

(2020) 06 MAN CK 0002

In the Manipur High Court

Case No : Writ Petition (c) No. 252, 272 Of 2020

M/S Aasray Concept Foods

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 17-06-2020

Acts Referred:

General Financial Rules, 2017 — Rule 164(iv), 144(viii)
Constitution Of India, 1950 — Article 19(1)(a), 226

Citation : (2020) 06 MAN CK 0002

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : B.P.Sahu, S. Nepolean, H.S.Paonam, M. Gunedhor

Judgement

[1] Heard Shri B.P.Sahu, learned Senior Advocate appearing for the petitioner while Shri S. Nepolean, learned GA for the State respondents, Shri H.S. Paonam, learned Senior Advocate for respondent No. 3 and Mr. M. Gunedhor, learned Advocate for respondent No. 4.

[2] The above two writ petitions have arisen out of a set of similar facts and therefore the same are being disposed of by this common judgment and order.

[3] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the orders/ letters dated 09.04.2020 issued by the State respondents and also to direct the respondents to float a fresh tender as per corrigendum dated 21.06.2019 with the amended provisions of RFP dated 29.05.2019 by quashing and setting aside the tender process.

[4] The petitioner is in the business of manufacturing Micronutrient Fortified Energy Dense Food, Baby Powder and has executed many supply works of Micronutrient Fortified Energy Dense Food in various departments of the Government of Assam during the last many years.

[5.1] Facts and circumstances as narrated in the writ petition, are that the

Director, Social Welfare, Government of Manipur issued a Tender Notice dated 29-05-2019 inviting bids from competent and eligible manufacturers having requisite infrastructure, plant and machineries, technical expertise and engaged in manufacturing of Micronutrient Blended Energy Dense Food in accordance with the guidelines issued by the Government of India and it was followed by a Request For Proposal (hereinafter referred to as "the RFP") dated 29.05.2019 containing the terms and conditions thereof. The last date for submission of bids was fixed at 3:00 pm of 25.06.2019, while the time of opening of Technical bids was fixed at 3:30 pm of the same day.

[5.2] The said RFP contained many clauses which did not follow the guidelines of the Central Vigilance Commission (CVC) and the Government of India. Being aggrieved by the RFP dated 29-05-2019, the petitioner filed a writ petition being WP(C) No.499/2019 praying for quashing it. When it was listed on 19.06.2019, this Court was pleased to direct that the matter be listed on 26.06.2019 with a further direction that the respondents should not open the Technical bids till 26.06.2019.

[5.3] During the pendency of the said writ petition, the Director, Social Welfare, Government of Manipur issued two corrigenda dated 21.06.2019 making certain amendments in various clauses of the RFP and since the prayer of the petitioner had been granted by the State respondents, the last date of submission of tender was fixed at 3:00 pm on 04.07.2019 and the time of opening Technical bids at 3:30 pm of the same day. When the said writ petition was listed on 26.06.2019 as directed by this Court, the said writ petition was withdrawn with a liberty to file a fresh petition, if so advised. After the disposal of the said writ petition, the State respondents further modified para 4(i) of the RFP. The petitioner submitted a representation dated 01.07.2019 to the Director of Social Welfare, Government of Manipur regarding the clarification of the last 3 financial years as contained in the corrigendum dated 29.06.2019 with a request to make certain changes therein and to extend time for submission of the bids by a week, followed by another representation dated 06.02.2020 requesting it to furnish the status of the tender process.

[5.4] The petitioner learnt that the contracts had been awarded to M/S Rausheena Udyog Private Ltd., Guwahati, Assam and M/S Continental Milkose Private Ltd., Noida, Uttar Pradesh, the respondent Nos.3 & 4 respectively herein vide orders/ letters dated 09.04.2020 without following due procedure and assigning any reason whatsoever and by issuing a back dated order which came to the knowledge of the petitioner only in the 3rd week of May, 2020. Being aggrieved by the said orders/ letters dated 09.04.2020, the instant writ petition was filed by the petitioner contending inter-alia that the contracts were awarded to the said private respondents in a completely arbitrary manner with a malafide intention and without finalizing the tender floated for the said purpose and with an intention to favour them. The online portal for the e-tender system continued to display the status of the said tender as open and that no final decision had

been taken by the Social Welfare department, Government till 21.05.2020, although the contracts had already been awarded vide orders/ letters dated 09.04.2020 to the private respondents which was a testimony to the fact that the said action had been taken in a most illegal manner; that the guidelines of the Central Vigilance Commission dated 09.07.2003 which laid down that the acceptance/ rejection of any bid should not be official, had not been followed and that the action of the State respondents awarding the contracts to the private respondents was illegal, unlawful and arbitrary.

[5.5] An additional affidavit was filed on 03.06.2020 by the petitioner contending that since the petitioner was unable to file all the documents along with the writ petition due to page limitation, the same were being filed along with it. It has been stated in the additional affidavit that the said documents included the tender documents dated 29.05.2019; the notification dated 06.01.2020 by which the proceedings of the Tender Opening and Evaluation Committee meetings were sent to the Administrative Department for approval of the Government and the tender status as on 03-06-2020 shown in the official website of the State respondents.

