

GAHC010167452024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4258/2024

M/S CHAYANIKA HANDLOOM PRODUCTS AND ANR
SOLE PROPRIETORSHIP CONCERN REPRESENTED BY ITS PROPRIETOR
SRI HRISHIKESH DEKA AND HAVING ITS REGISTERED OFFICE AT GOPAL
BAZAR, NALBARI, DIST. NALBARI, ASSAM, PIN- 781353.

2: HRISHIKESH DEKA
(SOLE PROPRIETOR) SON OF SRI DHIRENDRA NATH DEKA
R/O- GOPAL BAZAR
NALBARI DISTRICT
NALBARI
ASSAM
PIN- 781353

VERSUS

THE STATE OF ASSAM AND 12 ORS
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF
HANDLOOM, TEXTILES AND SERICULTURE, GOVT. OF ASSAM, DISPUR,
GHY-6, ASSAM

2:THE DIRECTOR OF HANDLOOM AND TEXTILES
ASSAM
GNB ROAD
AMBARI
GHY-781001
ASSAM

3:THE BID EVALUATION COMMITTEE
REPRESENTED BY THE CHAIRMAN
BEING THE DIRECTOR OF HANDLOOM AND TEXTILES
ASSAM
GNB ROAD
AMBARI
GHY-781001

ASSAM

4:M/S ARUNODOI UDYOG

KAIKARA
MANGALDAI
DIST. DARRANG
ASSAM
PIN- 784125.

5:M/S B.R. TEXTILES
DAKARGHAT BYE-PASS
DIST. NAGAON
ASSAM
PIN- 782003.

6:M/S BARUAH TIMBER DEPOT AND SUPPLIERS
KAIKARA
PATIDARRANG
MANGALDAI
DIST. DARRANG
ASSAM
PIN- 784125.

7:M/S JIMACHAYA INDUSTRIES
DAKHINGAON
KAHILIPARA
GUWAHATI
DIST. KAMRUP(M)
ASSAM
PIN- 781019.

8:M/S MAA SLEY HOUSE
CHAMATA
DIST. NALBARI
ASSAM
PIN- 781306.

9:M/S MANOJ BAH BET UDYOG
WARD NO. 12
HAJO ROAD
DIST. NALBARI
ASSAM
PIN- 781102.

10:M/S SIPINI BHANDAR
MUNICIPALITY MARKET
BARPETA ROAD

DIST. BARPETA
ASSAM
PIN- 781315.

11:M/S PALMARIAN ENTERPRISE
DERGAON TOWN
WARD NO. 2
DIST. GOLAGHAT
ASSAM
PIN- 785614.

12:M/S POPULAR FURNITURE AND WEAVING INDUSTRIES
NILBAGAN
DIST. HOJAI
ASSAM
PIN- 782445.

13:M/S RANU INDUSTRIES
RONGAJAN CHARIALI
KURUKA
MORONGI
DIST. GOLAGHAT
ASSAM
PIN- 785613

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner : Mr. B. Sharma, Advocate

For the respondent nos.1 to 3 : Mr. R. Dhar, G.A., Assam.

For the respondent nos.4 to 13 : Mr. D.K. Nath, Advocate.

Date of hearing & Judgment : 12.11.2024

JUDGMENT AND ORDER

1. Heard Mr. B. Sharma, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned counsel for the State respondents No.1-3. Mr. D.K. Nath, learned counsel appears for the private respondents No.4-13.

2. The grievance of the petitioners is that the petitioners' tender bid has been disqualified by the Technical Evaluation Committee, vide meeting minutes dated 22.02.2024, on the ground that the petitioners had submitted documents, which were not in conformity with Clause 13(h) of the NIT.

3. The petitioners' case is that they had participated in e-Tender Notice dated 11.01.2024 (hereinafter referred to as the 'NIT'), for empanelment of manufacturers and suppliers for supply of handloom and handloom accessories under the various schemes of Government of India and Government of Assam, implemented by the Directorate of Handloom and Textiles, Assam.

4. The petitioners' counsel submits that in terms of Clause 3(b) of the NIT, relating to the eligibility criteria of the bidders, bidders were to have not less than Rs. 50 Lakhs as the average annual financial turnover during the last three years, i.e., 2020-2021, 2021-2022 & 2022-2023 and they were also required to have the experience of supply of handloom and handloom accessories for an aggregated value of a minimum of Rs. 10 Lakh during the last three financial years in terms of Clause 3(c). He further submits that in terms of Clause 3(e) of the NIT, Micro and Small Enterprises (MSEs) are exempt from prior turnover and experience in all public procurements, subject to meeting the quality and technical specification.

