

(2015) 04 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (C) Nos. 5455 and 5688 of 2014

Bengal Tools Ltd. and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 3 BC 641 : (2015) 2 GLT 506

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : A.M. Buzarbaruah, Senior Advocate, A. Dhar and M. Mahanta, for the Appellant; B. Chetri, Sr. Government Advocate, N. Dutta and D.K. Misra, s, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—These two writ petitions involving virtually a common question of facts and of law were taken up together for consolidated admission hearing, and are now being disposed of by this common judgment. For simplification, I will first take up WP(C) No. 5455 of 2014, decide it and then attempt to dispose of WP(C) No. 5688 of 2014 on the basis of such decision. In WP(C) No. 5455 of 2014, the petitioner No. 1 is a company registered under the Companies Act, 1956 with its registered office in Kolkata, West Bengal and deals in Power Tillers by assembling Power Tillers with Chinese technology under the brand name of "SHRACHI" and claims to have a 20% market share of power tillers in India. It also claims to be supplying to the customers the spare parts for almost all the power tiller companies of India. It has a combined installed capacity of 5000 power tillers with two assembling locations, one in Kolkata with an annual capacity of 3000 and the other at Bangalore having a capacity of 2000 power tillers per annum, and has 8 branch offices in several States with a strong dealership network of 200 dealers throughout the country. The petitioner No. 2 is the authorized dealer of the products of the petitioner No. 1, which supplies and

provides services through the petitioner No. 2 in the district of Kamrup, Assam.

2. It is the case of the petitioners that the respondent No. 2 has floated a tender bearing dated 16.10.2014 for supply of power tillers by incorporating a condition in the tender documents to the effect that the intending bidders were required to supply only 100% indigenously built/manufactured inputs/items and no inputs/items built or manufactured outside the country would be accepted. It is contended by the petitioners that such restrictive tender clause has excluded companies such as the petitioners who assemble the components of the power tillers imported by them from outside India from participating in the tender process. According to the petitioners, they have the expertise and competence to execute contractual supply of power tillers of superior quality, but they have now been prevented from participating in the impugned NIT on account of such restrictive clause on the ground that their power tillers are not indigenously manufactured in India. It is asserted by the petitioners that out of the ten companies approved by the Directorate of Agriculture, Government of Assam, only two companies, namely the respondents No. 4 and 5 are dealing in power tillers which are indigenously manufactured in India, and, as such, the restrictive clause would enable only these two companies to participate in the tender process despite the expertise and competence the petitioners have to execute the supply work of power tillers and their products at par with any other companies. Aggrieved by the impugned NIT, the petitioners are now filing this writ petition for appropriate relief.

3. The State-respondents and the respondent No. 4 are contesting the writ petition and have filed their respective affidavits-in-opposition. The State-respondents deny that undue favour is being extended to certain companies in incorporating Clause 26: it has rather been incorporated to ensure transparency on rational basis and with legal sanctity to debar bidders offering power tillers produced or built outside. The rationale behind the incorporation of this clause stems from the observations made by the Department of Agriculture on two consecutive years on the basis of the specific enquiry made by the Directorate, that only two brands of power tillers are suitable for the soil conditions of Char areas vide the letters dated 14-11-2008 and dated 14-12-2009 and that both brands are manufactured in India. Moreover, there is demand from the beneficiaries/farmers favouring Indian agricultural inputs rather than imported inputs. It is for safeguarding the economic interest of this country and keeping in mind the "Make in India" policy of the Central Government that this clause has been incorporated: there is no question of discrimination against the petitioners as alleged by them. The intention is to procure good quality power tillers from reputed Indian manufacturers whose power tillers are more suitable for the Char areas of Assam. It is, therefore, submitted that such restrictive clause insisted by the State-respondents in furtherance of the interest of the intended beneficiaries can by no stretch of imagination be considered as illegal, arbitrary, mala fides, unreasonable, discriminatory and capricious: the writ petition is devoid of merit and is liable to be dismissed.