[6.1] An affidavit-in-opposition was filed on behalf of the respondent Nos.1 & 2 denying the allegations made in the writ petition except those which are admitted by them specifically. Denying the allegation that RFP did not follow guidelines of the Central Vigilance Commission and the Government of India, it has been stated that the tender process was carried out in accordance with the prevailing norms and that there was no violation of any norm or guidelines. The amendments in para 4 of the RFP were made after a representation submitted by the petitioner being considered by them. The corrigendum dated 29.06.2019 was necessitated as the State Government felt that the annual turnover of, at least, the last three financial years was required to assess the stability of a company. After the request being accepted by the State respondents, the corrigendum dated 03.07.2019 was issued by the Director (Social Welfare), Government of Manipur which was followed by another representation dated 16.07.2019 requesting for inclusion of the financial year, 2018-2019 while considering the annual turnover of the company during the last three financial years. As regards the representation dated 06.02.2020, the information as prayed for by the petitioner could not be furnished due to pending approval of the Higher Tender Committee to the proceedings of the Tender Opening and Evaluation Committee. There was no question of back dating the supply order issued to the successful bidders. The information on the issue relating to supply order being issued to the successful bidder reached the petitioner in a later date because a copy of supply order is normally not endorsed to the unsuccessful bidder. The meeting of the Higher Tender Committee (HTC) was held on 07.04.2020 and its approval was conveyed to the Director (Social Welfare), Government of Manipur vide a letter dated 08.04.2020 and accordingly, the supply orders were issued on 09.04.2020. No tender norm was violated during the entire process of tender. The Technical bids evaluation and the financial bids evaluation were done as per norm by a

Committee constituted by the State Government for the purpose. The proceedings of the tender opening and evaluation committee were placed before the Higher Tender Committee and the supply orders were issued only after the approval of the HTC being conveyed by the Government.

[6.2] The Technical bids were opened on 03.09.2019 at 3:30 pm in the presence of the representatives of all the bidders including the representative of the petitioner. Pursuant to a representation dated 30.11.2019, a meeting was convened on 04.12.2019 to consider the representation of the petitioner in the presence of the other bidders. During the meeting, the representative of the petitioner claimed that some of their bid documents were not evaluated. Their claim could not be verified without reverting the e-tender process as the documents were not visible on the portal. So, it was decided that the approval of the Government would be sought to revert the technical evaluation so that the documents submitted by the petitioner online could be downloaded afresh to verify its claim. The State Government conveyed approval for reverting the technical evaluation and a necessary order was issued by the Director (Social Welfare), Government of Manipur on 18.12.2019. During the course of reverting the bids and re-downloading the documents submitted online by the petitioner on 21.12.2019 at 10:30 am, the representatives of the petitioner were present and therefore, there was no question of violation of the procedure set by law.

[6.3] Since the lockdown was imposed in the country with effect from 25.03.2020, the Department of Social Welfare was busy in planning as regards the opening of dedicated quarantine centres and could not upload the final result of the tender on the e-tender portal in time. When the Department realized that the final result of the tender was yet to be uploaded on the e-tender portal, the digital signatures (DSC) of Joint Director (Social Welfare) and Joint Director (ICDS) were found to be invalid. Their digital signatures were subsequently re-validated and the tender process was completed on 04.06.2020. On getting the digital signature of the DSC being re-validated, the e-tender process was closed on the portal after uploading the necessary documents. It has further been stated that the petitioner was not qualified in the technical bid as its annual turnover for the financial year 2017-2018 was less than Rs.10 crore and therefore, the petitioner had no right to question the final result of the tender process.

[7] In the affidavit filed on behalf of the respondent No.4, it has been stated that the petitioner has not come before this Court with clean hands and therefore, the writ petition is liable to be dismissed by this Court. The petitioner has not given the details of the representation dated 01-07-2019 nor has it filed a copy thereof along with the writ petition. In its representation dated 06-02-2020, since it has been stated that the petitioner knew from the Department that its technical bid had been rejected, the petitioner cannot now come to this Court contending that the petitioner was not communicated about the rejection of its technical bid. The petitioner was aware of each and every facts of the procedure being followed by

the Department. From the Notification dated 06-01-2020, it is evident that the technical bid of the petitioner was re-evaluated by the Committee on 21-12-2019 and thereafter, the proceedings were sent to the Government for approval. Since the petitioner was aware of the reasons for rejection of its technical bid, there was no relevancy whatsoever, even if the tender status continued to be shown as open. The failure to communicate the reasons for rejection of the tender cannot result in the consequence of the tender itself being set aside. The writ petition has been filed with an ulterior motive based on misconception and misrepresentation of facts. The private respondents have already gone ahead to fulfill their contractual obligations by making delivery of the food materials to the Department meant for use by the children and the pregnant women & lactating mothers. The prayers made in the writ petition are not tenable with the result that the writ petition is liable to be dismissed with heavy costs.

[8] On 04-06-2020 when the instant writ petition was listed for consideration, this Court observed that the only issue involved herein was as to what would be the consequence in the event of the approval as well as the result of the proceedings not being intimated to the petitioner and not being uploaded in the official website. On 05-06-2020 this Court while issuing notice to the respondents, ordered that the writ petition be disposed of on 09-06-2020 and that in the meantime, the parties were permitted to file their documents. However, on 09-06-2020, Shri M. Gunadhor, learned counsel appearing for the respondent No.4 submitted that he had filed the counter to which Shri HS Paonam, learned Senior Advocate appearing for the respondent No.3 submitted that he would rely upon the counter filed by the respondent No.4. Some time was granted to the Government Advocate and the counsel appearing for the petitioner to file their respective counter and rejoinder affidavit.

