
(2011) 09 GAU CK 0073
In the Gauhati High Court

Indian Instruments Manufacturing Company	APPELLANT
Vs	
State of Mizoram, represented by the Commissioner & Secretary to the Govt.of Mizoram	RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Citation : (2011) 09 GAU CK 0073

Hon'ble Judges : B.D.Agarwal, J

Bench : Single Bench

Advocate : Advocates for the petitioner : Sri Michael Zothankhuma, Sr. Advocate, Sri I Choudhury, Sri R M Deka, Sri N J Khataniar, Sri Lalfakawma, Ms Zonuni Hrahse, Advocates for the respondents: Sri Nelson Sailo, Addl. AG, Mizoram (for R. 1 to 6), Sri C Lalramzauva, Sr. Advocate, Sri T J Lalnuntluanga, Sri A R Malhotra, Sri A Sharma, Sri C Zoramchhana (for R. 8), Advocates appearing for Parties

Judgement

1. The petitioner, herein, is challenging the legality and validity of the Notification dated 30.03.2011, issued by the Health and Family Welfare Department, Government of Mizoram, inviting tenders for supply of laboratory chemicals and reagents by way of "Restricted Tender Notice".
2. The aforesaid NIT has been circulated only to limited number of firms, precisely to respondent Nos. 7, 8, 9 and 10.
3. Heard Sri Michael Zothankhuma, learned Senior Counsel for the petitioner and Sri Nelson Sailo, learned Additional Advocate General, appearing on behalf of the State respondents. Also heard C Lalramzauva, learned Senior Counsel, appearing on behalf of respondent No. 8. Other private respondents being 7, 9 and 10, have not yet appeared to contest the writ petition. I have gone through the pleadings of both the parties and the documents annexed with the respective pleadings.
4. The writ petitioner's case in brief is that although he was selected for supply of medicines by the Government of Mizoram for several orders he has been

debarred from participating in the NIT (Restricted Tender Notice) and this being without any justification the petitioner has been discriminated. The learned counsel for the petitioner submitted that initially, an open tender notice was issued on 26.11.2010, for supply of medicines in the Health and Family Welfare Department in 4 (four) parts. As per the said NIT, the tenders were to be opened on 14.01.2011. However, keeping the tenders pending for settlement, the department cancelled the tender for Part IV items on 13.12.2010 and thereafter, the impugned NIT has been issued. According to the learned counsel, the impugned NIT is violative of Rule 151 of the General Financial Rules.

5. On the other hand, learned Additional Advocate General submitted that the department had to segregate the medicine items from laboratory chemicals and reagents as the rate contract for medicines is quite bulky. The learned Additional Advocate General further submitted that Rule 151 of the General Financial Rules permits the Government to make purchases by way of restricted tenders and as such, there is no illegality in issuing the impugned NIT.

6. Sri Lalramzauva, learned Senior Counsel, appearing for respondent No. 8, submitted that in an identical manner, the same department had also issued restricted NIT in the month of November 2010, wherein, the writ petitioner was also given opportunity to submit his tender and since the writ petitioner was a beneficiary of the said restricted tender notice, the said firm cannot now challenge the Restricted Tender Notice (NIT dated 30.03.2011).

7. Since the State respondents' case is that the impugned NIT has been issued in exercise of the discretion conferred upon the Government under Rule 151 of the General Financial Rules the said Rule is necessary to be looked into in detail. Hence, Rule 151 is extracted below in extenso :

?Rule 151. Limited Tender Enquiry (i) This method may be adopted when estimated value of the goods to be procured is up to Rupees Twentyfive Lakhs. Copies of the bidding document should be sent directly by speed post/registered post/courier/email to firms which are borne on the list of registered suppliers for the goods in question as referred under Rule 142 above. The number of supplier firms in Limited Tender Enquiry should be more than three. Further, webbased publicity should be given for limited tenders. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.

(ii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twentyfive Lakhs in the following circumstances:

(a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

(b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods though advertised tender enquiry.