4. The respondent No. 4 in their affidavit-in-opposition questions the validity of the claims made by the petitioners with respect to their presence in the Indian market, its installed production capacities, branch offices or its nationwide dealership network and asserts that the Chinese Power Tillers assembled and marketed by them are of inferior quality vis-à-vis their Indian counterparts, and they do not have the basic after sales support necessary for their maintenance. Nor are the spare parts of these Chinese power tillers readily available in the market. In fact, according to the answering respondent, even the Chairman of the petitioner No. 1, one Mr. S.K. Todi, has gone on record to state that the Chinese tillers are not the best and are, in fact, of inferior quality vis-à-vis Indian and South Korean products: this statement was published in the "Business Times" section of the daily "The Times of India" in its issue dated 11.5.2001. It is asserted by the answering respondent that their power tiller "VST Shakti 130 DI Power Tiller" was also tested at Central Farm Machinery Training and Testing Institute, Budini, MP, and was placed at Serial No. 1 in the list of the power tillers so tested. True, the power tiller of the petitioners, namely, "Shrachi Sifang SF 15 DI" has been certified by the same Institute, but the power tiller of the answering respondent, on comparison with the certificate issued in its favour, was far superior to all other Chinese power tillers including the one assembled by the petitioner No. 1.

5. It is the further case of the answering respondent that the power tiller of the answering respondent has not only passed the test but has also cleared each and every criteria laid down for testing unlike that of the petitioner-company vide "Summary of Observations, Comments and Recommendations" of the test report. It is also averred by the answering respondent that their power tillers are also published by the Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India making it eligible for grant of subsidy under various Government assisted schemes. According to the answering respondents, the VST (Model 130 DI), which is one of its indigenously built power tiller is the highest selling brand/model of power tiller in the country: it is also immensely popular amongst the farmers of the Assam. The respondent No. 4 is the only manufacturer of power tillers having full-fledged regional sales office and after sales service at Guwahati with district wise network for sales and after sales service at the grass root level: adequate spare parts are readily made available through its regional as well as district level dealership network as certified by the Directorate of Agriculture, Assam.

6. The answering respondent categorically denies that the petitioner company is at par with other Indian made power tillers and asserts that Chinese power tillers are, in fact, barred in almost all the departments in the State of Assam, which deal with farm equipments such as power tillers. As evident from the minutes of the Departmental Purchase Committee meeting dated 12.9.2013 of the Welfare of the Plain Tribes and Backward Classes Department, it has been declared that Chinese products are technically not time-tested and recommended the power tillers of the answering respondent. The Department of Agriculture Cooperation

in the Ministry of Agriculture, Government of India has issued the letter dated 11.9.2014 addressed to all Principal Secretaries (Agriculture) of all the States of India to furnish the average selling price of the Chinese as well as indigenous power tillers, directed to furnish comments with regard to quality and availability of spare parts of Chinese power tillers and observed that the misuse of Central Subsidy on Chinese power tillers are causing huge losses to the Government and farmers. The Chief Engineer vide his letter dated 14.11.2008 has categorically stated that the soils of Char areas, where the power tillers are to be operated, are primarily of sandy loam type with a sinking tendency and hence suggested that light weight power tillers should be preferred. According to the answering respondent, the power tiller of the petitioner-company and another power tiller of KAMCO brand are lighter in weight, which are extensively used by the farmers of the State under different schemes as per the record of the Department and fanner demands are also received regularly for these two brands. This was reiterated by the Agriculture Department, Assam again on 14.12.2009. The incorporation of Clause 26 in the bid document, submit the petitioners, is, therefore, based on cogent, logical and unbiased reasons, which may not be interfered with by this Court. There is thus no question of violation of Article 14 of the Constitution in incorporating Clause 26 in the bid document. These are the principal contentions of the petitioners in defending the impugned clause.

7. It is by now well settled that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by the Court in *Tata Cellular Vs. Union of India*, AIR 1996 SC 11 : AIR 1994 SC 11 : (1994) 4 JT 532 : (1994) 6 SCC 651 : (1994) 2 SCR 122 Supp . After examining virtually the entire case-laws in this behalf, the following principles have been deduced: (SCC pp. 687-88, para 94)

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision. without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

(emphasis supplied)

8. In *Air India Ltd. v. Cochin International Airport Ltd.*, , (2000) 2 SCC 617 , the Apex Court also observed:

"The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness."

