



IN THE GAUHATI HIGH COURT

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

(ITANAGAR PERMANENT BENCH)

Writ Appeal No. 35/AP/2017

Appellants : M/s Nangnyo Nampin Mulyipurpose Coope and Ors.

-versus-

Respondent: The State of Arunachal Pradesh and Others.

BEFORE

**HON'BLE MR. JUSTICE MANOJIT BHUYAN
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

For the Appellants : Mr. M. Pertin,
Senior Advocate.
Mr. S.K. Deori,
Advocate.

For the Respondent Nos. 1 to 6 : Mr. S. Tapin,
Sr. Govt. Advocate,
Arunachal Pradesh.

For the Respondent No. 7 : Mr. A.K. Singha,
Advocate.

Date of Hearing and Judgement : 16.07.2018

JUDGMENT AND ORDER (ORAL)

16.07.2018
(Manojit Bhuyan, J.)

This intra-Court appeal is directed against the order dated 04.08.2017 passed in WP(C) 184(AP)2017, whereby the challenge made to the recommendation of the Board of Officers in favour of respondent no. 7 herein as the Carriage Contractor for carrying PDS commodity under the *National Food Security Act, 2013* was negated by dismissing the writ petition.

2. Essential facts to be noticed are that initially Tender Notice dated 14.02.2017 was issued from the Office of the Deputy Commissioner, West Kameng district, Bomdila inviting bids from registered Cooperative Societies of West Kameng district only for carriage of PDS commodity from FSD Bhalukpong to various locations of the district for the year 2017-18. The said invitation of bids was made under the *National Food Security Act, 2013*. No registered Cooperative Societies of West Kameng district had responded to the said Tender Notice. As a result, on 15.03.2017, another Short Tender Notice was issued re-inviting bids (technical bid) from interested and registered Cooperative Societies of West Kameng district as well as from adjoining districts of East Kameng and Tawang. It was made known that the detailed terms and conditions could be obtained from the Office of the Deputy Commissioner, West Kameng district, Bomdila on payment of the required fees within the period mentioned therein. The appellant/writ petitioner, being a registered Cooperative Society of East Kameng district, responded to the Short Tender Notice dated 15.03.2017 along with three others. On 03.04.2017 the tenders were opened and a Comparative Statement was also prepared. In the 'Remarks Column' and as against the name of the appellant, an endorsement was made to the effect that tender is not opened as per Clause 17(a)(b) of the signed Terms & Conditions. On the same date, the Board of Officers, as constituted by the Deputy Commissioner, Bomdila made the following recommendation:

"Board Proceeding for opening of tender for Carriage Contract of PDS Commodities (under NFSA/13) of West Kameng District for 2017-18

The Board of Officers as constituted by Deputy Commissioner Bomdila vide order No. BS-2223/2015-16/ dated Bomdila the 07th February'17, assembled in the Chamber of Additional Deputy Commissioner, Bomdila who is the Chairman the Board at 1130 hrs on 03-04-2017 for opening the tender box for recommending the firm/registered cooperative societies for appointment as PDS Carriage Contractor of West Kameng District for 2017-18.

Four (4) sets of Tender paper (three-3 from LAMPS of West Kameng) and one from a coop. society of East Kameng were found in the tender box, whose seal/lock was opened in front of the interested bidders assembled in the Chamber of Additional Deputy Commissioner, Bomdila.

a) The records of the registered cooperative societies as submitted/furnished are recorded and appended in annexure-I.

b) The tender documents of the Coop. Society (M/s Namgyo Nampin Multipurpose Cooperative, Pijerang, East Kameng) was not opened as per clause 19 (a) & (b) of signed T & C. Wherein it is clearly stated that on participation of at least three (3) LAMPS from West Kameng District; tender documents of other districts will not be considered.

No financial bid or tendered rate required as the carriage rate @ Rs.3.27 per kg irrespective of distances have been fixed by State/Central Govt. under NFSA/13.

