

**(2011) 12 AHC CK 0048**  
**In the Allahabad High Court**  
**Case No : Misc. Bench No. 7447 of 2011**

|                                                   |            |
|---------------------------------------------------|------------|
| Celex Technologies Pvt. Ltd., Calcutta and Others | APPELLANT  |
| Vs                                                |            |
| State of U.P. and Others                          | RESPONDENT |

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**Date of Decision :** 12-12-2011

**Acts Referred:**

**Citation :** (2011) 12 AHC CK 0048

**Hon'ble Judges :** S.C. Chaurasia, J;Devi Prasad Singh, J

**Bench :** Division Bench

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## Judgement

1. Counter affidavit filed on behalf of respondent no. 1 is taken on record. Supplementary affidavit filed on behalf of petitioners is also taken on record.
2. Heard Sri R.N. Trivedi, learned Senior Counsel assisted by Sri Gaurav Bhatia, learned counsel for petitioners and Sri J.N. Mathur, learned Additional Advocate General on behalf of State.
3. A preliminary objection has been raised by Sri J.N. Mathur, learned Additional Advocate General that in view of order passed by Hon"ble Supreme Court this writ petition is not maintainable.
4. Attention of this Court has been invited towards the Judgment and order dated 08.12.2011 passed by their Lordships of the Hon"ble Supreme Court in Writ Petition (Civil) No. 510 of 2005, Maninderjit Singh Bitta Versus Union of India. In response to the arguments advanced by Sri J.N. Mathur, the arguments advanced by Sri R.N. Trivedi, learned Senior Counsel for the petitioners is in two folds. Firstly, the State of U.P. on 08.12.2011 has not placed the correct facts before the Hon"ble Supreme Court with regard to order passed by this court on 23.11.2011. The second limb of argument advanced by Sri R.N. Trivedi is that Hon"ble Supreme Court has not restrained this Court to proceed with the case and decide the same on merits and only passing of an interim order has been stayed.

5. On 23.11.2011, after hearing the learned counsel for the parties, we have passed the following order, which is reproduced as under:

The advertisement for High Security Registration Plates (in short H.R.P.Cs) was made on 20.5.2011, but subsequently tender condition was amended by another tender notice dated 21.6.2011. According to original condition technical bid was to be opened on 5.7.2011.

It has been stated by Sri R.N.Trivedi, learned Senior Counsel appearing for the petitioner that technical bid is likely to be opened today. However Sri J.N.Mathur, learned Additional Advocate General appearing for the opposite parties submits that technical bid was to be opened on 5.7.2011. Earlier this court has summoned the record.

Sri J.N.Mathur, learned Additional Advocate General submits that records are very well available. Allegations have been raised in the present writ petition which includes changing of terms and conditions of the tender at later stage to give alleged undue favour to the private respondent.

According to learned counsel the respondent has been proposed to grant at excessive rate the contract for the High Security Registration Plates (in short H.R.P.Cs) though in other parts of the country it is on lower rate i.e. Rs. 500/-. It has further been pleaded that the condition in the tender to provide financial status of 50 crore and odd has been reduced to 40 crore to accommodate the private respondent and the condition that financial status with regard to solvency certificate should not be older than three months, has been deleted.

Some of the pleadings on record as contained in paras 48, 49, 51, 52, 53 and 54 of the writ petition, have not been categorically replied by filing short counter-affidavit. However, Sri J.N.Mathur, learned Additional Advocate General submits that since tender has not been opened till date, it is not possible for the State to furnish necessary information. In the amended writ petition in paras 80-A to 80-G, allegations have been raised against the respondents which are of serious one and the manner in which original terms and conditions, amended by State Government creates reasonable doubt in discharging its obligations. Hence it is necessary to look into the matter. It has been submitted that matter is sub-judice before Hon"ble the Supreme Court.

Nothing has been brought on record nor the attention of the court has been invited towards any order passed, which may reveal that the procedure adopted by the respondents in inviting tender and finalising the same is subject matter before Hon"ble the Supreme Court and is pending for consideration.

Sri R.N.Trivedi, learned Senior Counsel submits that procedure must be just and fair and not to be an arbitrary. The tender condition reveals that financial status of the bidder should be opened after technical evaluation is done and should be opened on the date, time and place notified later on for the purpose in the presence of only those bidders or their authorised representatives whose

envelopes are to be opened.

Sri J.N. Mathur, learned Additional Advocate General wants ten days time to file counter affidavit containing parawise reply to the amended writ petition.

As prayed, ten days time is granted to State Government to file counter affidavit containing parawise reply to the writ petition. The counter affidavit shall be filed by the Principal Secretary, Transport Department, Uttar Praedesh.

Let notice be issued to the opposite party no. 4, who may also file their counter affidavit within the aforesaid period of ten days. Notice shall be sent by registered post as well as through the district judge concerned.

