Services listed from Sl. 1 to 15, detailed in the bidding/tender documents. Learned counsel submits that in response to the Open Advertised e-tender, six (e-bids) were uploaded namely

1) M/s Atlas Copco India Ltd, Pune (E Bid ID : 174098)
2) M/s Benson Medical Equipments (India) Pvt. Ltd, New Delhi (E Bid ID :168981)
3) M/s Draeger Medical (India) Pvt Ltd, Mumbai/Kolkata (E Bid ID : 169226
4) M/s Linde India Ltd, Kolkata (E Bid ID : 175023)
5) M/s MDD Medical System (India) Pvt Limited, Gurgaon (E Bid ID : 166283)
6) M/s PES Installation Pvt. Ltd. New Delhi (E Bid ID :173444)

13. The learned counsel then narrates that the Tender Committee with the Financial Adviser, NEIGRIHMS as Chairman, other members and an external expert including Deputy Director (P), DGHS, MOHFW carried out the Commercial evaluation of e-bids and observed that the bid of M/s Atlas Copco India Ltd, Pune was rendered commercially non-responsive, as the bidder has not submitted tender fee of Rs 1000.00 and EMD of Rs. 30 lakhs within the stipulated time, as per Clause No. 5 and 6 of NIT (Section I) of the bidding document and also, that the present petitioner M/s Benson Medical Equipments (India) Pvt. Ltd, New Delhi had sought exemption towards Earnest Money Deposit, by submitting NSIC enlistment certificate No. NSIC/GP/JHA/2015/0016000 dated: 24/09/2015.

14. The learned counsel submits that the petitioner had offered stores against BOQ Sl. No. 1.1, 1.2. 1.3, 2.1, 2.2, 2.2, 3.1, 4.1, 5.1, 5.2, 6, 6.1 (a) (b) (c), 6.2 (a) (b) (c), 7.1, 7.2, 7.3, 8,9,10,11, 12 and 13; which are "imported" with the country of origin shown as "USA/Canada", with documentary evidence of the manufacturer authorization certificate, as per bidding document issued by the respective manufacturers from abroad, and also had submitted a National Small Industries Corporation Limited (NSIC), Government Purchase enlistment certificate No. NSIC/GP/JHA/2015/0016000, dated 24/09/2015, issued to the petitioner, with store(s)/Service(s) from Sl. No. 1 to 4 in the Store details of the

certificate with Sl. No. 1 as "SITC of medical gases and vacuum pipelines system on turnkey basis…..". The learned counsel submits that the Tender Committee had noted that the bidder offered stores against BOQ Sl. 5.3 "Electrical Control panel for the vacuum system with single phase preventers, starters, controls, voltmeter, ammeters, gauges, hour meter, fuses, switchgears, MCCB and main switches etc" which are indicated to be "indigenous" with country of origin as "India" were not listed, in the listed stores details of the National Small Industries Corporation Limited (NSIC) enlistment certificate dated 24/09/2015, issued to the petitioner, under the MSME Policy dated 16th January, 2009. Learned counsel further submits that the tender Committee had carefully reviewed the e-bidding documents, NSIC enlisting certificate, representations and Government notification/Office memorandum issued by the Ministry of Micro, Small and Medium Enterprises, Government of India, in its meeting held on 09.11.2017 and further followed up by review meetings of the Tender Committee held on 15.12.2017 and 22.12.2017 which also examined the clarification issued by the Joint Director, DIC Gurgaon, Haryana on the query of the respondents.

15. Learned counsel submits that in response the Joint Director, DIC Gurugam vide email dated 22.12.2017, clarified that as per the certificate, the petitioner had been registered as a manufacturer of **1.** Operation and examination tables **2.** Adjustable beds, **3.** Hospital Furniture **4**. Steel Tables only. Further, he submits, it was noted that Public Procurement Policy also clarified that "Traders/Sole Agents/Distributors" are excluded to avail the facilities/benefits extended under the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012. Learned counsel then submits that in view of the clarification issued by the Joint Director, DIC Gurgaon, Haryana vide email dated 22.12.2017, it was clear that the NSIC Certificate of the petitioner was not in consonance with the MSME Act, 2006, inasmuch as, the Entrepreneurs Memorandum Part II which is the verifiable Document for issuance of the NSIC Certificate, does not substantiate/corroborate the NSIC certificate of the petitioner and as such it is inferred that the petitioner is therefore not entitled to avail facilities, under Public Procurement Policy

for Micro and Small Enterprises (MSEs) Order, 2012 and as such the offer of the petitioner was not considered eligible commercially. Learned counsel asserts that this speaking order was thereafter issued in compliance to the directions passed by this Court vide Judgment and order dated 6th October, 2017 passed in WA No. 40 of 2017 and the Institute proceeded with the matter in accordance with law.

