

(2016) 08 OHC CK 0054

In the Orissa High Court

Case No : Writ Petition (C) No. 18679 of 2015

Hemogenomics Private Limited

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 18-08-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Transfer of Property Act, 1882 — Section 52

Citation : (2016) AIR(Orissa) 178 : (2017) 1 ILRCuttack 31 : (2017) 3 RAJ 731

Hon'ble Judges : Mr. Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s B.M. Pattnaik, Senior Advocate along with M/s Rakesh Sharma, P.R. Pattnaik, S.R. Singh Samanta, K.C. Mishra and S.N. Barik, Advocates, for the Opposite Party No. 3; Mr. B.P. Pradhan, Addl. Govt. Advocate, for the Opposite Parties Nos. 1 and 2; M/s. Pr

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J. - The petitioner company, which is stated to be the single authorised distributor/dealer of GRIFOLS (formerly NOVARTIS Diagnostics), having Transfusion diagnostic business dealing with manufacturing and delivering high quality products of NAT (Nucleic Acid Testing) Proclex PANTHER system, participated in the tender process pursuant to the advertisement vide Annexure-1 dated AFR 20.02.2014, i.e., Request for Proposal (in short "RFP") issued by the Director, State Blood Transfusion Council, Department of Health & Family Welfare for supply and installation of maintenance free fully automated NAT facility for screening of HIV, HBV, HCV (all variants) for maximizing the blood safety along with opposite party no. 3.

Pursuant to such advertisement, the petitioner submitted its offer on 26.03.2014 with two bids, both technical and price bids, valid for 365 days. In technical evaluation, the petitioner being disqualified, its price bid was not opened. Consequentially, opposite party no.3 was selected and issued with work order

vide Annexure-9 dated 10.06.2015 and asked to sign the rate contract, i.e., beyond 365 days from the date of submission of tender. The petitioner, being not satisfied with the process of tender conducted by the State opposite parties and attributing unfairness and favouritism in decision making process, has approached this Court by filing the present writ petition seeking to quash the work order Annexure-9 issued in favour of opposite party no. 3.

2. Heard Mr. P.K. Mohanty, learned Senior Counsel for the petitioner, Mr. B.P. Pradhan, learned Addl. Govt. Advocate for the State-opposite parties and Mr. B.M. Pattnaik, learned Senior Counsel for opposite party no.3. Since pleadings between the parties have been exchanged, with consent of learned counsel for the parties, this writ petition is being finally disposed of at the stage of admission.

3. Mr. P.K. Mohanty, learned Senior Counsel appearing for the petitioner strenuously urged that the work order issued in favour of opposite party no.3 is contrary to the conditions stipulated in the tender documents, inasmuch as the equipment of latest version, i.e., of 2012 was not offered by opposite party no.3 and was not having approval of USFDA & CEIVD and Drug Controller General of India (in short "DCGI"), but offered the older version of 2006 having no facilities of testing all variants of HIV and also no DCGI approval as on the date of submission of bid, which was illegally accepted. Per contra, the offer of the petitioner being latest version of 2012 having CEIVD approval as equivalent to USFDA and also having DCGI approval with facilities of testing all variants of HIV was rejected. It is also urged that the technical committee has been constituted comprising members of no user of petitioner's equipment, whereas the users of opposite party no.3 equipment, the interested members were taken. Consequentially, alleged mala fide against the constitution of the committee.

4. Mr. B.P. Pradhan, learned Addl. Govt. Advocate appearing for the State opposite parties refuted the allegations made by the petitioner and vehemently urged that there is no illegality committed by the authority in the process of selection of opposite party no.3 and issuing the work order. Though some irregularities have been committed, but that is not fatal to the process of selection, and the same have been rectified subsequently. As such, opposite party no.3 having received work order and installed the equipment in June, 2016, which already started its functioning, interference at this stage by this Court will cause great prejudice to the State opposite parties. Therefore, prays that the writ petition should be dismissed as devoid of any merit.