5. The petitioners' counsel submits that even though the petitioners were a small enterprise, registered as a Small and Micro Enterprise (MSE), who were not required to submit the average annual financial turnover and experience of supply of handloom and handloom accessories in terms of Clause 3(b) &(c) of the NIT, in view of Clause 3(e) of the NIT, the petitioners had submitted

documents in terms of Clause 3(b) &(c) of the NIT. He accordingly submits that as the petitioners were not required to comply with Clause 3(b) &(c) of the NIT, in terms of Clause 3(e) of the NIT, the disqualification of the petitioners' technical bid, on the ground that it's documents were not in conformity with the Clause 13(h) of the NIT, does not arise. He further submits that similarly placed bidders as the private respondents, have been empanelled by the State respondents and as such, there is discrimination writ large, in disqualifying the technical bid of the petitioners.

6. The petitioners' counsel submits that the petitioners' technical bid had been rejected on the ground that the petitioners had not submitted the copy of the income tax returns for the years 2022-23. However, an income tax return to be submitted in terms of Clause 13(h), is proof of the Annual Financial Turnover required under Clause 3(b) of the NIT. As such, the petitioners were exempt from submitting the income tax returns for the year 2022-23 in terms of Clause 3(e) of the NIT.

7. The petitioners' counsel submits that the petitioners had submitted the Income Tax Returns for the year 2020 – 2021 and 2021 – 2022. The petitioners did not submit the Income Tax Return for the year 2022 – 2023. As the Income Tax Return is a part of the Annual Financial Turnover document under Clause 3(b), which also includes the audited certified balance sheets required under Clause 3(b) of the NIT, the non-submission of the Income Tax Return for the year 2022 – 2023 was not required in view of Clause (e), exempting the submission of the documents required under Clause 3(b).

8. Mr. R. Dhar, learned counsel for the State respondents No.1-3, on the

other hand, submits that Clause 3(e) of the NIT is not applicable to the case in hand, inasmuch as, the petitioners' technical bid had not been disqualified on the ground of not submitting the required Average Annual Financial Turnover and experience certificate. He submits that the petitioners' technical bid had been rejected due to the petitioners not submitting their income tax returns for the year 2022-23 in terms of Clause 13(h). He submits that Clause 13(h) does not come within the ambit of Clause 3(b). He further submits that the petitioners had submitted the Income Tax Returns only for the year 2020 – 2021 and 2021 – 2022, though Income Tax Return had to be submitted for 2022 – 2023 also. He accordingly submits that there is no reason for allowing the writ petition, as there is no infirmity with the rejection of the petitioners' technical bid.

9. Mr. D.K. Nath, learned counsel for the private respondents No.4-13 submits that all the private respondents had submitted their Income Tax Returns in terms of Clause 13(h) of the NIT.

10. I have heard the learned counsels for the parties.

11. Clause 13(h) of the NIT provides that the Income Tax Return and annual audited report for the last 3 financial years should be submitted. Clause 13(h) is a part of the "Schedule of Requirement" pertaining to Clause 13 Technical Bid (Part-I). Clause 13 provides that the "*following self-attested documents in hard copy and in online must be submitted in technical bid, without these, the tender will be rejected.*"

12. Clause 3(a), 3(b), 3(e), Clause 13 & 13(h) of the NIT are reproduced

hereinbelow as follows:-

3(a) *Manufacturers/Suppliers should be a registered manufacturer of Handloom and accessories or authorize supplier of the manufacturers of the relevant goods. The bidder should state in what capacity he/she is participating in the bidding process as a manufacturer/supplier. The bidders in case of Registered under MSME, he/she should submit the up-to-date **Udyam Registration certificate** from the competent authority and clearly mention that he/she is a manufacturer of Handloom & accessories.*

3(b) *The average annual financial turnovers during the last three years i.e. 2020-21, 2021-22 & 2022-23 should not be less than **Rs. 50.00 Lakh**. The audited/certified balance sheet should be submitted along with IT return files for the years as stated above.*

3(e) Relaxation for Micro & Small Enterprises (MSEs):