16. The Learned counsel submits that the Respondents while perusing the e-bids of the petitioner had sought clarification on 24/11/2015 from the respective branch of the NSIC, within 27/11/2015, in respect of "imported stores" and enlistment certificate and further submits that as per the "Public Procurement Policy for MSEs Order, 2012"- only goods produced and services rendered, as mentioned in the store details of the enlistment certificate were eligible, and that the Public Procurement Policy for MSEs under which Earnest Money Deposit exemption is sought by the petitioner clarified that "Traders/Sole Agents/Distributors" are excluded from availing the facilities/benefits extended under the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012.

17. Learned counsel Mr. K. Paul then places the judgment of the Delhi High Court in ***M/s Opaque Infrastructure Pvt. Ltd vs. Union of India & Anr (WP(C) No. 1344/2015 and CM Nos: 2358/2015 & 2907/2015)*** wherein a similar issue was involved where the Delhi High Court vide Order dated 26th March, 2015 observed as follows:

> *".....The petitioner submitted the bid being award of the tender conditions and as such the petitioner should have ensured that if the petitioner was claiming exemption from payment of Earnest Money Deposit then the certificate submitted by it should conform to the tender conditions. The petitioner, having not submitted either the Earnest Money Deposit or a valid certificate qualifying for an exemption, cannot be permitted raise to a grievance of rejection of the bid. There is no merit in the contention of the counsel for the petitioner that the respondents could not have qualified the NSIC certificate by making it restricted to the items covered by the tender and NSIC certificate should have been treated as valid for all items. The tender document itself stipulated that the certificate must cover the items tendered. The petitioner, being aware of the said tender conditions participated in the tender and having participated in the tender,*

cannot challenge or impugn the tender condition. The petitioner having participated in the tender process can only expect equality and fair treatment in the matter of evaluation of competitive bids. The petitioner cannot be permitted to challenge the terms and conditions of the tender after he had participated in the same.....”

18. Learned counsel also counters and disputes the petitioner’s claim that the NSIC does not issue any government purchase enlistment certificate with item wise details, and submits that documentary evidence in support of NSIC enlistment for item wise listing in the stores/services details of the enlistment certificate are enclosed in respect of electrical panels, infrastructure management services, temporary employment agencies, training solutions, UPS systems, communication, sewage treatment plant, autoclave, OT table, BOD Incubator, Safety belt, firefighting gloves, firefighting garment, etc. The learned counsel further submits that the petitioner’s claim that NSIC does not issue any Government enlistment certificate with item wise details including “Manpower Supply Services” indicated in the list of store(s)/Services as in the case of M/s Orrion star Innovates Pvt. Ltd, Delhi issued vide Purchase Enlistment Certificate No. NSIC/GP/JHA/2015/0017723 dated: 17/12/2015 is incorrect and that the respondent’s action is therefore, in total harmony with regard to the applicable law and there are no mala fide actions on the part of the Institute.

19. The learned counsel contends that the petitioner through this instant writ petition is only seeking to somehow stall the tender process on their failure which otherwise had been carried out in a most transparent and fair manner giving utmost consideration to all aspects of tender norms and requirement thereof. He submits that the petitioner having participated in the tender process cannot at this belated stage challenge the same on their failure in the tender process, especially when the terms and conditions of the tender process were specific and clear from the very beginning and not subject to any further interpretations or meaning as the petitioner herein claims or seeks to project. Learned counsel also submits that while this Court was delivering the direction in the WA No. 40 of 2017, the petitioner did not disclose before the Court that, they are rendered ineligible to perform the Contract as “the

petitioner was no longer the authorized distributor to perform the contract, as the Manufacturer M/s Tri-Tech medical USA confirmed that the petitioner was no longer distributing Medical Gas Pipelines products with effect from October, 2017". Therefore, he submits the material facts forming the basis of the directive/Judgment of this Court in the Division Bench was hidden/mis-declared by the petitioner's firm, and as such, the instant case does not deserve consideration by this Court and is liable to be dismissed.

20. The learned counsel asserts that the instant petition is not maintainable in its present form, inasmuch as, there has been wilful and deliberate concealment of material facts by the writ petitioner as, the petitioner has failed to disclose that it is no longer distributing medical gas pipeline products of M/s Tri-Tech Medical Inc, 35401, Avon Commerce Parkway, Avon, OH44011, USA, in India since October, 2017. Learned counsel further submits that that even if for arguments sake, the Answering Respondents were to concede to the averments of the writ petition, and this Court were to allow the prayers in the writ petition, and ignoring all other factors in the matter, award the work to the writ petitioner, in the supervening circumstances i.e. the writ petitioner not having the authority or agency of M/s Tri-Tech Medical Inc, USA, would not be in position to undertake the works of supply and installation of the medical gas pipelines at the Respondent Institute, and as such submits that the entire writ petition has been reduced to an academic debate not warranting any interference by this Hon'ble Court.

