

IN THE HIGH COURT OF BOMBAY AT GOA**PUBLIC INTEREST LITIGATION WP NO.46 OF 2019**

Mr. Sanjeev S.P. Raiturkar,
52 years of age,
son of late Mr. Shrinivas Pai Raiturkar,
r/o. Ground Floor, Vishwesh Apartments,
Murida, Fatorda, Margao,
Salcete – Goa.

.... Petitioner.

V/s.

1. Goa Electronics Ltd. (GEL)
through its Managing Director
having its Office at Ground Floor,
Shramshakti Bhavan,
EDC Complex, Patto Plaza,
Panjim, Goa.
2. Department of Transport
Government of Goa,
through its Director having its
Office at 1st Floor, Junta House,
Junta House, Panjim, Goa – 403001.
3. State Transport Authority
Government of Goa,
through its Chairman,
1st Floor, Junta House,
Panjim, Goa – 403001.

4. State of Goa,
through its Chief Secretary,
Secretariat, Porvorim – Goa.
5. Rosmerta Autotech Pvt. Ltd.,
through its Managing Director,
137, Udyog vihar, Phase – 1,
Gurgaon – 122016.
6. M/s. Securinex Inc.
Plot No.40, First Floor,
Sector – 2, Parwanoo, Solan,
Himachal Pradesh – 173220.
7. Travel and Tourism Association
of Goa, 609 Dempo Towers,
Patto Plaza, Panaji – Goa.
8. International Center for Automotive
Technology, Plot No.26,
Opp. Honda Company,
Power Supply Colony,
Sector 3, Imt. Manesar, Gurugram,
Haryana – 122050. Respondents

Mr. Nigel Da Costa Frias, Advocate for the petitioner.

D. Pangam, Advocate General along with Ms. Maria Correia,
Additional Government Advocate for the respondents no.1 to 4.

Ms. Gautami Kamat, Advocate for the respondent no.5.

Mr. Suren Uppal with Ms. Sneha Baul, Advocates for the respondent

no.6.

Mr. N.N. Sardesai, Senior Advocate along with Mr. Gaurang Panandikar, Advocate for the respondent no.7.

Mr. Jatin Ramaiya, Advocate for the respondent no.8.

**Coram : M. S. SONAK &
SMT. M.S. JAWALKAR, JJ.**

Date : 20th January, 2020.

Oral Order: (Per M.S. Sonak, J.)

Heard Mr. Nigel Da Costa Frias, the learned Counsel for the petitioner.

2. Mr. D. Pangam, the learned Advocate General along with Ms. Maria Correia, the learned Additional Government Advocate appear for the respondents no.1 to 4. Ms. Gautami Kamat, the learned Counsel appears for the respondent no.5. Mr. Suren Uppal with Ms. Sneha Baul, the learned Counsels appear for the respondent no.6. Mr. N.N. Sardesai, the learned Senior Counsel along with Mr. Gaurang Panandikar, the learned Counsel appear for the respondent no.7 and Mr. Jatin Ramaiya, the learned Counsel appears for the respondent no.8.

3. In this petition which is purported to be filed in Public

Interest, the petitioner, seeks the following substantive relief:

“(a) For a Writ of Mandamus or Writ in a nature of mandamus or an appropriate Writ order or direction thereby directing the respondent nos. 2 and 4 to cancel the RFP dated 21.9.2018 for supply, installation and maintenance of ATD with an integrated emergency system and fare meter in passenger taxis and to issue a fresh RFP by incorporating the applicable BIS standards of December, 2018 therein.

4. The case of the petitioner is that when the request for proposal/RFP were issued on 21.9.2018, BIS standards - 2018 were not in force. He states that all the standards though come in force in July 2018 were further amended on 1st December, 2018. He therefore submits that the RFP dated 21.9.2018 takes no cognizance of the amendment which came into force on 1.12.2018. He submits that these amendment requires maintenance of Automated Tracking Device (ATD) with interpreted emergency systems in the digital meters. He submits that Rule 125-H of the Central Motor Vehicles Rule 1989, requires that the digital fare meters should comply with BIS standards as applicable. He therefore, submits that RFP dated 21.9.2018 ought to be canceled and fresh RFP consistent with the BIS standards of December 2018 be issued.

5. Mr. Nigel Da Costa Frias, in the context of the Reports filed by the various respondents points out that even the samples furnished to the respondent no.8, which is the authorized certifying agency were samples which did not comply with December 2018 samples and therefore, the Reports of the respondent no.8 cannot be accepted.

6. The learned Advocate General, has opposed the entertainment of the present petition. He has referred us to the Affidavit-in-Reply filed on behalf of the respondents no.2, 3 and 4 by Rajan Satardekar, the Director of Transport and Ex-Officio Joint Secretary (Transport), to the Government of Goa. In particular, the learned Advocate General has invited our attention to the averments in paragraphs 7 and 8 in which, it is clearly stated that the digital meters which the respondent no.5 is now called upon to affix is to comply with December 2018 standards. The learned Advocate General has also referred us to the Affidavit filed on behalf of the respondent no.8, which is the Authorized Certifying Agency, in which, again it is stated that the samples are BIS December 2018, compliant.

7. Mr. Suren Uppal, the learned Counsel for the respondent no.6 also states that the digital meters which they will affix in

pursuance of the contract awarded by the State Government will be BIS December 2018 compliant.

8. Mr. N.N. Sardesai, the learned Senior Advocate appeared on behalf of the Travel and Tourism Department Association of Goa submits that the relief in this petition stands worked out because the meters which are going to be affixed, will be BIS December 2018, compliant.

9. Ms. Gautami Kamat, the learned Counsel appearing for the respondent no.5, which is also an Agency which is supposed to affix digital meters on taxis submits that the digital meters, which they propose to affix will be BIS December 2018, compliant.