Based on experience of and the excellent contract work done for the past 2-3 years by the present CC, M/s Bomdila Lamps and on agreement/acceptance of the three (3) bidders present; M/s Bomdila Lamps has been the consensus firm to undertake carriage PDS commodities (under NFSA/13) for West Kameng district for 2017-18.

Hence the board recommends that the Deputy Commissioner, Bomdila may like to forward the name of M/s BOMDILA LAMPS to the State Government for necessary approval as the Carriage Contractors of NFSA/13 foodgrains, please.

(Shri GDMBU DINGLA) F & AO
Member

(Shri PADANG SANGYU) DTD (Tpt)
Member

(Shri TOMO GAMLING) DF& CSO
Member

Shri SANG KHANDU) ADC
Chairman

Countersigned
(Dr. SONAL SWAROOP) IAS
Deputy Commissioner, Bomdila."

3. As the tender of the appellant was not opened and reference was made to Clause 17 (a) (b) of the Terms & Conditions, it would be apposite to reproduce the same, which reads as under:

" 17 a) Only registered cooperative societies will be allowed to participate. However, preference will be given to LAMPS managed by State Government or RCS staff. In case of 3 or more tenderers from such LAMPS are found participating, the tender documents of other cooperative societies will not be considered.

b) Similarly in case of participation of LAMPS from other districts, preference will be given to LAMPS of West Kameng District."

4. Mr. M. Pertin, learned senior counsel representing the appellant submits that non-opening of the tender of the appellant suffered from illegality and arbitrariness, inasmuch as, the reference made to Clause 17 (a)(b) of the Terms & Conditions, is wholly inapplicable and could not have been acted upon to the detriment of the appellant. To buttress his argument, Mr. Pertin contends that it is the Notification dated 16.01.2017, issued by the Government of Arunachal Pradesh in the Department of Food & Civil Supplies, which governs the appointment of District Public

Distribution System (PDS) Landroute Carriage Contractors. As per the said Notification the registered cooperative societies under the *Arunachal Pradesh Cooperative Societies Act, 1978* are eligible to participate in the tendering process for appointment of PDS Carriage Contractor. It is contended that the stipulation as made in Clause 17 (a)(b) of the Terms & Conditions, referred to above, do not find place in the Government Notification dated 16.01.2017. Arguments advanced is that the Deputy Commissioner is without power and jurisdiction to throw out the appellant from the tendering process by taking recourse to Clause 17 (a)(b), which clause is absent in the Government Notification of 16.01.2017. In addition, it is contended that in any event the Terms & Conditions, as referred to above, only pertains to the first Tender Notice dated 14.02.2017 and not to the subsequent Short Tender Notice dated 15.03.2017, against which the appellant had submitted bid. Further contention is that the recommendation made in favour of respondent no. 7 by way of agreement/acceptance of the other three bidders present, who had agreed on M/s Bomdila LAMPS (respondent no. 7) to undertake carriage of PDS commodities is not permissible either under the said Terms & Conditions and/or the Government Notification dated 16.01.2017. On these broad parameters, prayer is made for setting aside the recommendation dated 03.04.2017 made by the Board of Officers in favour of respondent no. 7 and to the order dated 04.08.2018 passed by the learned Single Judge.

5. *Per contra*, Mr. S. Tapin, learned counsel representing the State respondents submits that the Government Notification dated 16.01.2017 on sets down model terms & conditions as per Annexure-III thereof for guidance. Referring to the said Annexure-III, Mr. Tapin submits that the terms & conditions of tender for appointment of PDS Land Route Carriage Contractor are only illustrative and not exhaustive, thereby permitting any other terms & conditions to be included as considered necessary. Mr. Tapin further contends Clause 17 (a)(b), to which grievance is raised by the appellant, is integral to the Short Tender Notice dated 15.03.2017 and, therefore, the same is squarely applicable while making decision to appoint

Land Route Carriage Contractor for PDS items. Further contention is that the appellant was full well aware of Clause 17 (a)(b) and having participated in the tender process with full knowledge of the said provision, cannot now turn around to challenge the recommendation. Also, at no point of time, any challenge was made to the legality and validity of Clause 17 (a)(b) of the Terms & Conditions. Mr. A. K. Singh, learned counsel representing respondent no. 7, adopts the arguments of Mr. Tapin and further submits that unlike the appellant which is run by a private Board, the management of the respondent no. 7 is under the Managing Director appointed by the Registrar of Co-operative Societies, Government of Arunachal Pradesh. In this context, Mr. Singh has taken this Court to the statements made in paragraph 2 of its affidavit-in-opposition to demonstrate the legal status of the said respondent no. 7.