21. The learned counsel also contends that the writ petition is belated and does not warrant consideration by this Court, inasmuch as, the work order for the works contract in question have already been issued to the private Respondent vide order dated NEIGR/S&P/OT-315/2018-19 dated 14.06.2018, with a deadline of two hundred and ten days (from approval of flow diagram) and pursuant thereto, the private Respondent has also started the works and that as on date 75-80% of the total work has already been completed. He therefore submits that, such being the position, the instant writ petition praying for annulment of the supply order dated 14.06.2018 is

not maintainable both in facts and law and is liable to he dismissed by this Court.

22. Learned counsel has placed reliance in the case of ***Raunaq International Ltd. vs. I.V.R. Construction Ltd.,*** reported in ***(1999) 1 SCC 492***, ***Tata Cellular vs. Union of India*** reported in ***(1994) 6 SCC 651***, ***Jagdish Mandal vs. State of Orissa***, reported in ***(2007) 14 SCC 517***, ***Maa Binda Express carrier vs. North-East Frontier Railway*** reported in ***(2014) 3 SCC 760*** and ***Reliance Airport Developers (P) Ltd., vs. Airports Authority of India*** reported in ***(2006) 10 SCC 1***.

23. The learned counsel then concludes by submitting that the instant petition has been filed mala fide by the petitioner only with an intention to stall the entire process which is aimed at providing essential medical services to the people at large thereby affecting the basic services to the patients and defeating the very object of the tender, for which the tender process has been floated by the Respondents.

24. Mr. T.T. Diengdoh learned senior counsel assisted by Mr. C.T. Sangma on behalf of the Respondent No. 4 submits that pursuant to the supply order dated 14/06/2018 issued by the respondent No. 1, the respondent No. 4, after the drawings had been approved, has started the civil construction out of which as on date, about 90% of the work has been completed. He submits that that since time is the essence of the contract the respondent No. 4, has nearly completed the work of installation, supply, etc. in right earnest, to avoid being penalized, as per the general conditions of the contract. Further, there is an urgent need for installation of the gas pipeline for supply of oxygen to the patients of the hospital and it would be against the public interest to delay the works.

25. Learned Senior Counsel would submit that the petitioner has made various allegations in the writ petition by contending that the respondent No. 4 was in-eligible to bid and participate in the tender proceedings as it had been barred by the NCT Government of Delhi in terms of Section II clause 27.5(n) and Section V clause 7 of the tender document.

He submits that, it is a fact that an order dated 04/12/2013 (Annexure P/25) was passed by the NCT Government of Delhi debarring the respondent from participating in any tender process and had also blacklisted the firm. He further submits that however, after the respondent approached the High Court of Delhi, the said court after hearing the parties passed a consensual order dated 12/09/2013, and pursuant thereto, the Secretary of Health and Family Welfare, modified the earlier order and respondent No. 4 was only debarred from participating in new tenders of Delhi Government Hospitals, institutions in the Govt. of Delhi for eighteen months w.e.f. 04/02/2013. Thereafter, learned counsel submits the respondent No. 4 again approached the High Court of Delhi by filing WP(C) No. 1310 of 2014, which vide order dated 25/02/2014, dispelled the apprehension of the answering respondent that it would not be eligible in participating for tenders after the expiry of 18 months. He contends that the respondent No. 4 has never been de-registered/banned/blacklisted by any Government authority but was only debarred from participating in new tenders in the Government of NCT, Delhi for eighteen months which ended on August, 2014.

26. With regard to the next contention of the petitioner that criminal proceedings on the basis of FIR No. 201/2002 were initiated against the respondent No. 4, Learned senior counsel submits that the same is misleading and incorrect, inasmuch as, on the basis of the said FIR, a criminal case was registered against an individual viz. Amit Singh Katoch and others and denies the fact that there is any criminal case pending against the Respondent No 4, to attract the provisions of clause 7 of section V of the tender document. He further submits that on clarification sought by respondent No. 3 vide email dated 24.11.2015, respondent No. 4 duly submitted three affidavits dated 26.11.2015 reconfirming that there is no CBI/vigilance case pending against it and that it has not been de-registered/blacklisted by any government authority.

As regards case No. 42 of 2010 before the Competition Commission of India, New Delhi, the learned senior counsel submits that the order was passed on 16.04.2012 (Annexure P/26) and even assuming if

clause 8 of Section V was not amended, respondent No. 4 would still be eligible to bid for the contract, as there is no provision in the Competition Act, 2002 for penalizing any company or firm by way of debarring and banning such company from participating in other tenders, and only has the power to impose penalty by way of fine which can be executed by detention in civil prison.

27. The learned senior counsel submits that on 31st May, 2016 when the commercial and technical bids were considered, the petitioner was very much aware that the respondent 4 along with two parties had been shortlisted, but it is only at this juncture that the petitioner has sought to malign the reputation of respondent No. 4 by making false and baseless allegations. He further submits that the petitioner did not array the respondent No. 4 as a party to the earlier rounds of litigation and did not raise any issue regarding the competency of the respondent No. 4 until now when the supply order has already been issued.