10. In this case, without going into the issue whether this is a genuine public litigation or not, we note that practically all the respondents, on Affidavits have stated that the digital fare meters which will be affixed will be BIS December 2018 compliant. This means that the digital fare meters have provisions for ATD with integrated emergency systems. There is really no good reason not to accept the statements made by the various respondents on Affidavits before this Court.

11. The attempt on the part of the petitioner to find fault with the certification process resorted to by the respondent no.8 is really misconceived. The respondent no.8, in terms of Rules is the Authorized Certifying Agency. This agency has filed an Affidavit before this Court stating that the tests confirm that there is compliance with BIS December 2018 standards. Accordingly, there is absolutely no good reason not to accept the statements made by and on behalf of the respondent no.8, which statements, have been backed by test reports as well.

12. In particular, we refer to the Affidavit of the Director of Transport filed in this petition on 4th December, 2019. In paragraphs 7 and 8 of this Affidavit, this is what is observed.

“7. With respect to paragraph nos.32, 43, 46 and 49 it is herein reiterated that the tender process which commenced during the operation of the BIS Specifications of July 2018 is not rendered invalid merely on the ground of the BIS Amendments of December 2018 being notified subsequently as the Tender process proceeded legally on the Specifications of July 2018 which held the field at the relevant point of time. I submit that the respondent no.1 and 2 did not err in proceeding with the tender process under the BIS Specifications of July 2018. I submit that the decision making process in the present case is

neither arbitrary nor irrational therefore not warranting interference from this Hon'ble Court. It is denied that the tender was not refloated in order to favour a cartel of manufacturers.

*8. With respect to the contents of paragraph nos. 34, 35 and 37 it is stated that the amendment proposed to the BIS Specifications of July 2018 was already in the public domain. I submit that the amendments to the standards laid down in the BIS Specifications are a continuous and/or ongoing process. I state that under such circumstances it was thought to be neither expedient nor prudent to cancel the existing RFP and float a new RFP every time an amendment is carried out to the BIS Specifications as the same results in unnecessary delay in the implementation of the scheme of Automated Tracking Devices with an integrated emergency system and fare meter in passenger taxis. **I however state that the respondent no.1 and the respondent no.2 had taken cognizance of the BIS Amendments of December 2018 and took steps to ensure that the devices would be in compliance with the Amendment carried out to the BIS Specifications released as well as to the RFP. Further, sufficient time was given to the bidders to ensure that their devices were compliant with the BIS Specifications of December 2018. It is submitted that, the respondent no.8, is a certifying Authority as notified under Rule 125 (H) of the Central Motor Vehicle Rules, 1989. I state that the respondent no.8 has certified that the said devices are in***

compliance with the BIS Amendments of December 2018. That the petitioner has failed to disclose any cogent reasons in order to discredit the reports of the respondent no.8 which is an independent body having the requisite technical expertise.” (Emphasis supplied)

13. Further Ms. Sonia Nain, Assistant Manager, has filed an Affidavit on behalf of the International Centre for Automotive Technology (ICAT, the respondent no.8). In paragraphs 8, 9, 10, 11 and 12 this is what the deponent has stated.

“8.I say that the test report are fully in compliance of amended BIS norms amended upto 07.12.2018 and the test report are issued in accordance with rules.

9.The petitioner is making baseless allegations without any reasonable or substantive basis, against ICAT, which otherwise is discharging its statutory obligation. The petitioner is abusing the writ jurisdiction of this Hon'ble Court by premising his case on hypothetical, unreal and speculative assertions.

10.It is significant to mention that ICAT being a Testing Agencies, is not bound by the RFP Process and has to function according to its statutory mandate as embodied under Rule 124 and 126 of CMVR. ICAT is an autonomous body

as mentioned under Rule 126 of CMVR. Significantly, the certification process is undertaken as per Rule 124 of CMVR, on the basis of the sample being submitted to it by the manufacture. Thereafter, while giving the certification, ICAT is mandated to test and certify all the prototype automotive component, device, part, sub-assemblies etc. as per the respective AIS or BIS standards, as may be applicable. It is noteworthy that any prototype of device submitted for certification to the Testing Agency will be certified as per the applicable AIS or BIS standard and as amended from time to time. It is submitted that irrespective of the tender conditions of the RFP 23, ICAT is under the mandate of Rule 125 (H) of CMVR and the IS 16833:2018, to certify the prototype devices submitted to it as per the applicable BIS standard along with any amendment prevalent as on the date of test report being issued.

11.It is the statutory responsibility of ICAT to ensure the compliance of the prototype integrated device to the applicable BIS standard along with all the amendments carried there under. In case of any modification or amending occurs in the IS 16833, whether the same is before the award of contract or anytime thereafter till the pendency of the contract, the bidder is legally bound to ensure the compliance thereof. It is submitted that no testing agency can issue affirmative test reports until the device is complying with the IS 16833 specifications including amendment/s as applicable on date of

certification.

12.I say that the respondent no.8 has issued a detailed test report which shows that the integrated devices of both the respondent no.5 and 6 are compliant to the amended IS 16833, thus, this Hon'ble Court may pass such order or direction that my reprimand the petitioner for having filed irresponsible and malicious case". (Emphasis supplied)

14. The aforesaid means that the main relief in this petition stands worked out. The petitioner, obviously, can have no interest as to which party should be allotted tenders. Normally in the matters of tenders, there is no scope of entertainment of public interest litigations. The issue of compliance with BIS December 2018 standards stand already worked out as aforesaid.

15. For all the aforesaid reasons this petition is disposed of even without going into the issue as to whether this was indeed a genuine public interest litigation.

SMT. M.S. JAWALKAR, J. M. S. SONAK, J.

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