5. Mr. B.M. Pattnaik, learned Senior Counsel appearing for the opposite party no.3 supported the stand taken by the State and also urged that the contentions raised by learned Senior Counsel for the petitioner have no legs to stand and, as such, by following due procedure of selection in consonance with the terms of the tender if the work order has been issued and in the tender process since no illegality and irregularity has been committed, this Court should refrain from interfering with the decision taken by the expert body in selecting opposite party no.3 for issuance of work order, more particularly, while exercising power under

judicial review in contractual matters, the scope of this Court being limited and the opposite party no.3, on receipt of the work order, having started its functioning, this Court should not entertain the writ petition and the same should be dismissed.

6. With the above pleadings of the parties, it is to be examined whether the technical committee has acted bonafidely in decision making process by selecting opposite party no.3 and issuing work order in its favour.

7. An advertisement no. 0113 dated 20.02.2014, i.e., Request For Proposal (RFP) for establishment of NAT testing facility at the identified centers of State of Odisha in first phase was issued inviting sealed offers through reputed manufactures or any single authorised dealer/importer (i.e., manufacturer of NAT equipment or any single authorised dealer/importer by the Principal Equipment Manufacturer) for supply and installation of maintenance free fully automated NAT facility for screening of HIV, HBV and HCV for maximizing the blood safety. As per the description of goods indicated in serial no.1, the date of downloading of RFP was 24.3.2014 up to 5.00 P.M., date of submission of RFP was 28.03.2014 upto 1.00 P.M., date of opening of RFP was 28.03.2014 at 4.00 P.M., RFP paper cost Rs.2000/- and EMD of Rs.5,00,000/-. The relevant conditions stipulated in the tender document are as follows:-

"(i) Submission of RFP document at the office of opposite party no.2;

(ii) opening of RFP document date and time -28.03.2014 at 4.00 P.M.

(iii) offered RFP validity period -365 days from date of opening.

(iv) initial contract period with the selective organization- 5 years.

(v) price bids shall have to be submitted in duplicate."

8. Besides the above terms, the procedure for submitting RFP also provided that sealed RFPs should reach on or before the date and time as specified in the RFP inviting notice and which will contain both sealed covers, one for technical documents and the other for price related documents. Before submission of bids in the manner provided in the aforesaid tender notice, a pre-bid meeting was held on 21.03.2014 and certain clarification was also given by opposite party no.2. Accordingly, the petitioner participated in the bid as a single authorised distributor and dealer of the equipment in question manufactured by the GRIFOLS of Spain, formerly known as "NOVARTIS Diagnostics" having maintained its reputation worldwide in different countries with regard to its most guaranteed method of technology of testing blood, being more sensitive than conventional test by significant impact on the efficacy of NAT screening by offering individual donor-NAT (ID-NAT), which tests each sample individually and, as such, is totally different from the methodology adopted by the other bidders.

9. Pursuant to the said tender call notice, two bidders participated, namely, the petitioner and opposite party no.3. As per the date fixed, the technical bids,

which were in sealed cover, were opened in presence of the representatives of the petitioner and the other bidder, and it was found that the bids of both the bidders, i.e., petitioner and opposite party no.3 to have been submitted in conformity with the requirements of the tender call notice and were valid. When the petitioner was waiting for the occasion to be intimated for opening of price bid for NAT, as submitted with duplicate copy as per the tender call notice and subsequent clarification issued pursuant to pre-meeting held on 21.03.2014, after expiry of the valid period, no intimation was received from the State opposite parties. The petitioner had a legitimate expectation that it would be called upon to participate in the final bid. But, at that point of time, the petitioner was shocked and surprised, when it came across a news item published in the newspaper issued by the Health Department with regard to implementation of NAT-PCR test facility (Nucleic Acid Amplification and Polymerase Chain Reaction Test) in the State instead of issuance of letter of intent. Therefore, finding no other way out, the petitioner has approached this Court by filing the present writ petition. In order to justify the claim, it relies upon certain conditions of the tender documents, which are as follows:-

"Technical Documents for RFP:

xxx xxx xxx xxx

4. DCG (I) and USFDA approval certificate should be enclosed."

Technical Specifications for Nucleic Acid Amplification Testing:

"xxx xxx xxx xxx

All equipment/components of the system supplied shall be the latest version, consist of all compatible equipment, hardware and software designated and set up to perform the protocol as per instructions by the manufacturer for NAT assay purpose.

xxx xxx xxx xxx

NAT screening system must have minimum facility to detect HIV (all variants) and all known genotypes of HBV and HCV."