28. The learned senior counsel also alludes to the other contentions raised by the petitioner of collusion in the amendment of clause 8 of Section V of the tender documents, to accommodate the respondent No. 4 to participate in the tender process, that the quoted materials by respondent No. 4 were of inferior quality and non-standard as per norms laid down, and that the price/rate quoted by the petitioner is lower. To these contentions, the learned senior counsel asserts that all the products of the respondent No. 4 are as per the technical specifications and standards as indicated in the NIT and all the products which are being supplied by the respondent No. 4 are as per norms of the Tendering Committee and in fact, the offer of the petitioner is higher by Rs. 1,14,13,614.53 than that of the answering respondent. He further, submits that the public procurement policy 2012 of MSME is not applicable for composite work contracts which are non-divisible contracts, and that even otherwise, it is a settled law that merely being the lowest bidder is not a criterion for awarding a contract and thus on this score also, the petitioner has not made out any case for interference by this Hon'ble Court in the tendering process.

29. The learned senior counsel further submits that the petitioner had failed to comply with the above conditions of e-tender and had concealed material facts, that the manufacturer of medical gas pipelines products M/s Tri-Tech Medical Inc,35401, Avon Commerce Parkway, Avon OH44011, USA offered by the petitioner with authorization against e-tender vide IFB No. NEIGR/S&P/OT/E-33/2015-16 had confirmed that the petitioner is no long distributing its products in India from October, 2017. This he submits, had not been declared to the Respondent Institute and also before this Court, by the petitioner.

30. The learned senior counsel stresses and argues that the petitioner through its repeated writ petitions, has been attempting to scuttle a project of public importance of the Respondent Institute, which involves continuous supply of medical gases including medical oxygen and suction to patients beds, which is an essential requirement for effective running of a hospital of the stature and magnitude of NEIGRIHMS, which is the premier health care institution of the Govt. in the North East. He submits that as the petitioner is no longer a contender for the contract, in view of the fact that it was no longer the authorized distributor of the products, the entire proceedings before this court has been reduced to an academic exercise and as such, the instant writ petition is liable to be dismissed in limine with cost to the Respondents.

31. I have heard the learned counsels for the parties and also examined the materials on record as placed. I have given my thoughtful consideration to the entire gamut of the matter as it stands, and can discern at this stage that though effectively, the only aspect that has to be decided is to what reliefs will the petitioner be entitled to if any, in the current situation, wherein admittedly the contract/supply has already been awarded and work also almost completed, the pointed challenge and questions that have been put up by the petitioner regarding the entire tender process however requires examination in order to arrive at any sort of conclusion.

32. It is noted that the instant matter has been agitated earlier and the current proceedings is the fourth round of litigation before this court. The Division bench, it is also noted, had already examined the dispute in detail

in Writ Appeal No.40 of 2017 which had been preferred by the petitioner against the initial dismissal of its writ petition, which had challenged the rejection of its bid. The learned Division bench of this court while allowing the writ appeal vide order dated 06.10.2017 and setting aside the order of the learned Single Judge, had observed and directed as follows:-

"IRRATIONALITY AND UNREASONABLENESS IN THE IMPUGNED ACTION

Having examined the instant matter in its totality with reference to the principles aforesaid, we are clearly of the view that the impugned action suffers from such irrationality and unreasonableness that the same cannot be endorsed; and in the circumstances of the case, it appears just and proper that the decision taken by the respondents qua the appellant be revisited by them.

The suggestion on behalf of the respondents about the alleged delay in filing the petition has only been noted to be rejected. It is apparent on the face of the record that even after the evaluation dated 27.11.2015, the report was uploaded by the respondents only on 31.05.2016. the petitioner/appellant got served notice through lawyer on 16.06.2016 and the respondents sent its reply through their lawyer on 02.07.2016. The petitioner/appellant has pointed out in the petition that thereafter, the Ministry of Health and Family Welfare, New Delhi was approached, who expressed inability to intervene and thereafter, the writ petition was filed on 26.09.2016. In the totality of circumstances of the case, it cannot be said that the petition suffered from any such delay or laches that the case of the appellant be not considered on merits.

As regards merits of the case, the first and foremost reason, wherefor we find the action of the respondents to be wholly unreasonable is that BOQ items No. 14 and 15 were at all referred to and relied upon by them to find faults or shortcomings in the NSIC certificate possessed by the appellant without examining the relevant stipulations in the tender documents. As noticed, as per GIT Clause 19.2, exemption from earnest money deposit was

available to the tenderers, who would continue to remain registered during the tender validity period with the Directorate General of Supply and Disposal or with NSIC for the "specific goods" as per tender enquiry specification. The expression "Goods" had been defined in Sub-clause (iv) of Clause 1.2 of GIT to mean articles, material, commodities, livestock, furniture, fixtures, raw materials, spares, instruments, machinery, equipment, medical equipment, industrial plant etc., which a supplier would be required to supply to the purchaser under the contract. Such specific goods were otherwise indicated in BOQ items No. 1 to 13, viz., Oxygen system; Carbon dioxide System; Compressed Air System; Vacuum (Suction) Supply System; Area Control Unit; Terminal Outlets etc. etc.; and several equipments/articles were mentioned in the description relating to such items.