[9] In the meantime, the petitioner filed the instant writ petition praying for issuing a writ of certiorari to quash and set aside the proceedings dated 21-12-2019 as well as the tender summary reports dated 05-06-2020 and 08-06-2020 and also to quash and set aside the tender process with a direction to the State respondents to float a fresh tender. In addition thereto, the validity and correctness of the orders/ letters dated 09-04-2020 are also being questioned as has been done in the WP(C) No.252 of 2020. On 12-06-2020 when this writ petition was listed, this Court issued notice to the respondents but since the learned counsels did accept the notices, no formal notice was called for. Both the writ petitions were directed to be listed on 16-06-2020 for consideration of interim prayer with the further direction that till then, the status quo as of that day be maintained by all concerned.

[10] Counter affidavit on behalf of the respondent No.4 was filed on 16-06-2020. The stand taken by the respondent No.4 herein is similar to that of the one taken by it in WP(C) No.252 of 2020 and therefore, the details thereof are not repeated here for the sake of brevity and in addition thereto, it has been submitted that the allegation that no reason was given for rejection of the petitioner's technical

bid was denied and that the technical bid of the petitioner was re-evaluated on 21-12-2019 in the presence of the representatives of the petitioner who was aware of the rejection of its technical bid as is evident from its representation dated 06-02-2020. On 19-06-2020, these matters could not be taken for consideration for want of time and on 07-07-2020, they were not considered on the prayer that the counsel appearing for the respondent No.3 was on his legs in another Court.

[11.1] It has been submitted by Shri B.P. Sahu, learned Senior Advocate appearing for the petitioner that the technical bid of the petitioner was rejected without assigning any reason thereof which was uploaded only on 05-06-2020 and 08-06-2020; that the rejection of its technical bid was not communicated nor was it uploaded in the official website violating the provisions contained in the Manual for Procurement of Goods 2017 and the General Financial Rules, 2017; that non-uploading of the result of the proceedings of the Committee was in gross violation of the Notification dated 06-01-2020 issued by the State respondents and the issuance of the work orders/ letters dated 09-04-2020 in favour of the private respondents was arbitrary, malafide and illegal for the reasons that they were issued during the lockdown period violating the order of curfew; that they could not have been issued on 09-04-2020, when they were uploaded only on 06-06-2020; that they could not have been issued on 09-04-2020 because as per the tender summary report uploaded on 05-06-2020 and 08-06-2020, the date of opening financial bids was shown as 05-06-2020 and that the work orders/ letters dated 09-04-2020 were illegal being violative of the RFP because both the private respondents were awarded the contract. The fact that the petitioner had the knowledge about the rejection of its technical bid, cannot supplant the statutory requirement that the result of the technical bids and the reasons for rejection should be communicated and in other words, the State respondents cannot take the plea that they need not communicate the result and the reasons for rejection because the petitioner's bid had been rejected or it had the knowledge about it. In order to substantiate his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in (1981) 1 SCC 722, *Ajay Hasia Vs. Khalid Mujib Sehravardi*; (2001) 2 SCC 451, *W.B State Electricity Board Vs. Patel Engineering Co*; (2011) 8 SCC 737, *State of Tamil Nadu & ors Vs. K. Shyam Sunder & ors*; (2016) 8 SCC 622, *Central Coalfields Limited & ors Vs. SLL-SML & ors*; (2018) 12 SCC 790, *Haffkine Bio-Pharmaceutical Corporation Ltd Vs. M/S Nirlac Chemicals*; (2003) 7 SCC 219, *Rajesh D. Darbar Vs. Narasingrao Krishnaji Kulkarni*; (1994) 4 SCC 422, *Krishnan Lal Vs. state of J & K* and (1979) 3 SCC 489, *Ramana Dayanan Dayaram Vs. International Airport Authority of India & ors*.

[11.2] Combating the submissions of the counsel appearing for the petitioner, it has been submitted by the Shri S. Nepolen, learned Government Advocate that the technical bids were opened on 03-09-2019 and the Tender Evaluation Committee found the private respondents technically qualified and when the financial bides were opened on 29-11-2019, both of them were found to be

responsive. The petitioner submitted a representation dated 30-11-2019 for requisitioning the checklist for technical evaluation of the tender. The Tender Evaluation Committee, after the technical bids being reverted with the approval of the Government, re-downloaded the documents submitted by the petitioner on 21-12-2019 in the presence of its representatives and re-examined the technical bids. The technical bids of the private respondents were found to be technically qualified, while that of the petitioner was found technically not qualified for the reason that the turnover for the financial year, 2017-2018 was less than the mandatory requirement of Rs.10 crore. The petitioner submitted a representation dated 15-01-2020 to the Chief Secretary, Manipur, followed by a representation dated 16-01-2020 because of which the Director (Social Welfare) was directed to examine them. Another representation dated 21-01-2020 was submitted to the Principal Secretary (SW), Manipur. The Tender Evaluation Committee considered the petitioner's representations but to no effect. It has further been submitted that the fact that the petitioner submitted series of representations, had shown that it knew that it would be technically disqualified. As per the Notification dated 06-04-2020, the Higher Tender Committee's meeting was held on 07-04-2020 and its proceedings were approved by the Government and consequently, the Director (SW), Government issued the supply orders/ letters dated 09-04-2020. There was no question of backdating the supply order issued to the successful bidders, copies of which reached the petitioner at a later date because a copy of such supply order is not normally endorsed to the unsuccessful bidder. During the lockdown due to COVID-19, the Social Welfare Department was busy in planning for opening quarantine centres and the final outcome of the tender could not be uploaded due to lack of supporting staff, excessive workload, restriction of free movement etc. When the Department realized that the final result was yet to be uploaded, the digital signatures of the Joint Director (SW) and Joint Director (ICDS) were found to be invalid and therefore, the final result could be uploaded only on 05-06-2020 and 06-06-2020 after the same being re-validated. In support of his contention, he has relied upon the judgment and order dated 06-03-2020 passed by this Court in WP(C) No. 974 of 2019 and two others.