Liberty is given to the petitioner to serve the respondent no 4 out side the court.

Office shall provide necessary notice.

Sri Altaf Mansoor learned counsel who has put in apperance on behalf of opposite party no. 3 may also file counter affidavit containing parawise reply within 10 days.

Notice shall also be issued to opposite party no. 4 through transport commissioner.

As an interim measure, the respondents are permitted to proceed with the technical bid, however, they shall notify the date for financial bid after 15th December, 2011.

List on 12th December, 2011 for peremptorily hearing.

State Government shall also produce the entire record including the outcome of the technical bid and the related records on the next date of listing.

Proceedings initiated by the respondents shall be subject to further orders passed by the court.

6. From a plain reading of the aforesaid order, it reveals that we have provided that grant or acceptance of tenders, shall be subject to further orders passed by this Court and with regard to finance bid, State shall deffer the matter fixing a date after 15.12.2011. It appears that statement given before the Hon"ble Supreme Court by State of U.P. seems to be not correct.

7. Sri J.N. Mathur, learned Additional Advocate General, submits that while filing the affidavit before Hon"ble Supreme Court, we have brought on record the correct facts with regard to order passed by this Court. He further submits that since certified copy of the said order was not available, State was not in a position to make any statement.

8. The argument advanced by Sri J.N. Mathur, learned Additional Advocate General, seems to be not correct for the reasons that order dated 23.11.2011 was passed in the presence of learned counsel for both sides in the open court.

In case, correct facts would have been brought in the knowledge of the Hon''ble Supreme Court, then, there would have been no observation by their Lordships that "there is no stay granted by High Court". The order dated 08th December, 2011 passed by Hon''ble Supreme Court in Writ Petition (Civil) No. 510 of 2005 is reproduced as under:

Uttar Pradesh

31. As per the affidavit filed on behalf of the State of Uttar Pradesh, the notice for inviting tenders had been published. Last date for submission of tenders was 5th July, 2011. Seven bids were received, though no contract has so far been awarded and no agreement has been signed as yet. Request had been made on behalf of the State for extension of time. We may also notice that according to the State, a writ petition had been filed in the High Court of Allahabad to quash the tender for manufacture of these registration plates. There is no interim stay granted by the High Court. We make it clear that the State of Uttar Pradesh should ensure manufacture and affixation of HSRP through a single process and person in terms of the judgment of this Court. The Evaluation Committee should meet and take a final decision. The contract should be awarded and the implementation of the scheme should commence within three months from the date of passing of this order as prayed for. By way of last opportunity, the period is extended upto 29 th February, 2012.

9. Thereafter, with regard to interim order, Hon''ble Supreme Court has observed as under:

6. In the interest of justice and to ensure proper implementation of the judgments and directions of this Court, as contained in its various orders, in regard to manufacturing and affixation of the HSRP, it is imperative for this Court to direct that it will be in the fitness of things and even the judicial proprietary would demand that no High Court should pass any interim orders cancelling or staying the tender process in relation to implementation of the scheme. While so directing, we grant liberty to the parties to make a mention before this Court after they have instituted their petitions, if any, before the High Court and interim orders have been declined in furtherance to the observations aforemade.

10. From the aforesaid direction issued by the Hon''ble Supreme Court, at the face of record, it appears that their Lordships have restrained the High Court not to pass any interim order with regard to cancellation or stay of the tender process with regard to implementation of the scheme. At the face of record, Hon''ble Supreme Court has restrained the High Courts of the country from passing any order interfering with the tender process. The order passed by Hon''ble Supreme Court is binding on the all the courts and authorities and calls for no discussion. No Interim order can be passed by this Court or any other High Court of the country in view of the order passed by Hon''ble Supreme Court. However, we should pronounce our judgment or not after hearing the learned counsel for the parties, is the question which cropped up during the course of

hearing of learned counsel for the parties.

11. Sri R.N. Trivedi, learned Senior Counsel assisted by Sri Gaurav Bhatia, learned counsel for petitioners submits that Hon''ble Supreme Court has not debarred this Court to adjudicate the dispute on merits. On the other hand, Sri J.N. Mathur, learned Additional Advocate General submits that no hearing could take place in view of the order passed by the Hon''ble Supreme Court. Prima facie, We are of the view that their Lordships of Hon''ble Supreme Court have restrained the High Courts of the country to interfere with the tender process and have not restrained the High Courts to entertain the writ petitions and adjudicate the dispute on merits. However, we are of the view that hearing may go on and in the meantime, parties may approach the Hon''ble Supreme Court for clarification of order dated 08-12-2011 to remove doubt, if any.

12. Since, this case may take some more time to conclude the hearing of both the sides, petitioners may file rejoinder affidavit by the next date of listing.

13. List/Put up on 15.12.2011 at 2.00 P.M.