He also relies upon the following clarifications which were made in the pre-proposal Request for Proposal (RFP) meeting held on 21st March 2014:

"Sl. No.

Advertisement made in the RFP

Clarification on RFP No: 0113 for NAT

xxx

xxx

xxx

05.

Under Head : Technical Documents for RFP.

It has changed as

Assay Protocols and Platform all need to be approved by US FDA and CE IVD and simultaneously to be approved by Drugs Controller General (India) through out the RFP document where ever it is mentioned.

06.

Under Head : Rate/Price related documents for RFP:

Instated of NAT-PCR the same should be read as NAT.

The EMD of the successor will be returned after commissioning and successfully running of the NAT-PCR screening at the identified centres.

07.

Under Head : Key terms & Conditions for the installation of maintenance free Equipment : Those equipments are approved from US FDA "/" DCG(I) will only be considered for RC.

The symbol "/" should be the Assay Protocols and Platform all need to be approved by US FDA and CE-IVD and simultaneously to be approved by Drugs Controller General (India).

xxx

xxx

xxx

10.

US FDA approved assay and platform. Why US FDA only why not USFDA or CE

Instead of approved assay and platform US FDA and DCG (I) this has changed as the Assay Protocols and Platform all need to be approved by US FDA and CE IVD and simultaneously to be approved by Drugs Controller General (India)."

10. Considering the materials available on record, the technical evaluation committee for NAT held on 10th and 11th June, 2014 at OSACS Conference Hall recommended as follows:

"Recommendation :

1. The members recommended unanimously that M/s. Roche (Cobas 201) is technically qualified for the following reasons.

(a) The systems and Assay meets all the specification and requirements as per the tender's terms and conditions.

2. The members observed that M/s Hemogenomics Pvt. Ltd. (Panther) are not technically qualified for the following reasons.

(a) As per the terms and conditions of the tender bid should be from the principal manufacturer/sales distributor/agent in India. This is not fulfilled in the quoted document.

(b) There is no approval from USFDA and DCGI for testing platform for the systems and kits quoted in the tender.

(c) There is only one installation report for the system at AIIMS, New Delhi. However, there is no supporting document in the form of award contract, their proforma invoice/supply order & user report/customer feedback report for the system quoted in the tender.

(d) There is no clarity on the number of supporting staff and service engineer, IT expert as well as no. of accessories such as server, computers, barcode reader, printer, UPS etc.

(e) There is no supporting document related to performance effective such as HIV2 detection by the system quoted in the system. There are no user report publication to support their claim for HIV2 detection from India.

(f) In case of M/s. Hemogenomics Pvt. Ltd. it reveals from its documents there are total 3 engineers for the country where as in case of Roche 187 engineers throughout the country. Further the company assured that they will recruit dedicated engineers in the state of Odisha.

The meeting ended with vote of thanks."

11. The technical committee recommended unanimously opposite party no.3 as qualified, whereas the petitioner is not qualified for reasons mentioned above. It appears that the reasons assigned by the technical evaluation committee in disqualifying the petitioner in technical bid mostly there was no approval from USFDA and DCGI for testing platform for the systems and kits "quoted in the tender". But to that extent, it appears that the pre-bid meeting held on 21.03.2014, clarification was given by the Director, SBTC as quoted above and on that basis there was no reason to reject the technical bid of the petitioner on the said ground amongst the other grounds, whereas opposite party no.3 has got CE-IVD certification. Even otherwise, unless either of the certificate of USFDA or CE-IVD, no approval can be granted by the DCGI. At the time of submitting the RFP, the technical bid in response to the advertisement dated 20.02.2014 in Annexure-1 in clause-4 under the heading of "technical documents for RFP", it is specifically stated that DCGI & USFDA approval certificates were to be enclosed and in consonance with that the petitioner had submitted the DCGI certificate and also CE-IVD certificate and its DCGI certificate was valid till 31.03.2014. But, the DCGI certificate submitted by opposite party no.3 was valid upto 31.07.2013 on the date of submission of RFP on 26.03.2014. The DCGI certificate of the petitioner was also renewed and valid till 31.07.2017. But non-submission of