[11.3] The submissions of the learned counsels appearing for the respondent No.3 & 4 are similar to that of the State respondents and it has been submitted by Shri H.S Paonam, learned Senior Advocate appearing for the respondent No.3 that by virtue of the Notification dated 06-01-2020, the technical bid of the petitioner was re-evaluated on 21-12-2019 on the request made by it and the proceedings were sent to the Administrative Department for approval of the Government. Even if the ground of rejection was not communicated to the petitioner, that by itself was not sufficient to quash the tender process because the petitioner was fully aware of the reasons for rejection, as is evident from its representation dated 06-02-2020. It has further been submitted that merely because the reason for rejection of tender was not intimated/ communicated to the petitioner, it was not sufficient to allege arbitrariness or malafide on the part

of the respondent No.2 as has been held by the Hon'ble Supreme Court that the existence of reasons was a requirement of natural justice whereas the need to communicate those reasons to the aggrieved party would depend upon the specific dictate of some stipulation, conditions of law, for which he has relied upon the decisions of the Hon'ble Supreme Court rendered in (1991) 1 SCC 212, Kumari Shrilekha Vidyarthi & ors. Vs. State of Uttar Pradesh & ors; 166 (2010) DLT 402 (DB), Era Infra Engineering Vs. DDA & ors and AIR 1998 BOM 166, Nagesh M. Daivajna & etc. Vs. State of Goa & ors. It has also been submitted that by virtue of the Notification dated 06-01-2020, the information with regard to re-evaluation of technical bid of the petitioner by the Committee, was conveyed and the proceedings thereof were sent to the Administrative Department for approval of the Government and therefore, there was no relevancy, if the proceedings of the tender and other information were not uploaded by the State respondents in their website till 05-06-2020, when the petitioner was already aware that its tender had been rejected. In such a writ petition filed by an unsuccessful bidder, the limited question to be considered by the Court is as to whether the process adopted or decision made by the authority was malafide, arbitrary, irrational or was intended to favour someone and whether public interest was affected. If the answers are in the negative, there should be no interference under Article 226 of the Constitution of India, for which he has relied upon the decisions of the Hon'ble rendered in (2007) 14 SCC 517, Jagdish Mandal Vs. State of Orissa; (2012) 8 SCC 216, M/S Michigan Rubber (I) Ltd Vs. State of Karnataka & ors and (1994) 6 SCC 65, Tata Cellular Vs. Union of India. No submission was made by the counsel appearing for the respondent No.4, as he had relied upon the submissions made on behalf of the respondent No.3.

[12] From the aforesaid pleadings, two issues have arisen for consideration by this Court and they are:

(a) Whether the Tender Evaluation Committee, in its proceedings of the meeting held on 21-12-2019, has rejected the technical bid of the petitioner without assigning any reason as alleged by the petitioner ?

(b) Whether the fact that the rejection of its technical bid was not communicated to the petitioner nor was it uploaded in the official website, has violated the provisions contained in the Manual for Procurement of Goods 2017 and the General Financial Rules, 2017 and in particular, the provisions relating to the requirement of the information to be furnished or uploaded in the website ? If yes, whether the process of tender is liable to be quashed and set aside ?

[13] As regards the first issue, the case of the petitioner is that no reasons have been assigned by the Tender Evaluation Committee in its proceedings dated 21-12-2019 for rejecting the technical bid of the petitioner which has been denied by the State respondents. It is not in dispute that the technical bids were re-evaluated on 21-12-2019 after the same being reverted on the request of the petitioner and that too, with the approval of the Government, as is evident from

the Notification dated 06-01-2020 of the Director (Social Welfare), Government of Manipur. It has been stated in the said notification that the proceedings of the Tender Opening and Evaluation Committee had been sent to the Administrative Department for approval by the Government and that the result thereof would be uploaded, once the approval was conveyed. On perusal of the proceedings dated 21-12-2019, it is seen that the reasons for rejecting the technical bid of the petitioner are nowhere stated therein. But it is stated in the said proceedings that the check lists of the documents submitted by the bidders were enclosed therewith as Annexure-A, B, C, D and E for reference which formed part of the said proceedings. A copy of the Annexure-B which pertains to the documents submitted by the petitioner, has been placed on record and on perusal thereof, it is further seen that the requirement of turnover of Rs.10 crore was not met by the petitioner. The remarks as given against the paragraph 13 of the said check list read as under:

"A) Issued by Joint Director (SW) Assam

- 1) Completion Certificate dated 30.09.2016 includes supply order dated 10.12.2016 which is contradictory.
- 2) Proposed to be included in F.Y. 2015-16, actually should be in F.Y. 2016-17.
- 3) Turnover for F.Y. 2015-16 is less than 10 crores.
- 4) Supply Order dated 10.12.2016 amounting to Rs. 5.89 crore should be accounted in F.Y. 2016-17 (wrongly included in F.Y. 2015-16)

B) Completion Certificate dated 05.12.2018 issued by Director/WCB, Arunachal Pradesh