However, BOQ item No. 14 had been of manpower costs towards engagement of professionals for a period of 10 years. It sounds rather intriguing that the said item No. 14 of BOQ was at all referred by the tender committee of the respondents as being one of the items wanting in the NSIC certificate. As noticed, the expression 'Goods' had distinctly been defined in Sub-clause (iv) of Clause 1.2 GIT to mean the articles, materials, commodities etc. and it is difficult to appreciate that manpower costs towards engagement of professionals for maintenance and operation were at all conceived by any authority to be included in the term "goods" for the purpose of NSIC certificate. Obviously, the reference to BOQ item No. 14 had been a matter of irrationality and unreasonableness. Not only that such an unconceivable proposition was stated in a rather obscure manner in the evaluation note dated 27.11.2015, but even in reply to the notice, such a proposition was reiterated and emphasized by the respondents and the same stand has been taken before this Court too. When the decision making by the respondents has taken its shape from such an unreasonableness with reference to BOQ item No. 14, we are clearly of the view that the entire decision is vitiated and needs to be revisited.

Similarly, item No. 15 of BOQ was not of supply of any specified goods but was of complete 'civil works' and other accessories required.

"Civil work" had not been defined in the GIT but in a comprehension of the project, it could only mean all such works which are required to be carried out for installation and operation of the medical gas system. Such works are found mentioned in the definition of 'turnkey' as occurring in the tender condition of contract i.e., RCC buildings as per CPWD specifications, complete RCC works – doors, windows, making holes in the slab, walls, removing and replacing wall/ceilings etc. etc.

In the context of the tender in question, co-relating the civil work with "goods" for the purpose of Clause 19.2 ibid. again gives rise to the questions of rationality and reasonableness. It appears that looking to the nature of the tender enquiry, where supply of specified goods and the civil works and even providing of manpower for 10 years were clubbed together, the appellant took care to obtain the certificate from NSIC in comprehensive terms, which stated the stores/services as "SITC of medical gases and vacuum pipeline system on turnkey basis" and "SITC of modular operation theatres on turnkey basis". The expression SITC referred to the wholesome task/service of supplying, installing, testing and commissioning on turnkey basis, as defined by the respondents themselves. Obviously, these crucial expressions and stipulations in the certificate have been ignored by the respondents.

For what has been discussed hereinabove, we are clearly of the view that before finding shortcomings in the NSIC certificate in question with reference to BOQ items No. 14 and 15, the respondents have not examined the relevant details and have not considered as to how the components of such items could be referred to the description of "specific goods" for the purpose of EMD exemption under Clause 19.2 of the GIT?

Coming now to the question of BOQ item No. 5.3, in our view, even in regard to this item, the approach of the respondents had been rather unsure, ambiguous and obscure. As noticed, the tender committee in paragraph 3 of its Evaluation Report dated 27.11.2015 essentially relied upon BOQ item Nos. 14 and 15 to treat the petitioner ineligible. Thereafter, in paragraph 4, the Committee made a cursory noting that the stores as referred in BOQ Sl.

No. 5.3 were not listed in "stores detail of NSIC certificate". Interestingly, only a cursory reference was made to this item in paragraph 10 of the reply dated 02.07.2016. Though the respondents have alleged that the appellant's Entrepreneur Memorandum Part-II did not contain all the specified goods and the appellant has also not placed on record a copy of its application seeking NSIC certificate in question but in any case, as noticed above, the appellant's NSIC certificate in comprehensive terms stated "SITC of medical gases and vacuum pipeline system on turnkey basis" and "SITC of modular operation theatres on turnkey basis". In our view, the respondents were obliged to examine as to whether such comprehensive descriptions in the certificate were not covering whole of the items specified in BOQ Sl. No. 5 i.e., of vacuum (suction) supply system.

The discussion aforesaid leads to the result that the respondents have not examined the case of the appellant in its correct perspective and the rejection of the petitioner's claim for exemption from EMD needs to be revisited. The learned Single Judge has rejected the case of the appellant only with reference to the decision in Opaque Infrastructure (Supra) but in our view, the said decision has no application to the facts of the present case because therein, the certificate of the tenderer was not carrying even the very basic goods that were supposed to be supplied for High Mast Signage, whereas in the present case, the nature of work is entirely different and the tender requirements are also entirely different.

We may, however, hasten to observe that we do not propose to directly hold the petitioner eligible but, having regard to the circumstances, consider it proper that in this matter of contract, the respondents themselves should re-examine the certificate submitted by the petitioner with reference to the stipulations in the tender documents and then should take a considered decision by way of a speaking order. In the interest of justice, it is of course provided that for the purpose of taking such a decision, the respondents shall take the certificate issued by the NSIC in favour of the appellant as subsisting and the decision would be taken with regard to the position as was obtaining on 27.11.2015.