(Emphasis supplied).

9. This principle was again reiterated by this Court in *M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others*, AIR 2000 SC 2272 : (2000) 6 JT 491 : (2000) 4 SCALE 446 : (2000) 5 SCC 287 : (2000) AIRSCW 4005 : (2000) AIRSCW 2050 : (2000) 4 Supreme 34 : (2000) 7 Supreme 430 . It was held therein that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the ones prescribed in the earlier tender invitations. This is what the Apex Court said:

"12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with

the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."

10. The question which now falls for consideration in this writ petition is whether the impugned Clause 26, in so far as it restricts the participation in the tender process only to those bidders who will supply 100% indigenously built/manufactured power tillers, suffers from the vice of arbitrariness or discrimination or mala fide. As no officials in the decision-making process are personally impleaded, the question of mala fide in fact cannot and does not arise. However, the question of mala fide in law or malice in law can be examined without impleading the officials in person. Mala fide in law or malice in law means an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling or spite, or a desire to injure another. It is the contention of the learned counsel for the petitioner that there is absolutely no basis for ousting the petitioner company supplying only Chinese made power tillers from the tender process except for giving advantage to the respondent No. 4 and 5. He further argues that the classification between the Chinese made power tillers and Indian made power tillers is not founded upon intelligible criteria but is based on artificial concept and certainly has no rational relation to the object sought to be achieved, namely, for operating in Char (on the bank of river) areas: the power tillers of the petitioner-company has a proven track record in the past. He points out that the power tillers of the petitioner-company are in no way inferior in quality to those manufactured in India since it has complied with all the statutory requirements like performance testing reports made by the Central Farm Machinery Training and Testing Institute, Bharat Stage II norms by the Automotive Research Association of India, Pune and Minimum Performance Standards by Ministry of Agriculture, New Delhi and have been providing spare parts and other after-sales service to its customers. He submits that the adverse report against the power tillers of the petitioner-company in the Business Time way back in 2001 is no longer relevant today with the advancement in their technology.

11. Refuting the contention of the respondent No. 4, the learned counsel maintains that the petitioner-company has supplied its power tillers to the Directorate of Welfare of Plain Tribes and Backward Classes, Assam to their full satisfaction and that the comments called for by the Ministry of Agriculture, Govt. of India from the Agriculture Departments of all the States with respect to the viability of Chinese power tillers following the complaint made by Shri Hukumdev Narain Yadav, MP have not yet resulted in eliminating the Chinese made power tillers in the Indian market till now. He further contends that the product of petitioner-company, namely, Shrachi SF 15 DI being equipped with engine of 15 HP is more powerful than that of power tillers of the respondent No.

4, which has only 13 HP, and the weight of the power tillers cannot be a factor for eliminating the Chinese made power tillers as the same are successfully operated upon all types of soil as evident from supply order for Greaves (another Chinese made power tillers) issued by the Welfare of Plain Tribes and Backward Classes Department vide the letter dated 15.7.2014 and the supply order for Shrachi Sifang 15 DI of the petitioner-company issued by the Chief Engineer, Agriculture vide the letter dated 5.1.2015: this belies the claim of the respondents that the Chinese power tillers are inferior and not suitable in Char areas. The counsel also submits that Clause 26 has been deliberately inserted to exclude the petitioner- company from participating in the tender process without any rational basis and with a view to create monopoly for the respondent No. 4 and 5, which is thus unfair, discriminatory, arbitrary and illegal and is liable to be quashed. In support of various contentions, he relies on Meerut Development Authority Vs. Association of Management Studies and Another, AIR 2009 SC 2894 : (2009) 6 JT 169 : (2009) 6 SCALE 49 : (2009) 6 SCC 171 : (2009) 6 SCR 663 : (2009) 5 UJ 2391 : (2009) AIRSCW 4623 : (2009) 3 Supreme 429 , Global Energy Ltd. and Another Vs. Adani Exports Ltd. and Others, AIR 2005 SC 2653 : (2005) 1 CTLJ 259 : (2005) 5 JT 121 : (2005) 4 SCC 435 : (2005) 3 SCR 1108 , Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, AIR 2004 SC 1962 : (2004) 2 BC 386 : (2004) 2 CTC 221 : (2004) 1 CTLJ 339 : (2004) 1 JT 502 Supp : (2004) 3 SCALE 111 : (2004) 4 SCC 19 : (2004) 2 SCR 1010 : (2004) AIRSCW 1505 : (2004) 2 Supreme 646 , LIC v. Consumer Education and Research Centre, (1995) 5 SCC 48 and Rashbihari Panda etc. Vs. State of Orissa, AIR 1969 SC 1081 : (1969) 35 CLT 479 : (1969) 1 SCC 414 : (1969) 3 SCR 374 .