- 1) Two supply orders dated 27.03.2016, one included in FY, 2015-16 & another included in FY, 2016-17
- 2) Two supply orders dated 31.03.2016 are included in FY 2015-16 & another in FY, 2016-17
- 3) As per the Certificate for supply dated 05.12.2018 signed by Director, Deptt. of Women & Child Development, Govt. of Arunachal Pradesh, two supply orders claiming to be for the FY 2017-18 are dated 07.04.2018. The total amount involved under the two supply orders is Rs. 3,17,18,075/- inclusion of these supply orders and accounting it under 2017-18 is incorrect considering that the supply orders relates to 2018-19. Further, it is inappropriate to include turnover for supplies made in a given year i.e., 2018-19 in the turnover of the preceding year, 2017-18. Therefore, the turnover for 2017-18 as indicated in the certificate for supplies dated 05.12.2018 is incorrect and cannot be included in the turnover for 2017-18. Considering this, the requirement of turnover of Rs. 10 crore for 2017-18 is not met by the firm."

Since the check list did form part of the proceedings, it cannot be said that the reasons have not been assigned therein for rejecting the technical bid of the

petitioner and therefore, the contention of the learned counsel appearing for the petitioner has no merit and substance and cannot be countenanced by this Court. Moreover, pursuant to the letter dated 20-01-2020 of the State Government, the Tender Evaluation Committee held its meeting on 29-01-2020 to consider the representations of the petitioner in the light of the information/ documents uploaded by the petitioner. After having examined them by the Committee, many discrepancies were detected in the information/ documents uploaded by the petitioner. The Committee came to the conclusion that the claim of the petitioner for fulfilling the minimum turnover of Rs.10 crore in each of the last three financial years, was not supported by the relevant documents and hence, the petitioner's claim was not acceptable to it. The representations of the petitioner as referred to in the Government letter dated 20-01-2020 and considered by the Tender Evaluation Committee in its meeting held on 29-01-2020 are nothing but the representations dated 15-01-2020 and 16-01-2020 as is evident from the proceedings dated 07-04-2020 of the Higher Tender Committee. The representation dated 15-01-2020 is the one addressed to the Chief Secretary, Manipur praying for re-consideration of the petitioner's technical bid.

[14.1] So far as the second issue is concerned, it has been submitted by the counsel appearing for the petitioner that being aggrieved by the proceedings dated 29-11-2019 of the Tender Evaluation Committee, a writ petition being WP(C) No.990 of 2019 was filed by the petitioner. During the pendency of the writ petition, a Notification dated 06-01-2020 was issued by the Director (Social Welfare), Government of Manipur informing that the technical bids were re-opened on 21-12-2019 and were re-evaluated by the Committee. Having knowledge about this letter, the said writ petition was withdrawn by the petitioner. Even after the expiry of about a month from 06-01-2020, the petitioner did not receive any information about the outcome of the said re-evaluation but the petitioner came to know from the reliable sources that its bid had been rejected by the Committee. In order to know the status of its technical bid, the petitioner submitted a representation dated 06-02-2020 to the Director (Social Welfare), Government of Manipur. No information about the contents of the proceedings was given to the petitioner nor was it uploaded in the website. On the contrary, the petitioner came to know in the third week of May, 2020 that the contracts had already been awarded to the private respondents vide orders/ letters dated 09-04-2020 which are under challenge in the first writ petition by the petitioner contending that they were issued without following due process of law and with a malafide intention to favour the private respondents. In order to substantiate his argument, he has relied upon the guidelines issued by the Government of India as well as that of the Central Vigilance Commission. The Government of India issued a manual known as Manual for Procurement of Goods, 2017 wherein clause i) provides for principles of transparency relating to procurement of goods. Clause 4.13.4 (v) provides for declaration of successful bidders with the requirement of informing the failed bidders. If any bidder is aggrieved by the procurement process, the bidder shall be permitted to submit a

representation in writing and on receipt thereof, a decision shall be taken either to withhold the opening of financial bids or give a reply expeditiously. Clause 3.0 of the Appendix 3 provides for a process to be handled either fully online/ emails/ SMS etc. or partly online and partly offline. Rule 144 (viii) provides that at every stage of procurement, the procuring authority must place on record, in precise terms, the consideration which weighed with it while taking the procurement decision. Rule 164 (iv) provides that suitable provision should be kept in the bidding documents to enable a bidder to question the bidding conditions, bidding process and /or the rejection of its bid. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder. The Central Vigilance Commission, Government of India also issued certain guidelines in respect of the common irregularities/ lapses observed in award of contracts for improvement thereof. Clause 12 emphasizes the need of opening tenders in the presence of the bidder's representatives. In one of the orders dated 10-12-2004, it has been stated by the CVC that the intimation of rejection to the firms whose bids have been evaluated but found not to meet the qualification criteria, along with the return of the unopened price bid, will enhance transparency and plug the loop-holes in the tendering system.

[14.2] The stand of the State respondents was that the information as sought for by the petitioner vide its representation dated 06-02-2020 regarding the status of the petitioner's bid, could not be furnished to the petitioner due to pending approval of the Higher Tender Committee on the proceedings of the Tender Evaluation Committee. In reply to the contention of the petitioner that even after the orders/ letters dated 09-04-2020 being issued in favour of the private respondents, the petitioner was not informed nor was the information uploaded in the website and it was uploaded only after the filing of the first writ petition, it has been stated by the State respondents that after the imposition of the lockdown, there was a complete standstill in almost all the offices except those classified as essential services. Only 4-5 officers of the Directorate of Social Welfare used to attend office to look after urgent matters and on top of that, the Department was busy in trying to arrange safe place for homeless drug users, lactating mothers etc and in planning for opening a dedicated quarantine centre for transgender who need to be quarantined on their return from other States to Manipur. When the State Government conveyed the decision of the Higher Tender Committee, the Department considered it necessary to place the supply order immediately in public interest. Therefore, the Department could not upload the outcome of the tender on the e-tender portal in time due to lack of supporting staff, excessive workload, restriction on free movement due to lockdown etc. When the Department realized that the final result was yet to be uploaded, the digital signature of the Joint Director (Social Welfare) and Joint Director (ICDS) were found to be invalid and after their signature being re-validated, the e-tender portal was updated on 05-06-2020.