CONCLUSION

With the observations and requirements aforesaid, this appeal is allowed to the extent indicated; the impugned order dated 07.07.2017 as passed in WP(C) No. 294 of 2016 is set aside and the respondents are directed to revisit the decision in relation to the claim of the appellant for exemption from Earnest Money Deposit and then, proceed with the matter in accordance with law."

33. Thereafter on reconsideration, the respondents vide the impugned order dated 11.06.2018 rejected the bid of the petitioner on the following ground that the exemption of EMD did not meet the provisions notified and as per clause 19.2 of the e-bidding documents. It is noted firstly that the impugned order has traversed on different aspects while revisiting and reviewing the bid documents of the petitioner. This Court, vide the order dated 06.10.2017 in the Division bench, had categorically come to a finding with regard to the irrationality and the unreasonableness of the rejection of the bid of the petitioner. More specifically with regard to BOQ items number 14 and 15 which were earlier found wanting by the Tender Committee in terms of NSIC certificate as far as the expression of 'Goods'. Further, this Court observed that the crucial expression and stipulations in the NSIC certificate had been ignored by the respondents, inasmuch as, they did not examine the relevant details as to how the components of certain items could be referred to the description of 'specific goods' for the purpose of EMD exemption under clause 19.2 of the GIT. The direction of this Court therefore was for the respondents to examine the case of the petitioner in its correct perspective and that the petitioner's claim for exemption from EMD be revisited.

34. The respondents by the impugned order dated 11.06.2018, to clarify the eligibility of the petitioner to avail the benefits under the MSMEs Public Procurement Policy, called for verification of the Entrepreneurs Memorandum Part-II (verifiable document) and clarification with regard to the items manufactured and types of services rendered as declared by the petitioner under the MSME Policy dated 16.01.2009 from the Joint Director,

District Industries Centre, Gurgaon, Haryana. It is noted in the impugned order that the Joint Director, District Industries Centre, Gurgaon, Haryana by communication dated 22.12.2017 via email clarified that the certificate of the petitioner has been registered as a manufacturer of (a) Operation and examination tables (b) Adjustable beds (c) Hospital furniture and (d) Steel tables only. The petitioner's claim for exemption of EMD in view of the clarification, was rejected by the respondent Institute by holding that the claim of exemption for EMD by the petitioner did not meet the provisions notified by the Ministry of Micro, Small and Medium Enterprises (MSME). As per the order of this Court dated 30.01.2018 passed in WP(C) No. 3 of 2018, an opportunity was then given to the petitioner to refute the contents of District Industries Centre, Gurgaon, and for producing original documents, including acknowledgement of the Entrepreneurs Memorandum (EM II) filed with the District Industries Centre, Gurgaon.

35. The petitioner appeared before the Tender Committee on 06.03.2018 and submitted an assessment report of the Consultancy Development Centre, New Delhi which has been forwarded to the Branch Manager NSIC, New Delhi on 16.09.2015 along with the other documents submitted earlier with the e-bidding documents including copy of the NSIC certificate. The impugned order records that the acknowledgment of the Entrepreneur Memorandum (EM II) which is a verifiable document as per the MSME Policy was however not produced before the Tender Committee and the same therefore could not be verified. Another ground noted by the Tender Committee was that the NSIC enlistment certificate dated 24.09.2015 issued to the petitioner were for 'specific services' and would not qualify for exemption as per clause 19.2 of the e-bidding document which is for 'specific goods'. The finding as recorded in Para-8 of the impugned order is reproduced herein below :-

> ***"8. And whereas, the committee noted that the NSIC enlistment certificate Ref No. NSIC/GP/JHA/2015/0016000 dated: 24/09/2015, issued to M/s Benson Medical Equipment (India) Pvt Ltd, Delhi, were for specific "Services" and does not qualify for exemption as per clause 19.2 of the e-bidding document, which is for the "specific goods" and reads as "the***

tenderers who are currently registered and also, will continue to remain registered during the tender validity period with Directorate General of Supplies & Disposals or with National Small Industries Corporation, New Delhi for the specific goods as per tender enquiry specification shall be eligible for exemption from earnest money deposit. Vague stipulations in the Registration Certificate such as "to customers' specification" etc. will not be acceptable for exemption from furnishing of earnest money. In case the tenderer falls in these categories, it should furnish copy of its valid registration details (with DGS&D or NSIC, as the case may be)".

This Court in the Division bench had dwelt on the definition of 'specific goods' as defined in sub-clause 4 of clause 1.2 of the e-bidding document as far as it concerned the earlier rejection which was in terms of BOQ items 14 and 15 and had categorically held that though the petitioner's Entrepreneurs Memorandum (EM II) did not contain all the specified goods and the petitioner also had not placed on record seeking NSIC certificate, the fact that the petitioner's NSIC certificate in comprehensive terms stated 'SITC of Operation Theatres on turnkey basis required the respondents to examine whether this comprehensive description as contained in the certificate would not cover the other requirements.