*As per the Government Policy Circular No.1(2) (1) 2016-MA, dated 10/03/2016 issued by O/o Development Commissioner (MSME), Ministry of Micro, Small & Medium Enterprises, Government of India, **Micro and Small Enterprises (MSEs) are exempted from prior turnover and experience in all public procurements subject to meeting of quality and technical specification**. The bidders need to submit the up-to-date copy of Certificate of registration for Micro or Small Enterprises (Udyam Registration Certificate) issued by Ministry of Micro, Small and Medium Enterprises (MSME), Govt. of India. Moreover, the bidders must be genuine manufacturer of handlooms that clearly mention in the Udyam Registration Certificate. In case of MSE payment of EMD and bid cost are exempted as per Govt. of India OM, No.F.No.1(3)/2018-MA, Pt-III, dt. -27-10-2022.*

(Schedule of Requirement)

(13) TECHNICAL BID (Part-I)

Following self-attested documents in hard copy and in online must be submitted in technical bid, without these, the tender will be rejected.

13(h) *Copy of Income Tax return and annual audited report (Balance Sheet & Profit and Loss A/C of the last three financial years (i.e.,2020-21, 2021-22 & 2022-23) duly certified by the Chartered Accountant."*

13. The issue to be decided is whether the documents required under Clause 13(h) would come within the ambit of the "Average Annual Financial Turnover" provided as per Clause 3(b) of the NIT and as such, whether Clause 3(e) would exempt the petitioners from submitting the Income Tax Returns for 3 years, as required as per Clause 13(h) of the NIT. The further question is whether the word "Turnover" and "Income Tax Return" are different.

14. On considering the above Clauses in the NIT, this Court finds that Annual Turnover refers to the total revenue generated from the sale of goods or services during a financial year before deducting any expenses. It is a measure of business activity and operational performance. It is focused solely on the sales and revenue generated in the normal course of business. It does not factor in expenses, taxes, or other financial liabilities. Annual Turnover may be reported using different accounting methods (cash or accrual basis) based on the company's accounting policies, but it must be consistent with generally accepted accounting principles.

15. An Income Tax Return is a formal document filed with the tax authorities that reports income, deductions, and taxes owed for a given financial year. It encompasses various sources of income, including but not limited to turnover. An Income Tax Return includes comprehensive financial details such as total income, allowable deductions, tax credits, and the final tax liability. It may also reflect income from investments or other non-operational sources. Income Tax Returns require adherence to specific tax regulations and formats prescribed by the tax authorities, which may include the inclusion of various forms and schedules.

16. The primary purpose of reporting Annual Turnover is to provide a clear picture of a company's revenue-generating capacity. It is often a critical criterion for assessing a bidder's financial strength in tender applications. An Income Tax Return serves to comply with tax obligations and inform the government about the taxpayer's financial status, ensuring accurate taxation based on total income.

17. In the case of ***Commissioner of Income Tax-VII, New Delhi vs. Punjab Stainless Steel Industries*** (Civil Appeal No.5592/2008), the Supreme Court has held that the word "Turnover" would mean the total "Sales". In terms of the meaning given by the institute of Chartered Accountants of India, wherein it has been held at paragraph-25 as follows :

"25. So as to be more accurate about the word "turnover", one can either refer to dictionaries or to materials which are published by bodies of Accountants. The Institute of Chartered Accountants of India (hereinafter referred to as the 'ICAI') has published some material under the head "Guidance Note on Tax Audit Under Section 44AB of the Income Tax Act". The said material has been published so as to guide the members of the ICAI. In our opinion, when a recognized body of Accountants, after due deliberation and consideration publishes certain material for its members, one can rely upon the same. Para 5 of the said Note deals with "Sales", "turnover" and "gross receipts". Paras 5.2 and 5.3 of the said Note are reproduced hereinbelow, which pertain to the term "turnover".

"5.2 In the "Guidance Note on Terms Used in Financial Statements" published by the ICAI, the expression "Sales Turnover" (Item 15.01) has been defined as under:-

"The aggregate amount for which sales are effected or services rendered by an enterprise. The term 'gross turnover'

and 'net turnover' (or 'gross sales' and 'net sales') are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts".

5.3 The Guide to Company Audit issued by the ICAI in the year 1980, while discussing "sales", stated as follows:

"Total turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company and indicating the quantities of such sales for each class separately.