6. We have given our anxious consideration to the arguments of the parties. First and foremost, there is no prayer in the writ petition calling in question the legality of Clause 17 (a)(b) of the Terms & Conditions. It cannot be said that the Deputy Commissioner, Bomdila was without power and jurisdiction to incorporate Clause 17 (a)(b) as part of the Terms & Conditions, inasmuch as the Government Notification dated 16.01.2017, read with Annexure-III thereof, permits him to include any other terms & conditions that may be considered necessary, which conditions have remained undisturbed until this date. Further, as can be seen from the Notification dated 16.01.2017 itself, the Deputy Commissioner is required to issue Notice Inviting Tender for appointment of PDS Carriage Contractor with due consultation with the Director of Food & Civil Supplies. Therefore, it cannot be said that it was a unilateral action on the part of the Deputy Commissioner himself to incorporate such terms & conditions as in Clause 17 (a)(b). A perusal of the available records also go to show that the terms & conditions incorporating Clause 17(a)(b) was exclusively in respect of the Short Tender Notice dated 16.03.2017, as would be apparent from the document at page 44 of the appeal memo. As such, the contention put forth

on behalf of the appellant that Clause 17(a)(b) pertained only to the first tender dated 14.02.2017, is wholly misconceived.

7. Clause 17 (a)(b) of the Terms & Conditions clearly prescribes that in a tender process for appointment of PDS Carriage Contractors, preference would be given to Large Size Multipurpose Co-operative Society (LAMPS) which are managed by the State Government or by the RCS staff. It is also categorically prescribed that in case there is participation of three or more tenderers from LAMPS, the tender documents of other co-operative societies will not be considered. It is also provided that if there is participation of LAMPS from other districts, preference will be given to LAMPS of West Kameng district. In the present case, the provision under Clause 17 (b) is not of much relevance, save and except Clause 17(a). The appellant herein is only a registered co-operative society and not a Large Size Multipurpose Co-operative Society (LAMPS) managed by the State Government or RCS staff, unlike the respondent no. 7. Apparently, four tenderers had responded to the Short Tender Notice dated 15.03.2017 and three of the tenderers, excluding the appellant, are Large Size Multipurpose Co-operative Societies (LAMPS) from West Kameng district. Going by the clear prescription in Clause 17 (a) and the number of LAMPS bidders, there was no scope for opening the tender documents of the appellant, which is only a registered Co-operative Society and not a Large Size Multipurpose Co-operative Society (LAMPS) managed by the State Government or by the RCS staff. As regards the contention put forth on the agreement arrived at by the other three bidders in not objecting to selection of respondent no. 7 to undertake carriage of PDS commodities, we hold that it is not open to the appellant to raise any grievance on this score, inasmuch as, the appellant itself is without locus to raise question on any agreement/consensus arrived at by and between the other three bidders. It is not the case of the appellant that it is a Large Size Multipurpose Co-operative Society (LAMPS) and any agreement/consensus was arrived at behind its back. By virtue of Clause 17(a) itself, which is not put to challenge, the appellant have automatically gone out of consideration. By virtue of the same, there is also

no question of interfering with the decision of the Board of Officers for not opening the tender documents of the appellant.

8. For all the discussions and findings above, we find no merit in the appeal. Accordingly, the present appeals stands dismissed by affirming the recommendation made by the Board of Officers dated 03.04.2017 and to the order of the learned Single Judge dated 04.08.2017. There shall be no order as to cost.

JUDGE

JUDGE

Kishor