36. In the re-examination with regard to the same clause i.e. 5.3 of the BOQ, the respondents have taken an alternate ground by holding that the offered stores against BOQ which was indicated to be indigenous with country origin as India was not listed in the stores detail of the NSIC certificate and as such noted the same to be a vague stipulation which would not be acceptable as per clause 19.2 of the GIT. The finding which was recorded at Para 9 of the impugned order is reproduced herein below :-

"9. And whereas, the Committee also noted that M/s Benson Medical Equipment (India) Pvt Ltd, New Delhi/Gurgaon offered stores against BOQ Sl. 5.3 "Electrical Control panel for the vacuum system with single phase preventers, starters, controls, voltmeter, ammeters, gauges, hour meter, fuses, switchgears, MCCB and main switches etc" which are indicated to be "indigenous" with country of origin as "India" are not listed, in the enlisted stores details of the NSIC certificate. Further, the expression "SITC" referred to at serial number (1) of National Small Industries Corporation Limited (NSIC), Government Purchase enlistment certificate

No. NSIC/GP/JHA/2015/0016000 dated: 24/09/2015, issued to M/s Benson Medical Equipment (India) Pvt Ltd, Delhi has not been defined in the "e-bidding" document or in the "Enlistment certificate issued by the NSIC". Therefore, noted to be a "vague stipulation" as per GIT Clause 19.2 and vague stipulations in the Registration Certificate such as "to customers' specification etc" would not be acceptable for exemption from furnishing of earnest money.

37. As recorded above it can be seen that the respondents have found fault with the bid of the petitioner on the same ground, but on another pretext by classing it as a 'vague stipulation'. This is accentuated by the manner in which they have sought to deal with the same issue in the re-appraisal, which were on the directions of this Court. In the proceedings before the Division Bench, only cursory notings were observed to have been made on the same aspect, but on reappraisal they have still remained vague and stipulated as such, by the tender committee. The intent of the respondents to oust the petitioner thus becomes very apparent even in the present impugned order.

38. The rejection of the bid of the petitioner after re-examination is mainly on these grounds as observed above i.e. (i) Entrepreneurs Memorandum (EM II) a verifiable document could not be verified (ii) NSIC enlistment certificate was for 'specific services' and not 'specific goods' as stipulated by clause 19.2 of GIT and (iii) Store details of indigenous items not listed in NSIC certificate, and vague stipulation in the NSIC certificate as regards the SITC certification. The Tender Committee on a bare perusal of the impugned order seems to have embarked upon a hyper-technical path while re-examining the bid of the petitioner. This observation is being made in view of the fact that in the Notice Inviting Tender, the basic invitation for bids was for procurement of stores/items for the respondent Institute with regard to **'Centralized Medical Gas Manifold System and Manifold'** with the quantity being specified as **'Composite Turnkey Requirement'**. The petitioner in this regard had on record submitted a copy of the Consultancy Development Centre and EM II assessment report wherein, it was clearly mentioned that the petitioner was recommended for registration as a **Small Scale Unit and Service Provider of Supply, Installation, Testing and Commissioning of Medical Gases and Vacuum Pipeline System on**

turnkey basis, the basis on which the NSIC certificate dated 24.09.2015 was issued. The basic requirements for eligibility being fulfilled the conduct of the respondent Institute in splitting hairs in both rounds of litigation to disqualify the petitioner does not reflect well in such matters of public procurement nor does it serve public interest.

39. Another glaring aspect is the amendment of clause 8 of the tender document to remove the automatic disqualification clause as evident from the extract reproduced below of the Tender Corrigendum/Addendum dated 07.10.2015.

TENDER CORRIGENDUM/ADDENDUM

Page No./Clause No./Point no	**Existing Specification/Sentence**	**To be read as**
Section V, Clause No.-8	8.Companies/Firms/Bidders who have been/are indulged in illegal bid rigging and cartelization during the last 3 years and have been penalized by any Government agencies such as Competition Commission of India (CCI), will not be entertained.	8.Companies/Firms/Bidders alleged to be involved in bid rigging or cartelization during the process/finalization of tender, may be recommended for inquiry to Government agencies such as Competition Commission of India (CCI) etc, in exercise of powers vested under section 19 of the Act and provisions of section 3 of the relevant Act.

The submissions of the petitioner in this regard has weightage as the respondent No. 4, admittedly, and on record had been blacklisted from participating in any tender process with any Government Hospital or Health Institution of the Government of Delhi in respect of Medical Oxygen Supply for a period of eighteen months w.e.f. 04.02.2013 and also the Competition Commission of India had found the respondent No. 4 to be involved in bid-rigging and cartelization and was also imposed a penalty. The amendment of clause 8 negated the stipulation which would have rendered the respondent

No. 4 ineligible, though arguments have been advanced by the counsel for the respondent No. 4 that the amendment had no impact on the eligibility of the respondent No. 4.