12. Countering the submission of the learned counsel for the petitioner, Mr. Niloy Dutta, the learned senior counsel for the State- respondents, contends that the object of the impugned restrictive-clause is to ensure that the power tillers to be purchased should be able to operate in Char areas (riverine area), for which weightier Chinese made power tillers have proved to be unsuitable, and the classification between the power tillers of the petitioner-company and the indigenously made powers tillers is therefore based on intelligible differentia, namely, the lightness of the power tiller, which has rational relation with the object sought to be achieved, namely, its operational viability in Char areas: there is no discrimination or arbitrariness in the impugned decision of the respondent authorities in choosing indigenously made power tillers. Drawing my attention to the letter dated 11.9.2014 of the Ministry of Agriculture (Department of Agriculture and Cooperation), Government of India addressed to the Principal Secretary, Agriculture and Director of Agriculture of all States and the "Business Times" section of the daily "The Times of India" in its issue dated 11.5.2001, the learned senior counsel submits that the adverse comments made therein against the products of the petitioner-company is certainly a relevant consideration in denying participation to the petitioner-company in the ongoing tender process. According to the learned senior counsel, it is a well-known principle of

administrative law that more than one choice is open to the administrative authorities; they have certain amount of discretion available to them or "free play in the joints". As they have the right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred, so submits the learned senior counsel, the Court would not like to substitute its opinion for the opinion of the respondent authorities in this case. Mr. D.K. Mishra, the learned counsel for the respondent No. 4, endorses the submissions advanced by the learned senior counsel for the State-respondents, and maintains that since the view taken by the State-respondents in restricting the participation in the tender process only to Indian made power tillers is based on expert views, which does not suffer from any perversity, there is no merit in the case of the petitioner-company: after all, mere possibility of another view cannot be a ground for interference by this Court. He, therefore, strenuously urges this Court to dismiss the writ petition.

13. The tender file is placed before me by the learned senior counsel for the State-respondents. A perusal of the tender file shows that the respondent authorities apparently based their decision for restricting the tenderers only to indigenously made power tillers on three factors. One of them is the complaint lodged by the Nebula N.G.O. of Dhubri District, to the effect that the power tillers by named Dragon Shaktee which were earlier supplied for Char areas in the Dhubri district were "too low quality in field" and also defective on the ground (i) that many of them were condemned in field in a short time; (ii) that parts are not available at market since the power tiller was of China; (iii) that mechanics are not available at field level to repair as the power tiller were of foreign make and (iv) that almost all power tillers are lying idle in field as the said power tillers are supplied from foreign made. The second ground is the letter dated 14.11.2008 of the Chief Engineer, Agriculture, Assam addressed to the Director of Char Areas Development, Assam, which, among others, stated that the soils of the Char areas were primarily of sandy loam type with sinking tendency and the weight as well as H/power of the power tillers are, therefore, of primary concern and that the lighter the weight of the power tiller with more HP, better performance might be expected and that of the two, namely, "KAMCO Power Tiller" and "VST Shakti Power Tiller, he virtually recommended KAMCO Power Tiller. The third factor is the letter dated 11.9.2014 written by the Deputy Commissioner (M&T), Govt. of India, Ministry of Agriculture (Department of Agriculture and Cooperation) to the Principal Secretary (Agriculture), (All States/UTs) and Director (Agriculture) (All states/UTs) in which he referred to the letter dated 22.8.2014 received from Shri Hukumdev Narain Yadav, Member of Parliament addressed to Agriculture Minister, Government of India, complaining of gross misuse of central subsidy on Chinese made power tillers which are causing huge loss to the Government and farmers, are sold in the Indian market at double price and are of poor quality and non-availability of spare parts. He then asked the State Government to examine the said letter of the MP and forward their comments to the Department of Agriculture and Cooperation,

Ministry of Agriculture with specific reference to average selling price of indigenous as well as Chinese make power tiller in their States during the last five years.

