



**Serial No.02**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C). No. 344 of 2024

Date of Decision: 14.10.2024

Manaksia Aluminium Company Limited,  
Represented by Mr. Anand Kumar Chaudhary,  
Sr. Manager, 8/1, Lal Bazar Street,  
Bikaner Building, Third Floor,  
Kolkata -700001.

...Petitioner

-Versus-

1. The State of Meghalaya, Represented by  
The Chief Secretary to the Government of  
Meghalaya, Shillong- 793001.
2. The Secretary to the Government of  
Meghalaya, Housing Department,  
Government of Meghalaya,  
Shillong – 793001.
3. The Director, Directorate of Housing,  
Housing Department, Government of  
Meghalaya, Shillong – 793001.

...Respondents

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**Coram:**

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

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**Appearance:**

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|-----------------------------------|------------------------------------------------------|
| For the Petitioner/Applicant(s) : | Mr. Philemon Nongbri, Adv.<br>Mr. R.Pahsyntiew, Adv. |
| For the Respondent(s) :           | Mr. N.D.Chullai, AAG with<br>Mr. E.R.Chyne, GA.      |

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|-----|-----------------------------------------------------|--------|
| i)  | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: _        | Yes/No |
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**JUDGMENT AND ORDER (ORAL)**

1. As the matter is of some urgency, this writ petition even though an affidavit on behalf of the State respondents is not yet on record, the same is being disposed of today itself as the last date for submission of bids is fixed on 15-10-2024 at 2 PM.

2. The writ petitioner which is a registered company being aggrieved with the impugned Notice Inviting Quotation (NIQ) dated 10-09-2024, calling for bids for supply of Aluminum Roofing Sheets on the ground that the general terms and conditions as contained in the NIQ have limited the bidding to local entrepreneurs only is before this Court assailing the same.

3. Mr. Philemon Nongbri, learned counsel for the petitioner has submitted that the NIQ at clauses 1, 3, 6, and 13 has prescribed conditions wherein clause 1 restricts the bidders to local entrepreneurs having their manufacturing units in the State of Meghalaya, clauses 3 and 6 that all quotationers be registered with the Meghalaya Industrial and Investment



Promotion Policy, 2024 and clause 13 that non-tribal quotationers, should furnish Trading license from the concerned District Council, which he contends has restricted eligible firms such as the petitioner from participating, thereby denying reasonable opportunity, which is in violation of Article 14 and 16 of the Constitution of India. It is further submitted that the respondents in the NIQ have inserted these conditions which are arbitrary and discriminatory and the same is not in line with the earlier quotations in the past years for the same product, inasmuch as, in clause 3 of the financial bid, it has been stated that the provision of clause 8 (i) of the Meghalaya Procurement Preference Policy for Micro and Small Enterprises, 2020 shall apply, and that the decision of the tender committee will be final, whereas the said item i.e. Aluminum Roofing Sheets is not a reserved item only for MSME bidders as per the website of the Ministry of Micro, Small and Medium Enterprises.

4. Learned counsel submits that the tender conditions being offensive and discriminatory and in violation of Article 14, the instant case is a fit case for interference by this Court in exercise of powers under Article 226 of the Constitution of India. In support of his contentions, the learned counsel has placed reliance on the judgment of *Union of India & Ors. vs. Hindustan Development Corporation & Ors.* reported in (1993) 3 SCC



499, to impress upon the point that in the matter of awarding contracts, inviting tenders is considered to be one of the fair ways and that any reservations or restrictions should not be arbitrary and must be justifiable.