valid DCGI certificate by opposite party no.3, he should have incurred disqualification, to be considered for technical bid.

12. As it appears from the documents available on record, the DCGI certificate submitted by opposite party no.3 was valid upto 31.07.2013. On the date of submission of RFP on 26.03.2014, opposite party no.3 has not possessed the valid DCGI certificate, whereas the petitioner had got the valid DCGI certificate, which was valid till 31.03.2014. The proposed date of opening of RFP was at 4.00 P.M. on 28.03.2014. Therefore, till the date of opening of RFP, i.e., 28.03.2014, opposite party no.3 had not produced valid DCGI certificate for technical evaluation of the committee. The opposite party no.2 vide letters dated 10.06.2014 and 11.06.2014 sought for clarification vide Annexure-D to the counter affidavit filed by opposite party no.3 regarding validity of DCGI certificate from opposite party no.3. In response to the same, on 10.06.2014, opposite party no.3 submitted its reply to opposite party no.2 vide Annexure-H. Even on the date of opening of price bid by the opposite party no.2 on 15.07.2014, opposite party no.3 has no valid DCGI certificate. The minutes of meeting on opening of the offered price held in the conference hall of Health and Family Welfare Department does not indicate with regard to the production of valid DCGI certificate by the opposite party no.3. Thereby, opposite party no.3 having not satisfied the requirement of production of valid DCGI certificate, he had incurred a disqualification to be considered for both technical bid as well as financial bid. But, subsequently on 13.08.2014, the DCGI certificate of opposite party no.3 was renewed from 31.7.2013 to 31.07.2017 by the time such renewal was granted, opposite party no.3 had already incurred disqualification as per the terms and conditions of the tender document itself. But, on 10.10.2014, opposite party no.2 communicated opposite party no.3 regarding acceptance of price bid. It is urged by learned Addl. Govt. Advocate that by the time the technical bid as well as price bid was considered/opened, even though opposite party no.3 does not possess the valid DCGI certificate, subsequently by virtue of renewal thereof on 13.08.2014, from 31.07.2013 to 31.07.2017, he possessed a valid DCGI certificate and accordingly his price bid was accepted. Non-possession of DCGI certificate at the time of consideration of technical bid and price bid by opposite party no.3, may be an irregularity, but it cannot be construed as illegality. Subsequently, when renewal was granted, that irregularity has been rectified. Thereby, the authority have not committed any illegality in accepting the price bid of the opposite party no.3.

13. When the condition of the contract is clear or when the question is only purely of construction of an agreement and the intention has to be primarily gathered from the terms and conditions agreed upon by the parties. Therefore, the parties to the agreement has to act in terms of the conditions stipulated in the agreement itself. Any non-compliance and deviation thereof, cannot be construed that there is a valid agreement between the parties.

On the basis of the admitted facts, when the opposite party no.3 had no valid

DCGI certificate at the time of opening of technical bid and price bid, this Court is of the considered view that the contention raised that subsequent renewal made, cannot validate the invalid contract. Thereby, opposite party no.2 has acted in excess of its jurisdiction.