14. It is interesting to note that the petitioner-company does not deny the averments made by the respondent No. 4 in paragraph 17 of their counter-affidavit that the soil of Char Areas is primarily of sandy loam type with a sinking tendency and that Chinese power tillers are, therefore, not fit for Char areas as they are much heavier than its Indian counterparts, are not denied by the petitioner in their affidavit-in-reply. On the contrary, the petitioner-company in the 13th line of paragraph 10 of the same affidavit says that

"[T]he weight of the power tillers cannot be a factor for eliminating the Chinese power tillers as the same are also successfully ran over all types of soil."

This, coupled with the fact that the petitioner-company never denies at any point time in their pleadings that their power tillers are weightier than, or, at any rate, equal to, the power tiller of the private respondents, would go long way in reinforcing the contention of the respondent authorities that the power tillers of the petitioner-company are not suitable for Char areas. After all, the procurement of power tillers in the instant case is for the purpose of operating them in Char areas. The power tillers of the petitioner- company could be better in all respects in other areas, but that is the not point involved in this case: in this case, the decision-makers are concerned with the suitability of the power tillers of the petitioner-company for use in Char areas. Thus, on the facts found by me, the opinion entertained by the respondent authorities that indigenously made power tillers are more suitable than Chinese made power tillers such as the one offered by the petitioner- company for operating in Char areas, cannot be said to be a perverse view nor can such view be taken to be malicious or is actuated by any extraneous consideration. Therefore, the classification between the indigenously made power tillers and the Chinese made power tillers is really based on intelligible differentia, namely, the lightness of the power tillers, which has rational nexus to the object sought to be achieved, namely, their operational efficiency/effectiveness when deployed in Char areas where the soils are primarily of sandy loam type with sinking tendency. As already noticed, the petitioner- company never denies in their pleadings that the indigenously made power tillers are lighter than the Chinese made power tillers offered by them. In my judgment, this is certainly a case where the facts taken as a whole could logically warrant the conclusion of the decision makers that indigenously made power tillers are more suitable than Chinese made power tillers in for use in Char areas. To conclude, I am tempted to quote the observations, with due respect, aptly made by the Apex Court para 31 and 36 of the judgment in Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, AIR 1992 SC 1033 : (1992) 75 CompCas 12 : (1991) CriLJ 1391 : (1992) 1 JT 405 : (1992) 1 SCALE 216 : (1992) 2 SCC 343 : (1992) 1 SCR 406 :

"31. The function of the Court is to see that lawful authority is not abused but

not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

15. I cannot also avoid quoting the answer given by the Apex Court in *In Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, AIR 1978 SC 1296 : (1978) CriLJ 1281(1) : (1978) 3 SCC 459 : (1978) 3 SCR 293 to the submissions of the like nature made by the learned counsel for the petitioner-company herein, albeit in a different context. This is how the Apex Court observed:

"We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

Need I say more? In the premises set forth above, there is no merit in this writ petition, which is hereby dismissed. The interim order stands vacated. The parties are, however, directed to bear their respective costs.

WP(C) No. 5688 of 2014

In this case, M/s. Greaves Cotton Limited, having its registered office and place of business in Mumbai is the petitioner. The petitioner-company is also dealing in power tillers by assembling them with Chinese products/technology under the brand name of Greaves. As in WP(C) No. 5455 of 2014, their power tiller has been excluded from participating in the same NIT dated 16.10.2014. Since the issues involved in both the writ petitions are common, this writ petition shall also be governed by the aforesaid judgment. Consequently, this writ petition must also meet the same fate, and is, accordingly, dismissed. The interim order, if any, also stands vacated. No costs.