40. It is also noted with interest by this Court, that the impugned order rejecting the bid of the petitioner on reappraisal, was passed by the respondents on 11.06.2018, and on 14.06.2018 itself, issued the impugned supply order to the respondent No. 4, before the petitioner received a copy the same on 22.06.2018. The events recounted above, also give credence to the contention of the petitioner that the tender process was vitiated also by the element of collusion between the respondents No. 1 to 3 with the respondent No. 4.

41. However, in spite of the clouds that give rise to serious doubts about the transparency and fairness of the entire tender process, a fact that has been brought on record and cannot be overlooked, is the assertion of the respondents that even in course of the proceedings of the writ appeal before this Court in the Division bench, the petitioner did not disclose the fact that they had been rendered ineligible to perform the contract even if selected as they were no longer the authorized distributor of Medical Gas Pipelines Products w.e.f. October, 2017 from the U.S. Manufacturer, which fact stood unrefuted by the petitioner. Further, the fact that the writ petitioner never challenged the amendments in the earlier rounds of litigation also worked against the interest of the petitioner. These factors, in effect have seriously dampened the prospects of the petitioner for obtaining any relief, coupled with the fact that the contract has neared completion, if not already completed. These subsequent events however, cannot take the attention of the Court away from flagging the manner the entire tender process by the respondents was conducted, which is replete with commissions and omissions.

42. Though it has been strenuously argued that an exercise to examine the legality of the tender process will be reduced to a mere academic debate without any fruitful conclusion, in view of the situation as it pertains today, this Court cannot but remark that it is required to examine as to whether the

decision arrived at by the respondents herein is based on legitimate considerations.

43. In the case of ***M/s Power Carriers*** (supra) this Court had held that the State had violated the various principles which **had been laid down in *Sterling Computers Limited (1993) 1 SCC 445, Tata Cellular*** *(supra)* and ***Raunaq International*** *(supra)* where the state had adopted unfair and questionable process thereby unjustly awarding the tender to a party who was selected on the basis of favouritism, which resulted in the breach of Article 14 of the Constitution. In this context it would be appropriate to quote herein Para-22 of ***Raunaq International*** as to the metes and bounds of judicial review of administrative action in such matters.

> ***" 22. In Tata Cellular v. Union of India. [1994] 6 SCC 651, this Court again examined the scope of judicial review in the case of a tender awarded by a public authority for carrying out certain work. This Court acknowledged that the principles of judicial review can apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of that power of judicial review. The Court also observed that the right to choose cannot be considered as an arbitrary power. Of course, if this power is exercised for any collateral purpose, the exercise of that power will be struck down: (SCC p. 675, para 71)***
>
> ***"71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters… and the need to remedy any unfairness. Such an unfairness is set right by judicial review."***
>
> ***After examining a number of authorities, the Court concluded (at pp. 687-88) as follows ;-***
>
> ***(1) The modern trend points to judicial restraint in administrative action.***
>
> ***(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.***
>
> ***(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.***

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi-administrative sphere. However, the decision can be tested by the application of the "Wednesbury principle" of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

44. The distribution of largesse as has been held by the Hon'ble Supreme Court such as grant of contracts is to be tested on the touchstone of Article 14 of the Constitution and the action has to be fair, reasonable, transparent, unbiased without favouritism to promote healthy competition and equitable treatment. In the instant case, it is noted that there was no justification to amend Clause 8 of Section V of the tender document and the action of the respondents in this regard has to be viewed as capricious to show favour to the respondent No. 4.

45. Against the entire backdrop as discussed this Court cannot but come to the logical conclusion that the award of contract to the respondent No. 4 and the rejection of the bid of the petitioner, cannot withstand the relevant test of reasonableness, rationality, transparency and fairness. The rejection of the bid of the petitioner on both the occasions though interfered with in the first instance by this Court, was based as observed earlier on hyper-technicality, and unfairness is writ large in the face of the decision making process.

46. At this stage however as submitted by the parties, the work which is urgent in nature is nearing the stage of completion, if not already completed, and is of critical importance for the Medical Institute. Though, it cannot be said that the petitioner would have ultimately secured the bid, as the rejection was at the stage of technical evaluation, the consequence of the findings of this Court as regards the decision making process, would have

normally resulted in setting the same aside, but considering the facts as they pertain on the ground, the same is not possible at this stage.

47. However, taking an overall view of the matter, the instant case is a fit case for imposition of costs upon the respondents in favour of the writ petitioner. Accordingly, it is hereby directed that the respondents shall jointly and equally, pay cost of Rs. 2 lakhs to the writ petitioner. The same shall be made over to the Registry of this Court by cheque/draft in the name of the petitioner within a period of 3(three) weeks from the date of the order and receipt of the certified copy thereof. With regard to quantifying or fixation of compensation and damages, to make the Respondent No. 4 disgorge a portion of the profits of the contract, the writ petitioner is at liberty to institute appropriate civil proceedings against the respondents for the same.

48. With the above noted directions, the instant writ petition is accordingly disposed of.

JUDGE

Meghalaya
13.02.2020
"V. Lyndem PS"