[15] In a democratic country like ours, the sharing of information is paramount

as seen from the statement of objects and reasons, the preamble and relevant provisions of the Right to Information Act, 2005. In this regard, it will be useful to refer to some of the decisions rendered by the Hon'ble Supreme Court. In *State of Uttar Pradesh Vs. Raj Narain*, (1975) 4 SCC 428 the Hon'ble Supreme Court observed -

"74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security...

In *Dinesh Trivedi vs. Union of India*, (1997) 4 SCC 306, the Hon'ble Supreme Court held -

"16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute...

17. Implicit in this assertion is the proposition that in transaction which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.

19. What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But is equally important to be alive to the dangers that lie ahead. It is important to realized that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyze the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.

In *People's Union for Civil Liberties Vs. Union of India*, (2004) 2 SCC 476, the Hon'ble Supreme Court held that right of information is a facet of the freedom of "Speech and expression" as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.

The above decisions have been referred to and relied by the Hon'ble Supreme Court in *Central Board of Secondary Education & ors. Vs. Aditya Bandopadhyay & ors.* (2011) 8 SCC 497.

[16] In spite of the fact that the Notification dated 06-01-2020 states that the proceedings of the Tender Evaluation Committee dated 21-12-2019 were sent to the Administrative Department for approval of the State Government and that the result would be uploaded once the approval of the State Government was conveyed, the result thereof was not uploaded by the State respondents. Had the information about the rejection of the petitioner's technical bid been uploaded in the website, the whole controversy could have been avoided then and there. Two representations dated 15-01-2020 and 16-01-2020 were submitted by the petitioner, the first being the one addressed to the Chief Secretary, Manipur praying for re-consideration of its technical bid. The said representations were considered by the Tender Evaluation Committee in its meeting held on 29-01-2020 and in the said proceedings of the Committee, it is stated that the claim of the petitioner for fulfilling the minimum turnover of Rs.10 crore in each of the three financial years, was not supported by the relevant documents and hence, the claim was not accepted by the Committee. It is further stated that the price bids of the qualified firms namely the private respondents were opened on 29-11-2019 at the Directorate of Social Welfare. The said proceedings dated 29-01-2020 also appear to have not been intimated to the petitioner which probably prompted the petitioner to submit the representation dated 06-02-2020 enquiring about the status of the tender process. No reply thereto appears to have been given by the State respondents. On 07-04-2020 in its meeting, the Higher Tender Committee approved the proceedings of the Tender Evaluation Committee and recommended the procurement of Micronutrient Fortified Energy Dense Food by the private respondents subject to the conditions mentioned therein. From the aforesaid facts and circumstances, it is absolutely and admittedly clear that the rejection of the petitioner's technical bid was not communicated to the petitioner nor was it uploaded in the website and on top of that, the final result of the tender process was not uploaded in the official website before filing of the first writ petition. Then, the short question that calls for consideration by this Court is as to what will be consequence thereof in the given facts and circumstances of the present cases. Relying upon the decisions rendered by this Court in the cases referred to hereinabove, it has been submitted by the counsel appearing for the petitioner that since the action of the State respondents was arbitrary and malafide, the tender process ought to be quashed and set aside, to which the counsel appearing for the respondent No.3, in order to counter it, has relied upon the decision rendered in *Shrilekha Vidhyarthi* (supra) to contend that there was no malafide or arbitrariness in the State action. The facts and circumstances of the cases which have been decided by the Hon'bl Supreme Court are not exactly the same as that of the present cases. But it may be noted that there can be no dispute as regards the law laid down by the Hon'ble Supreme Court in the aforesaid decisions relied upon by the

counsels appearing for the parties. Therefore, the details of the said decisions are not referred to herein, as the issues involved herein will have to be decided by this Court on the facts and circumstances of the present case, as is evident from the decision rendered by the Hon'ble Supreme Court in *Shrilekha Vidhyarthi* (supra) wherein the Hon'ble Supreme Court held:

"36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable may itself attract the vide of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplated governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that ? be you ever so high, the laws are above you?. This is what men in power must remember, always."

[17] Coming to the facts of the case, it is not in dispute that the Director (Social Welfare), Government of Manipur, issued a Tender Notice dated 29-05-2019 inviting bids from the eligible bidders for supply of Micronutrient Blended Energy Dense Food, followed by the RFP dated 29-05-2019 containing the eligibility criteria, of which para 4(i) which is relevant for the present case, reads as under:

"4(i) The bidder should have turnover of manufacturing and supplying of Micro Nutrient Fortified Energy Dense Food/ Supplementary Nutrition under ICDS Scheme of Ministry of Women and Child Development, Govt. of India against orders placed in their own names, directly by the Department of Women and Child Development/ Department of Social Welfare of any State Government/ UT Government of not less than Rs. 25,00,00,000/- (Rupees twenty five crores only) in each of the last 3 financial years i.e., 2017-18, 2015-17 and 2015-16. The bidder should submit Annual Turnover Statement for the last 3 years of sale, exclusively from manufacturer and supply of Micro Nutrient Fortified Energy Dense Food/ Supplementary Nutrition directly to the Department of Women and Child Development/Department of Social Welfare duly certified by a Chartered Accountant and also submit order copies of the same issued by the Departments. In case of Mahila Mandal/Self Help Group/ Village Community (Who are original manufacturers) the turnover shall be relaxed to Rs. 2,50,00,000/- (Rupees two crore fifty lakhs only)."