14. As per the advertisement Annexure-1, proposals were invited from reputed manufacturers or single authorised dealer/importer etc. The technical bid of the petitioner has been rejected on the ground that, as per the terms and conditions of the tender, bids should be from the principal manufacturer/sole distributors/agents in India, this was not fulfilled in the quoted document. But, the petitioner submitted the documents in support of the condition stipulated in the tender being a distributor, single/sole authorised distributor of GRIFOLS (erstwhile NOVARTIS Diagnostics), the same has not been considered by the technical committee. As it appears, the GRIFOLS owns the global rights of this product and is the sole licensee of the said blood screening product and, therefore, deemed to be the manufacturer. The letter dated 24.03.2014 of the petitioner to the Director, SBTC enclosing the letters of authority of GRIFOLS dated 12.03.2014 and 13.03.2014 and also attestation of GRIFOLS clearly indicates that the petitioner is an authorised distributor of GRIFOLS, who is the sole global licensee of the product.

15. The grounds further taken under Clause-(c) by technical evaluation committee that there was only one installation report for the system at AIIMS, New Delhi, but there was no supporting documents in the form of award contract, their proforma invoice/supply order and user report/customer feedback report for the system quoted in the tender. The petitioner furnishes a list of reputed institutions of the country having the product ID-NAT USER LIST in Annexure-6. On perusal of such document, it appears that most of the reputed and important hospitals of the country having in possession of the product of the present petitioner and more particularly the petitioner having offered the most suitable equipment of the latest version of 2012 on its installation, the authority could not have opted for an old installation of 2006. But in course of hearing it is stated that the opposite party no.3 has already installed its equipment of 2011 version.

16. The grounds of rejection of the technical bid of the petitioner, as mentioned in clauses-(d), (e) and (f) cannot sustain in view of the fact that the petitioner's equipment being of the latest version without testing the same or without examining the same or without giving any opportunity to the petitioner the conclusion arrived at by the technical committee seems there was non-application of mind and arbitrary exercise of powers.

17. If the brochures of the respective products of the petitioner vis-à-vis opposite party no.3 are examined, it would appear that the equipment provided by the petitioner is having some additional features. Since the Court is not a technical authority to evaluate the same, this Court expresses no opinion with regard to the assessment made by the technical committee. Such power of the

Court to test the suitability of the particular equipment is beyond the scope of judicial review and that is within the complete domain of the technical committee, which is the expert in the field. As such, this Court is refrained from making any comments thereon. But, certainly this Court has got jurisdiction in exercise of power of judicial review to enter into the contractual matters, when the authority acts arbitrarily at its sweet will and every activity of the authority must have public element in it and it must, therefore, be informed with reasons and guided by public interest and such activity will be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid. The authority cannot act arbitrarily even though the matter arises out of a contractual obligation.

18. In *Karnataka State Forest Industries Corporation v. Indian Rocks*, (2009) 1 SCC 150 : AIR 2009 SC 684, the Apex Court held that when action of the State is arbitrary or discriminatory and also violative of Article 14 of the Constitution, writ application is maintainable for enforcement of the terms of the contract.

19. In *Air India Ltd. v. Cochin International Airport Ltd. and others*, (2000) 2 SCC 617, the Apex Court held as follows:

"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 procedures 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. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

20. In *Jagdish Mandal v. State of Orissa and others*, (2007) 14 SCC 517, considering the scope of the Court to interfere in tender and contractual matters in exercise of powers of judicial review, the Apex Court held as follows :

(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"

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

21. Taking into consideration the law laid down by the Apex Court in *Air India Ltd.* (supra) as well as *Jagdish Mandal* (supra), this Court is conscious of the fact that its jurisdiction to interfere with the decision making process in exercise of powers under judicial review is very very limited in nature. But certainly this Court is of the considered view that when in a decision making process, there is arbitrary and unreasonable exercise of power, this Court has got jurisdiction to interfere with the same under Article 226 of the Constitution of India.

22. Applying the principles as enunciated by the Apex Court in the judgments discussed above, it appears that the technical committee, while taking a decision, has not given any opportunity to the petitioner to explain the shortcomings, which had been pointed out in declaring it as disqualified in the technical bid. This clearly indicates that the authorities have acted arbitrarily and unreasonably and, therefore, have violated Article 14 of the Constitution of India. Therefore, the writ application is maintainable for enforcement of terms of the contract.