(c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped, is remote.

(iii) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.?

8. A bare perusal of Rule 151 would indicate that before resorting to discretionary power to purchase goods by way of limited tender enquiry certain preconditions have to be fulfilled. Basically, the preconditions are that (i) the procurement should be upto Rupees TwentyFive Lakhs; (ii) minimum 3 (three) firms should participate in the process; (iii) the firms, from whom tenders are invited should be under the list of "registered suppliers" for the goods in question as referred under Rule 142; (iv) if the purchase is more than Rs. TwentyFive Lakhs; the department should justify the urgency and the additional expenditure which may be borne due to short notice purchase; and (v) reasons for short tender purchases should be recorded in writing by the competent authority.

9. In the case before me, none of the aforesaid preconditions has been fulfilled. There is no averment in the affidavit of the State respondents that the value of the goods/items covered under PartIV would be less than Rupees TwentyFive Lakhs. During the course of hearing, the learned Additional Advocate General admitted that the value of the goods may be or may not be below Rupees TwentyFive Lakhs. The learned Additional Advocate General further admitted that there is no list of "registered suppliers". In fact, the affidavit is also silent in this regard and no list of registered suppliers for the goods covered under the NIT has also been annexed with the affidavit. Besides this, no record was placed by the State respondents to show that there was any urgent need of the laboratory chemicals and reagents. In my considered opinion, the items covered under PartIV may not be required by the Health Department urgently. Had it been so, the impugned NIT would have indicated that the goods have to be supplied within a stipulated period. Contrary to that, the impugned NIT indicates that there is no time limit for supply of the items. On the other hand, Clauses 13 and 14 of the NIT indicate that the offers shall remain valid for a period of 12 (twelve) months. This condition of the NIT thoroughly dilutes the spirit of Rule 151.

10. With regard to the submissions of the learned counsel for the respondent No. 1 that the writ petitioner is estopped from challenging the Restricted Tender Notice, since it itself had availed such benefit against other NIT of identical nature, I am of the view that the contention is untenable in law. In my considered opinion, if the previous NIT was also against the rules any intending tenderer could have challenged the same. However, that cannot be a ground to

prevent the writ petitioner from assailing the impugned NIT. In this regard, the learned counsel for the writ petitioner submitted that the previous Restricted Tender Notice, issued in the month of November 2010, was finally not acted upon by the Government.

11. For the foregoing reasons, the impugned Restricted Tender Notice dated 30.03.2011, is hereby quashed. The State respondents are directed to purchase the goods, covered in PartIV of the original NIT, by way of open tenders.

12. The other prayer of the writ petitioner is that a writ in the nature of mandamus should be issued to the State respondents to finalise the tenders, received by the Health Department, pursuant to NIT No.B.16014/7/2010HFW, dated 26.11.2010, immediately. According to the learned counsel, the State respondents have postponed the finalization of the tenders without any justifiable grounds. According to the learned counsel, under the garb of issuing fresh NIT for PartIV items, the State respondents may eventually cancel the original NIT dated 26.11.2010.

13. In Para 17 of the affidavit of the State respondents, it has been stated that the State Purchase Advisory Board is scheduled to finalize the tenders in its meeting on 19.07.2011. It is also apparent from the averments made in the writ petition that the Government is purchasing medicines on adhoc basis since 2009 and as such it is necessary to purchase medicines by way of regular supply orders. Purchase of medicines and other items through contract orders on permanent basis would not only save Government money, the citizens would also not suffer from any shortage of medicines and other instruments in Government Hospitals. Hence, the State respondents (respondent Nos. 1 to 6) are directed to finalize the tenders for Part I, II and III items immediately, preferably within a period of one month from the date of receipt of a copy of this judgment. It is made clear that quashing of the impugned NIT for Part IV items shall not be taken as an instrument to cancel the NIT dated 26.11.2011 for Part I, II and II items. The State respondents are further directed to issue fresh open NIT for Part IV items immediately.

14. With the aforesaid directions, this writ petition stands allowed.