

Md. Mobassir Nawaz Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Constitution of India, 1950 " Article 14, 226

Hon'ble Judges: M. S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Mohan Kumar Dubey

Final Decision: Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. The Nagar Parishad, Mihijam (respondent No.4) floated an E-Tender Notice dt. 09.09.2024 (Annexure-2) for development of Park in Kangoi under

the said Nagar Parishad.

2. The terms and conditions thereof are mentioned in detail in the said tender.

3. As per clause 8.1 of the E-Tender, the tenderers were required to upload scanned copy in PDF format/ digitally signed copy of his/her valid

Registration Certificate, GST Certificate, GSTR 3B (Current), GST Annual Return, PAN etc. It was also specifically mentioned in the said clause that

bidders who failed to upload the said documents are liable to be technically disqualified.

4. Petitioner submitted his bid in response to the said E-Tender along with six others including respondent No.5.

5. Petitioner's bid was, however, rejected on 08.10.2024 by the E-Tender Committee on the ground that he did not submit GSTR 3B

(Latest/Current), Annual GST Return, Registration Certificate (Section 2E), MSY.

6. The contention of the petitioner is that GST Annual Return Certificate will be issued only to those contractors whose turnover is more than Rs. 2

crore in GST as per a Circular Annexure-3 issued by the Ministry of Finance, Government of India. He contends that his turnover is less than Rs.2

Crores and so it is impossible for him to get the said certificate. So he contends that the said requirement in the E-Tender conditions, is arbitrary and

violative of Art.14 of the Constitution of India and therefore, the decision of the E-Tender Committee dated 08.10.2024 is to be set aside.

7. The petitioner, further, contended, that, Clause, 23A, of, the, E-Tender provided e-tendering through Two Envelope System i.e.

Envelope-1 for technical bid and Envelope-2 for financial bid, but as per the Jharkhand Public Works Department Code and in

particular Clause 163(a) and (b) thereof, submission of tender in two envelopes for a tender value below Rs. 2.5 crore is not necessary; and the tender

could have been given in a single envelope. So he contends that Clause 23 of E-Tender notice is therefore, bad in law.

8. The issue about the scope of judicial review with regard to tender conditions was considered in *M/s Michigan Rubber (India) Ltd. Vs State of*

Karnataka and others (2012) 8 SCC 216.

The Supreme Court held that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be

conceded to the State authorities; unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers,

interference by Courts is not warranted; that certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has

the capacity and the resources to successfully execute the work; and if the State or its instrumentalities act reasonably, fairly and in public interest in

awarding contract, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

It held that a Court, before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following

questions; (i) whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process

adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably

and in accordance with relevant law could have reached it" and (ii) whether the public interest is affected.

It held that if the answers to the above questions are in negative, then there should be no interference under Article 226.

9. In *Union of India Vs. Bharat Forge Limited* (2022) 17 SCC 188 this principle was reiterated and it was held that the terms of the invitation to tender

are not open to judicial scrutiny and the courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly

arbitrary, discriminatory or actuated by malice.

10. Keeping this principle of law in mind, we shall consider whether in the instant case the petitioner has made out the case for grant of relief by this

Court.

11. It may be that as per the decision of the 50th GST Council held on 11.07.2023, a recommendation was made to provide relaxation to tax payers

from filing returns for financial year 2023-24 under GSTR-9/9A where their aggregate annual turnover for the said financial year is below Rs. 2 crore

and that this was also notified on 10.07.2024. May be because of the said notification, and also because the petitioner does not have the turnover of

more than Rs. 2 crore, he is unable to obtain the said document GSTR-9/9A.

12. However, the question is not whether the petitioner has been put to any disadvantage on account of the prescription in the E-Tender conditions

about production of the GST Registration Certificate, GSTR 3B (Current), GST Annual Return etc.

13. The test is whether the prescription in the E-Tender conditions is malicious, wholly arbitrary or contrary to public interest.

14. No material is placed by the petitioner to show that the decision to include such a condition is mala fide or intended to favour someone. It is

possible that the reason for prescription of such conditions is that only businesses which have an aggregate annual turnover of more than Rs. 2 crore

(for which annual GST Returns are issued) would participate in the tendering process i.e., that the contractor has the capacity and resources to

successfully execute the work. Such a consideration cannot be said to be arbitrary or irrational or contrary to public interest.

15. As regards Clause 23 of the E-Tender conditions, which is alleged to be contrary to the amended P.W.D. Code and the question whether the e-

tendering process should have a Two Envelope System or One Envelope System depending on the value of the tender, the rejection of the

petitioner's tender is not on the ground that he did not follow the Two Envelope System. Therefore, it is not necessary to go into the said aspect.

16. Since the reason assigned for disqualification is the petitioner's tender is non- submission of GSTR 3B (Latest/Current), Annual GST Return,

Registration Certificate (Section 2E) etc., and since such requirement is specifically mentioned in Clause 8.1 which also specifically mentioned that a

bidder would be technically disqualified if he fails to upload them, we find no arbitrariness or illegality in the said decision dt.8.10.2024 of the E-Tender

Committee.

17. For the aforesaid reasons, we are of the opinion that the petitioner is not entitled to grant of any relief in the writ petition

18. Accordingly, the writ petition is dismissed.