5. Mr. N.D.Chullai, learned AAG assisted by Mr. E.R.Chyne, learned GA in the course of proceedings on 01-10-2024, had produced a corrigendum dated 30-09-2024, whereby he had submitted that the terms of the tender especially at clause 1 had been relaxed to include all bonafide citizens of India and changed to bidders preferably having their manufacturing units in the State of Meghalaya, which has thus removed the offending clauses. He has further submitted that the clauses as framed, were in furtherance and in line with the Meghalaya Industrial and Investment Promotion Policy, 2024 to specifically encourage investment and to create employment within the State of Meghalaya. In this context, he submits that the MIIPP Policy, 2024 had been put in place by the State Government, as a strategic unified framework to draw investments and the policy is aligned with the Govt. of India's Uttar Poorva Transformative Industrialization Scheme (UNNATI), 2024, which is designed to strengthen the Industrial Eco-System in the Northeast and attract New Investment.

6. Learned AAG then submits that the issuance of the tender is purely within the purview and discretion of the State respondents, and that the



conditions therein are based on the local requirements keeping in mind the cause of local manufacturers as per policy. He further submits that the tender conditions cannot be said to be arbitrary and that the petitioner is at liberty to submit its bids which will be duly considered by the Tender Committee. Judicial review, he contends, in the instant case is not warranted as a tenderer cannot challenge a tender clause which might not suit him and that the authority floating the tender is the best judge of the requirements. In support of his arguments, the learned AAG has cited the following decisions:

- (i) *Directorate of Education & Ors. vs. Educomp Datamatics Ltd. & Ors. (2004) 4 SCC 19.*
- (ii) *N.G.Projects Limited vs. Vinod Kumar Jain & Ors (2022) 6 SCC 127.*
- (iii) *Airport Authority of India vs. Centre for Aviation Policy, Safety & Research (CAPSR) & Ors. (2022) SCC Online SC 1334.*
- (iv) *V.P.Enterprises vs. Karnataka Institute of Medical Sciences WP No. 105292 of 2024.*
- (v) *Manjeet Plastic Industries vs. State of Jharkhand & Ors. W.P.(C) No. 3857 of 2024.*

7. Heard learned counsel for the parties.



8. The pointed challenge of the writ petitioner company which is stated to be having its manufacturing facilities at Kolkata, is with the requirements given in the tender clauses especially at clauses 1, 3, 6 and 13. The said clauses of the NIQ as it was originally published on 10-09-2024 are reproduced hereinunder for the sake of convenience:

*“1. Local Entrepreneur(s) representing industries/Units who are Reputed Manufacturers of Aluminium Roofing Sheets having their manufacturer Units/Industries in the state of Meghalaya and having ISO 9001, 14001, 45001 Certification to maintain standard and quality, can participate for this quotation. The quotationer for supply of Aluminium Roofing Sheets should have a valid GSTIN.*

*(3) Every quotationer should furnish the company/firm’s name, registered no. on MIIPP, full postal address along with contact details and email id. Letter sent by email by the Department to the address mentioned by the quotationer shall be deemed to have been received by the quotationer. Any change of details provided shall be duly informed to the Department in time.*

*(6) All Quotationer should furnish a valid registration certificate registered under “Invest Meghalaya” (as per Meghalaya Industrial and Investment Promotion Policy 2024).*

*(13) The Non-Tribals quotationer should furnish the Trading license from concerned District Council/Income Tax Clearance certificate for the past 3(Three) years along with the tender papers documents mentioned herein.”*



9. On the matter appearing before this Court, the State respondents had by a corrigendum dated 30-09-2024, then amended the original clauses in the NIQ firstly from bonafide resident of Meghalaya to bonafide citizens of India, and from having manufacturing units in the State of Meghalaya to preferably having their manufacturing units in the State of Meghalaya. Other clauses which were also subject to change was the removal of clause A (3) and clause B (12) which had initially in the NIQ, required the bidder to furnish the Company Firm's name, registration number on MIIPP and Licensing under Factories Act, 1948 within the State of Meghalaya. The last date for submission of bids was also postponed to 15-10-2024.