The last date for submission of bids was fixed at 3 pm of 25-06-2019, while the time of opening technical bids was fixed at 3.30 pm of the same day. Being aggrieved by the RFP dated 29-05-2019, the petitioner filed a writ petition being WP(C) No.499/2019 questioning it. During the pendency of the said writ petition,

the Director (Social Welfare), Government of Manipur issued a corrigendum dated 21.06.2019 making certain amendments in various clauses of the RFP, because of which the last date of submission of tender and the opening of technical bids were fixed on 04.07.2019 and the said writ petition was withdrawn with a liberty to file a fresh petition, if so advised. The petitioner submitted a representation dated 01.07.2019 to the Director (Social Welfare), Government of Manipur seeking a clarification as regards the last three financial years as contained in the corrigendum dated 29.06.2019. After the request being considered by the State respondents, the corrigendum dated 03.07.2019 was issued by the Director (Social Welfare), Government of Manipur which was followed by the representation dated 16.07.2019 requesting for inclusion of the financial year, 2018-2019 while considering the annual turnover of the company during the last three financial years. A corrigendum dated 31-07-2019 was issued by the Director (Social Welfare), Government of Manipur making amendment of paragraph 4 of the RFP. Thereafter, the Director (Social Welfare), Government of Manipur wrote a letter dated 08-08-2019 to the private respondent No.3 stating that the last three years would mean the years, 2016-17, 2017-18 and 2018-19 and that if the audit for the year, 2018-19 was not completed, the annual turnover statements for the years, 2015-16, 2016-17 & 2017-18 could be submitted by the bidders. A Notification dated 05-11-2019 was issued by the Director (Social Welfare), Government of Manipur informing all the concerned that the technical evaluation would be done on 07-11-2019 at the Directorate Head Quarter and accordingly, the meeting of the Tender Evaluation Committee was held on 07-11-2019 for opening technical bids, the proceedings of which indicated that the Committee, after examining the documents attached to the technical bids submitted by the bidders, found the private respondents having qualified in the technical bids and recommended them for the financial bids. It is also stated in the proceedings that the check list statements for the documents submitted by the bidders were enclosed therewith. A copy of the proceedings along with annexure-B relating to the petitioner has been placed on record by the respondent No.1 & 2 along with their written argument. The financial bids were opened on 29-11-2019 and in the proceedings thereof, it is stated that both the private respondents quoted the same rate for supply of Micronutrient Fortified Energy Dense Food as Daliya sweet and therefore, the Committee recommended both of them for procurement of Micronutrient Fortified Energy Dense Food as indicated against them.

Pursuant to a representation dated 30.11.2019 of the petitioner, a meeting was convened on 04.12.2019 to consider it in the presence of the other bidders. During the course of the meeting, the representative of the petitioner claimed that some of their bid documents were not evaluated by the Committee. Their claim could not be verified without reverting the e-tender process, for which an approval of the Government was sought for and was duly granted on 18-12-2019. At the time of reverting the bid process and re-downloading the documents submitted online by the petitioner on 21.12.2019, the representatives

of the petitioner were present. After having examined the documents, the Committee found the same result and accordingly, similar proceedings as that of the proceedings dated 07-11-2019 were prepared wherein the check lists of the documents submitted by the bidders are stated to be enclosed with the observation that there was no change in the particulars of the technically qualified firms even after re-evaluation and therefore, the private respondents were recommended. The proceedings dated 21-12-2019 were submitted to the Higher Tender Committee for approval. So far as the petitioner is concerned, it is stated therein that many discrepancies were detected in the information furnished by it. The petitioner submitted two representations dated 15-01-2020 and 16-01-2020 which were considered by the Committee on 29-01-2020 but the same were not accepted by the Committee on the ground that the petitioner did not fulfill the requirement of minimum turnover of Rs.10 crore in each of the last three financial years. Thereafter, a representation dated 06.02.2020 was submitted by the petitioner enquiring about the status of the tender process. The proceedings of the Tender Evaluation Committee was approved by the Higher Tender Committee in its meeting held on 07-04-2020 and the private respondents were recommended for procurement of Micronutrient Fortified Energy Dense Food for use in AWCs under ACDS subject to the conditions mentioned therein. Consequently, two orders/ letters dated 09-04-2020, impugned herein, were issued to the private respondents to supply the items mentioned therein.