23. If the conduct of the State opposite parties is taken into consideration, it would appear that the petitioner challenging such arbitrary and unreasonable action has approached this Court by filing the writ application on 14.11.2015. This Court issued notice considering there is a prima facie case in favour of the petitioner, calling upon the opposite parties to file their affidavits. When the matter is subjudice before this Court, even though no interim order was passed, the authorities have shown undue haste allowing opposite party no.3 to install its equipment, which has started functioning in June, 2016. This clearly indicates that during *lis pendens* the action has been taken by the opposite parties 1 and 2 by permitting opposite party no.3 to install its equipment, which is not permissible in law. The meaning of "*lis pendens*" has been mentioned in *P. Ramanatha Aiyar's Advanced Law Lexicon*, 4th Edition as follows:

"*Lis* means a suit, action, controversy, or dispute, and *lis pendens* means a pending suit. The doctrine denotes those principles and rules of law which define

and limit the operation of the common-law maxim *pendente lite nihil innovetur*, that is, pending the suit nothing should be changed."

24. In Wharton's Law Dictionary "*lis pendens*" has been defined as pending suit. "*Lis*" means a suit, action, controversy, or dispute, and dispute is a conflict or contest, while controversy is a disputed question, a suit at law; and the *pendens* of the *lis* is not disturbed in any manner affected by the fact of an appeal taken from one Court to another. The litigation or contest still goes on.

25. In *Nivarti Govind Ingale v. Ravangouda Bhimana Gouda Patil*, (1996) 8 SCALE 687 the Apex Court applying the doctrine of "*lis pendens*" held that in re-sale of property in suit during pendency of a suit of specific performance of contract, the subsequent purchaser is bound by the decree of specific performance of contract.

26. In *Raj Kumar v. Sardari Lal*, (2004) 2 SCC 601, the Apex Court came to hold that the doctrine of "*lis pendens*" expressed in the maxim *ut lite pendente nihil innovetur* (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Act. Though not brought on record the *lis pendens* transferee remains bound by the decree as he is treated in the eye of law as a representative in interest of the judgment-debtor.

27. In *Tek Chand v. Deep Chand*, (2005) 4 SCC 488, the Apex Court observed that the alienation of property during pendency of suit by a party would be hit by the doctrine of "*lis pendens*".

28. In *Sanjay Verma v. Manik Roy*, AIR 2007 SC 1332, the Apex Court held that the doctrine of "*lis pendens*" as envisaged in Section 52 of the Act is based on equity, good conscience and justice because it will be impossible to bring an action or suit to a successful termination if alienation's are permitted to prevail. A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit.

29. In *Guruswamy Nadar v. P. Lakshmi Ammal*, (2008) 5 SCC 796 it has been held by the Apex Court that the doctrine of "*lis pendens*" would be applicable in a case where second sale of the property had taken place after the filing of the suit for specific performance of the contract.

30. Considering the above principles laid down, so far as "*lis pendens*" is concerned, when the matter was sub-judice before this Court for consideration allowing opposite party no. 3 to install its equipment is hit by doctrine of "*lis pendens*".

31. Since opposite party no.3 has already installed its equipments pursuant to the work order issued in Annexure-9 and it is for the public good, though the petitioner has got the latest version and it satisfies the requirements of tender conditions and otherwise eligible to install the same, applying the principle of equity, this Court thinks it just and proper to allow opposite party no.3 to continue till the end of October, 2016 and opposite parties 1 and 2 are directed

to reconsider the tender documents submitted by the petitioner vis-à-vis opposite party no.3 afresh and allow the petitioner to participate in the financial bid and taking into consideration the latest version of the petitioner's equipment by affording opportunity to re-assess the tender documents both technical and financial bids in conformity with the conditions stipulated in tender documents and the entire exercise shall be completed as expeditiously as possible, but not later than October, 2016.

32. With the above observations and directions, the writ petition stands disposed of.