10. In this backdrop, and on the allegation that the tender conditions inspite of the amendments still breached Article 14 which called for judicial review, this Court is to examine as to whether the said impugned conditions as prescribed in the NIQ, fail the test of relevant factors that are to be taken into consideration. The purpose and scope of this examination or scrutiny therefore, will be limited only to ascertain and to discern if there is any arbitrariness, irrationality, unreasonableness, bias and mala fides, present in the tender process to warrant interference.



11. First in the considered view of this Court, it is important to note that the State of Meghalaya launched the MIIPP, a policy document in the year 2024 itself, which was made with the stated objective to foster economic and human capital growth and to harness the State's optimum potential. The policy document contains the policy roadmap, framework, policy enablers, implementation, apart from covering other areas under different heads. A holistic perusal of the MIIPP 2024 document, reflects that the policy was designed to provide advantages to investors, to streamline administrative processes and to consolidate multifaceted initiatives under a single platform to promote economic development and employment opportunities in the State. The policy itself at clause 2.5.3 provides for the manner of registration of units which would make them eligible to avail of incentives/subsidies/ reimbursements and has classified the manufacturing and service enterprises therein. As such, it is noted that this policy was framed with the deemed objective for the economic development of the State.

12. Coming to the impugned general terms and conditions given in the NIQ, as quoted above, initially the bidding was restricted to local entrepreneurs representing Industries/Units who are reputed manufacturers of aluminum roofing sheets limited to bonafide residents of Meghalaya. This was subsequently changed to include entrepreneurs who are bonafide



citizens of India representing Industries/Units under the provision of the Company/Partnership Act, the MIIPP, 2024, preferably having their manufacturing Units/Industries in the State of Meghalaya duly registered under the Factories Act. After these amendments, the petitioner however still harboured grave reservations with regard to the necessity of registration under the MIIPP, and it was argued that registration was not possible without a bidder having manufacturing facilities in the State of Meghalaya, which effectively made the petitioner an ineligible bidder.

13. Though on the first blush, the contention of the writ petitioner seemed valid, as the stipulated conditions in the NIQ appeared to have restricted the field of bidding to only the registered manufacturers under the MIIPP, however this Court cannot lose sight of the fact that the same had been occasioned, in furtherance of and in pursuance to the adoption of the policy by the State Government, in a matter concerning tender specifications and award of contracts, which is in the realm of commercial transactions. It is settled law that the scope of judicial review in such matters is very limited, and as held by the Supreme Court of India in *Airport Authorities of India vs. Centre for Aviation Policy* (supra) which followed the decision rendered in *Michigan Rubber (India Limited)* at para 30 thereof, which is extracted herein below, certain principles have been enunciated.



*“30. In the case of Michigan Rubber (India) Ltd. (Supra), after considering the law on the judicial scrutiny with respect to tender conditions, ultimately it is concluded in paragraph 23 as under:*

*23. From the above decisions, the following principles emerge:*

*(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*

*(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*

*(c) 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;*

*(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resource to successfully execute the work; and*



*(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”*

14. In the series of judgments which have been cited by the learned AAG, and other judgments, similar views have been expressed especially on the point that the Courts must realise that the authority floating the tender, is the best judge of its requirements and that merely because the Court feels that some other terms would have been more preferable, would not make it open to interference. In the instant case, the NIQ though having been amended and notwithstanding the fact, that reservations and restrictions still existed with regard to the necessity of registrations of units under the MIIPP, the said clause being founded on the basis of the stated Government policy, that is for promotion of the economic environment in the State of Meghalaya, the said restriction is therefore justifiable and cannot be held to be arbitrary or discriminatory.

15. The other contentions raised as to the product not being under the list of items reserved for purchase from Micro and Small Enterprises is not significant to vitiate the tender process in any manner, as there is no restriction in the manner of procurement by the authorities of products not listed in the said list. Further, the contention with regard to the Trading



license is not relevant for consideration as the same is a consequential factor on the bidder being eligible or awarded with the contract.

**16.** As such, as discussed and for the reasons aforementioned, no interference is called for and the writ petition is dismissed.

**Judge**