[18] From the aforesaid undisputed facts, it is seen that the Tender Notice was issued on 29-05-2019 inviting bids from the eligible bidders, followed by the RFP. The technical bids were opened on 07-11-2019 and while the private respondents were found having qualified, the petitioner was found not qualified therein and accordingly, the private respondents were recommended for the financial bids which were opened on 29-11-2019. The petitioner was aware of the fact that its technical bid had been rejected and therefore, it submitted a representation dated 30.11.2019, on the basis of which a meeting of the Committee was convened on 04.12.2019 to consider it but the documents alleged to have been submitted by the petitioner could not be verified. The tender process was reverted on 18-12-2019 with the approval of the State Government and the technical bids were re-evaluated on 21.12.2019 in the presence of the representatives of the bidders. After having examined the documents, the Committee found the same result and accordingly, proceedings similar to that of the proceedings dated 07-11-2019 were prepared and submitted to the Higher Tender Committee for approval. The petitioner submitted a representation dated 15-01-2020 to the Chief Secretary, Manipur praying for re-consideration of its technical bid, followed by a representation dated 16-01-2020 which were considered by the Committee on 29-01-2020 but the same were not accepted by the Committee. A representation dated 06.02.2020 was submitted by the petitioner enquiring about the status of the tender process. The grievances of the petitioner at that juncture was that the petitioner was not

informed about the rejection of its technical bid or for that matter, the petitioner was not informed about the outcome of the proceedings dated 21-12-2019. As has been observed hereinabove, it is admitted by the State respondents that the petitioner was not informed about the proceedings dated 21-12-2019 nor was it uploaded in the website. But it may be noted that the petitioner was fully aware of it and therefore, the representation dated 15-01-2020 was submitted to the Chief Secretary for re-consideration of its technical bid and moreover, in its representation dated 06-02-2020, it has been specifically stated by the petitioner that it came to know about the rejection of its technical bid. If that be so, there was no point of waiting for the information. The petitioner could have applied for a copy thereof under the provisions of the Right to Information Act, 2005 and challenged it before the appropriate forum at that point of time which the petitioner failed to do that. The reason given by the State Government was that it could not give the information, as it was awaiting the approval of the Higher Tender Committee for approval. The proceedings of the Tender Evaluation Committee were approved by the Higher Tender Committee in its meeting held on 07-04-2020 and consequently, the orders/ letters dated 09-04-2020 were issued to the private respondents to supply the items as mentioned therein. This time too, no information was given to the petitioner nor was it uploaded in the website and the State action was contrary to the guidelines of the Government of India. It has been specifically stated in RFP that the bids are invited in accordance with the guidelines issued by the Government of India. The reasons given by the State respondents appear to be not plausible. The approval of the Government was conveyed on 08-04-2020 and on the next day, i.e, 09-04-2020, the letters were written to the private respondents. It may be noted that these exercises were done during the lockdown due to COVID-19 crisis and since the uploading of the final result was not a difficult task, they could have done it on 09-04-2020 itself on which the letters dated 09-04-2020 were written. If the information could not be uploaded that day in the website, the State respondents could have written a short letter to the petitioner informing that its technical bids had already been rejected by the Committee. The fact that the State respondents did not intimate the rejection of the technical bid of the petitioner, despite the existence of the guidelines as contained in the manual, has clearly demonstrated that the State respondents were not bothered at all with the said guidelines or the information was not uploaded at many stages of the tender process deliberately so that the petitioner could have no occasion to ventilate its grievances before the appropriate forum. The State respondents appear to be fed up with the manner in which the petitioner kept on submitting representation after representation. But if the rejection of the petitioner's technical bid was intimated to it in time or it was uploaded in the official website, non-uploading of the final result would not have created this sort of controversy. These circumstances warrant that in future, the State Government is incumbent to incorporate, in any NIT issued by any of the Departments of the State Government, the requirement of uploading the information relating to the tender process from time to time. In any case, the tender process stood completed; the

work orders had been issued and the private respondents are alleged to have started supplying the food items. In the normal course, this Court could have interfered with the tender process because the State respondents had failed to follow the guidelines but in the peculiar facts and circumstances of the present case, this Court is not inclined to do so for the reason that the petitioner did not approach this Court at the right time, even after it knew that its bids had been rejected by the Committee. Instead of doing that, the petitioner submitted a representation dated 15-01-2020 for re-consideration of its technical bid which was considered and rejected by the Committee in its meeting held on 29-01-2020 and thereafter, the proceedings of the Tender Evaluation Committee were approved by the Higher Tender Committee on 07-04-2020 but both the proceedings dated 29-01-2020 and 07-04-2020 are not under challenge in these writ petitions. Moreover, since the technical bid of the petitioner had already been rejected by the Committee with reasons as has been observed by this Court in the preceding paragraph while considering the first issue and the petitioner was aware of it as observed hereinabove but it failed to challenge it at the right time, non-intimation of the result of the tender process cannot be said to be the ground for quashing and setting aside the tender process. It is nowhere specifically stated in the RFP that the proceedings of the Tender Evaluation Committee shall be either intimated to the bidders or uploaded in the website from time to time except the general guidelines, as contained in the manual of the Government of India, wherein there is no specific provision that in the event of the guidelines not being followed by the State respondents, the tender process will stand vitiated and will be liable to be quashed and set aside. Considering the materials on record and the submissions of the learned counsels appearing for the parties and having regard to facts and circumstances of the present case, this Court is of the view that the writ petitions are devoid of any merit and are accordingly liable to be dismissed.

[19] For the aforesaid reasons, the instant writ petitions are dismissed with no order as to costs. However, a copy of this judgment and order shall be sent to the Chief Secretary, Manipur with the direction that he shall give instruction to all the Departments that as and when an NIT is issued by any of the Departments for the execution of certain works, a clause shall be incorporated therein in terms of the guidelines contained in the manual of the Government of India to the effect that the information as regards the stages of the tender process shall be uploaded, from time to time, in the official website. The compliance with the direction contained in this judgment and order shall be intimated to the registry of this Court within a month from the date of receipt of a copy of this judgment and order. The interim order, if any, passed by this Court shall stand vacated.