Note (i) The term 'turnover' would mean the total sales after deducting therefrom goods returned, price adjustments, trade discount and cancellation of bills for the period of audit, if any. Adjustments which do not relate to turnover should not be made e.g. writing off bad debts, royalty etc. Where excise duty is included in turnover, the corresponding amount should be distinctly shown as a debit item in the profit and loss account." (emphasis added)

The aforestated meaning given by the ICAI clearly denotes that in normal accounting parlance the word "turnover" would mean "total sales" as explained hereinabove. The said sales would definitely not include the scrap material which is either to be deducted from the cost of raw material or is to be shown separately under a different head. We do not see any reason for not accepting the meaning of the term "turnover" given by a body of Accountants, which is having a statutory recognition."

18. A reading of Clause 3(b) shows that the bidder is to submit the Average Annual Financial Turnover during the last 3 years, the audited/certified balance sheet along with Income Tax Returns filed for the said 3 years. The above Clause 3(b) shows that besides the Average Annual Financial Turnover, the income tax returns are also to be submitted along with the audited/certified

balance sheet. Clause 3(e) of the NIT provides for the exemption of submitting turnover and experience, as required under Clause 3(b) and 3(c) of the NIT respectively, for Micro Small Enterprises (MSEs). Clause 3(e) in the opinion of this Court, does not exempt the petitioners from filing Income Tax Returns, inasmuch as, Clause 3(b) clearly provides that the Average Annual Financial Turnover for three years would have to be provided. The audited/certified balance sheet, along with the Income Tax Returns was also to be provided. This shows that the Average Annual Financial Turnover is different from an Income Tax Return.

19. Due to the reasons stated above, this Court is of the view that the Average Annual Financial Turnover would have to be considered to be different than an Income Tax Return and the exemption given under Clause 3(e) to MSEs, from submitting the "Average Annual Financial Turnover" in Clause 3(b) does not include within its ambit Clause 3(h) of the NIT. There is also no provision for submission of the "Average" income tax returns for the last 3 years in either Clause 3(b) or Clause 3(h). Though the Income Tax Return can be supportive of the Average Annual Financial Turnover, the Average Annual Financial Turnover cannot be said to be the same as an Income Tax Return or vice versa.

20. Having stated the above, the Supreme Court in various judgments has held that the author of the tender document is the best person to understand and appreciate its requirement and interprets its documents. It has further been held that Court's interference should be minimal in relation to the interpretation to the terms and conditions of a tender. Further, the Writ Court does not have the expertise to correct decisions made in matters of Government contract, by substituting its own decision for the decision of the authority. It has also been

held that the words in the tender documents cannot be ignored or treated as redundant or superfluous. They must be given meaning and their necessary significance.

21. In the case of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Another***, reported in ***(2016) 16 SCC 818***, the Supreme Court has held as follows-

“The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents.”

In the case of ***Silppi Constructions Contractors vs. Union of India & Another***, reported in ***(2020) 1 SCC 489***, the Supreme Court has held as follows:-

“The essence of the law laid down in regard to the scope of judicial review. in respect of government contracts is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender. documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.”

22. In the case of ***Utkal Suppliers -vs- Maa Kanak Durga Enterprises***, reported in ***(2021) 14 SCC 612***, the Supreme Court has held that judicial review in the matters of Government contracts is equivalent to judicial restraint

in these matters. What is reviewed is not the decision itself but the manner in which it was made. The writ court does not have the expertise to correct such decisions by substituting its own decision for the decision of the authority. The words used in the tender documents cannot be ignored or treated as redundant or superfluous. They must be given meaning and their necessary significance. In the matter of government contracts and tenders, employer/competent authority is better placed to appreciate the requirements of the tender conditions and to interpret them. Courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. Courts should give way to the opinion of experts unless the decision is totally arbitrary or unreasonable.

23. The above being said, as an Income Tax Return cannot said to be an Average Annual Financial Turnover document, this Court holds that the relaxation provided to MSEs under Clause 3(e) would not cover the Income Tax Returns required to be submitted by a bidder under Clause 13(h). As the petitioners have submitted only the Income Tax Returns for 2 years, which is not in consonance with the requirement of filing the Income Tax Returns for 3 years, this Court does not find any infirmity with the decision of the respondent authorities in disqualifying the petitioners Technical Bid.

24. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant