
(2019) 03 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 4479 Of 2018

Ravi Brothers

APPELLANT

Vs

Guwahati Municipal Corpn. And 5 Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 GAU CK 0007

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : Diganta Das, S. Khound, K. Mohammed, D. Saikia, S. Bora, D. Baruah, D.L. Deka, N.B.P. Singha

Judgement

1. Heard Mr. D. Das, learned Senior Advocate, assisted by Mr. S. Khound, learned advocate for the petitioner. Also heard Mr. D. Saikia, learned Senior Advocate, assisted by Mr. S. Bora, learned advocate for the Guwahati Municipal Corporation, i.e. respondents No. 1 to 4, as well as Mr. D. Baruah, learned advocate appearing for respondent No.5, i.e. M/s. Industrial System LLP. None appears on call for respondent No.6, FlowTech Solutions LLP, although notice was duly served.

2. The petitioner herein is a registered partnership firm, and in this case, the petitioner firm is represented by one of its partners. In this writ petition under Article 226 of the Constitution of India, the case of the petitioner is that on 19.06.2018, the Guwahati Municipal Corporation (respondent No.1) had issued an "Invitation For Bid" (hereinafter referred to as 'IFB' for short) in respect of the contract work of "Strengthening of Panbazar, Satpukhuri, Kamakhya Water Supply Scheme and Existing Deep Tube Well Scheme under Water Works Wing, GMC under Supplementary Demand during 2017-18" in nine groups. Amongst the nine groups, the petitioner had submitted his bid in respect of Group No. SD/17-18/A, which was the work for "Supply, installation, testing and commissioning of pump and motor and under Satpukhuri Plant, Panbazar Plant,

Kamakhya Water Supply Scheme" as well as for "Supply, installation, testing and commissioning of different capacity electrical motor driven horizontal centrifugal pump with squirrel cage induction motor under boosting pumping station". On 03.07.2018, the petitioner had submitted its bid before the respondent No.2. It is projected that the tender process envisaged that bid was to be submitted through online mode by uploading soft-copies of documents, but the petitioners could only partially upload the soft copies of the bid documents because the pump performance data-sheet, pump-curve, general arrangement drawing and cross sectional drawings, which was submitted by way of hard copy by the petitioner was found to be consuming more than 40 MB data space, but as per tender stipulation, only documents with scanned file size of 25 MB data could be uploaded. Therefore, the petitioner had to submit additional documents in form of hard copies, apart from tender documents, the soft copies of which were uploaded. However, vide e-mail dated 09.07.2018, the petitioner was informed about the rejection of its technical bid. Thereafter, on the same day, the petitioner had downloaded the tender summary report from the Assam Government Tender website and came to know that the petitioner's bid was technically disqualified for not stating the brand of the motor, the material of construction, etc. Accordingly, the financial bid of respondent Nos. 5 and 6 had not been opened for further financial evaluation. Hence, the rejection of the technical bid of the petitioner has been challenged in the present writ petition.

3. By referring to Note-2 to Note-6 of the IFB, it is submitted that while under Note-2, online mode of submission of bid was mandatory, Note-5 provided for submission of hard copy of bid and it was further provided that for any discrepancy between the online bid and the hard copy of the bid, the online bid will be governed and will be considered for evaluation. It is submitted that however, as the files size of the bid documents of the petitioner exceeded the maximum file size of 25 MB, the petitioner could not be held responsible of being deficient in complying with the terms and conditions of submission of bid and therefore, the respondents ought not to have summarily rejected the bid of the petitioner as being technically disqualified.

4. It is submitted by the learned senior advocate for the petitioner that one of the reasons for holding the petitioner to be technically disqualified was that the petitioner had not filled-up the technical data sheet. By referring to the technical data sheet annexed to the writ petition, it is submitted that as the technical data sheets were not filled up, the petitioner had specifically mentioned in the foot-note of each and every technical data sheet that - "Kindly refer to the data sheet and enclosed with our unpriced Technical Bid". Referring to the other reasons disclosed in the minutes of technical/evaluation committee held on 09.07.2018, it is submitted that the reasons disclosed therein were that the petitioner had not quoted (i) brand of motor, (ii) material of construction, (iii) performance curve, and (iv) declaration of internal quoting of the pump from manufacture unit. In this regard, by referring to the technical data sheet forming part of the tender, it is submitted that it was the departmental requirement that the 'pump make' and

'make of motor' should be of 'a reputed brand', and it was also provided that the pumps and motors must conform to the parameters/details as mentioned in the technical data sheet. It is submitted that as per the hard copy of bid submitted, it was mentioned that the pumps and motors offered by the petitioner conformed to the prescribed requirements, and that the said pumps and motors were in consonance with the latest national and international code practices, and that they were also conforming to the latest energy efficiency norms of 'IE3', further disclosing that the pumps were manufactured by Kirloskar Brothers Ltd. and motor that were offered were manufactured by a "reputed brand" having latest energy norms of IE3. Hence, it is emphatically submitted that the decision by the respondents to hold the petitioner to be technically disqualified was not sustainable in any view of the matter. In this regard, it is also submitted that as the technical data sheet permitted the pump and motor to be of a "reputed brand", and when the bid documents did not disclose a list of approved maker of pumps and motors, as the petitioner was offering both the pumps and motors of reputed brand, the petitioner could not have been held to be technically disqualified. It is further submitted that as per the product brochure of Kirloskar Brothers Ltd., it was made clear that internal quoting was not required and, as such, there was no necessity for disclosure of any information which was not available at the manufacturer's end.

5. By referring to the bid documents as annexed to this writ petition, it is submitted that in the hard copy of the bid, not only the performance curves, and other technical data were duly provided, but all requisite information in support of the bid was present in form of hard copy. It is submitted that as the GMC authorities had retained the power to seek clarification, they could have resorted to exercise of that power if despite the foot note contained in the technical data sheet, the authorities required more information than which was provided in the hand copy of the bid documents, but the same was not done in the present case in hand. It is reiterated that only because the scanned soft copy of document exceeded the permissible 25MB file-size, the petitioner had to resort to uploading only bare-essential documents within such prescribed file-size, but at the same time, as also required, hard copy of all documents were duly enclosed with the hard copy of the bid, as such, all that was required to be done by the GMC authorities was to read the hard copy of documents accompanying their bid. Thus, it is submitted that the petitioner was being technically disqualified for the fault on part of the GMC authorities to provide adequate file-space for uploading the entire bid documents in one go.

6. By referring to the additional affidavit filed by the petitioner, it is submitted that while the bid of the petitioner was the lowest L-1 bid, the price bid quoted by the L-2 bidder was around Rs.80.00 lakh more than the rate quoted by the petitioner. Hence, it is submitted that the rejection of the bid of the petitioner by declaring it to be not technically qualified, was a decision which was not in greater public interest as huge money of the exchequer could be saved by considering the bid submitted by the petitioner.

7. It is submitted that the bid of the petitioner was technically rejected on five grounds as mentioned in the minutes of technical/evaluation committee held on 09.07.2018. By referring to the comparative statement prepared by the authorities, which is annexed to the affidavit-in-opposition filed by the respondent Nos. 1, 2, 3 & 4 (hereinafter referred to as the 'A/o' for short), it is submitted that the reasons assigned therein does not correspond to the minutes of technical evaluation committee. Hence, it is submitted that the rejection of the technical bid of the petitioner was arbitrary, unreasonable and vitiated by extraneous considerations, for which the writ petition deserves to be allowed.

8. In support of his submissions, the learned Senior Advocate for the petitioner has placed reliance on the following cases, viz., (i) Jagdish Mandal Vs. State of Orissa & Ors., (2007) 14 SCC 517 (para 22), (ii) Rashmi Metalinks Limited & Anr. Vs. Kolkata Metropolitan Development Authority and Ors., (2013) 10 SCC 95 (para 18), (iii) Poddar Steel Corporation Vs. Ganesh Engineering Works & Ors., (1991) 3 SCC 273 (para 6), and (v) G. J. Fernandez Vs. State of Karnataka and Ors., (1990) 2 SCC 488 (para 15).

9. Per contra, the learned Senior Advocate appearing for the respondents No. 1 to 4 has submitted that there was sufficient, good and valid reason to hold the petitioner to be technically disqualified. In this regard, it is submitted that as per clause 1.1 and clause 1.9 of the "Special instructions to Bidders" ('SIB' for short), bids was required to be submitted in complete, but the petitioner had not filled up column-3 of the technical data sheet. By referring to Note-2 of the IFB, it is submitted that the online mode of submission of bid was mandatory, making it further clear that manual submission of bid will not be accepted, which was further qualified by Note-5 that a hard copy of the bids submitted online was to be submitted on or before the prescribed date and time for evaluation purpose and it was made further clear that for any discrepancies between the online bid and the hard copy of the bid, the online bid will be governed and will be considered for evaluation. It is submitted that moreover, in the technical data sheet accompanying the tender documents, it was further specifically mentioned in Column-3 thereof relating to vendor's confirmation that the vendor was required to fill up each technical data sheet. It is also submitted that in terms of Note-5 of the IFB, it was made clear that only the online bid would prevail over the hard copy of the bid and not vice-versa.

10. Contradicting the submissions made by the learned Senior Advocate for the petitioner that submission of additional hard copy of documents was necessitated only because not more than 25 MB data could be uploaded, it is submitted that as per the documents annexed to the A/o of the respondents No. 1 to 4, the petitioner had uploaded their online bid at 12:46 PM on 03.07.2018 with total size of bid documents of 18.468 MB (with file size of technical documents being 12.764 MB). The respondent No. 6 had uploaded their online bid at 12:58 PM on 03.07.2018 with total size of bid documents of 41.020 MB (with file size of technical documents being 33.671 MB). The respondent No. 5 had uploaded their

online bid at 12:42 PM on 03.07.2018 with total size of bid documents of attachment of 24.585 MB (with file size of technical document being 16.238 MB). Accordingly, it is submitted that within twelve minutes time of the submission of online bid by the petitioner, the respondent No.5 had uploaded a higher data, as such, the plea taken by the petitioner was not genuine as the petitioner had uploaded only 12 MB data out of the slot of each file space of 25 MB data. It is submitted that in the IFB it was stated that one maximum file size would be of 25 MB, and it was specifically provided that if numbers of pages exceeds, the bidders could create multiple files and upload the same in "upload additional document" stage, and accordingly, if the petitioner wanted, it could create a number of multiple file size of 25 MB data each and that there was no space constraint in the tender portal. It is also submitted that the records do not show that the petitioner had ever raised any grievance before the GMC authority prior to the date of opening of the tender that it could not upload more than 25 MB data. It is submitted that as e-tendering was done in this case, the GMC could not have accepted and/or relied upon any additional documents, not uploaded in the e-tendering portal.

11. It is submitted that there is no doubt that as per the technical data sheet, the departmental requirement for pumps and motors was that those should be of reputed brand. In this regard it is submitted that when it was not mentioned in the IFB that 'Kirloskar' was an approved brand, still the petitioner had named that brand for pumps, as such, it must be presumed that the petitioner was aware of the brands approved by the GMC and that as the petitioner had quoted the brand of pumps they were offering, there was no reason for the petitioner not to provide the make/ brand name in respect of motors. It is further submitted that in para-10 of SIB, it was explained that the bidders should offer pumps and motors of one single manufacturer's product only, and an example was cited to the effect that - "... if bidder is offering say 'A' make pumps and 'X' make motors, which are appearing from approved makes, he should offer the same 'A' make pumps and 'X' make motors for all the required pump sets and it was also explained that in case bidder submitting bid with multiple makes of pumps of motors of different tags, the same shall be out rightly rejected." Accordingly, it is submitted that as the petitioner had only mentioned 'reputed brand', in their tender, there was every possibility that the petitioner might supply motors of different tags/ make, for which the petitioner's bid was held to be not technically responsive. It is submitted that if the technical data and performance curves and internal quoting of pumps were not provided, and if motors are purchased without prior knowledge of the make, there is every possibility that the said combination of pumps and motors would not be energy efficient, which may in long turn, lead to a high revenue cost of operation or would entail frequent repairs and replacement of parts. It is submitted that the Guwahati city has hillocks all around, as such, if the motors do not meet the requisite parameters, such pumps and motors may not be able to pump adequate water supply to the hill-top areas, which in turn would fail the entire

water supply scheme in the Guwahati city.

12. By referring to the scope of works, it is submitted that vide para-1.10 of the SIB, it was envisaged that the price quoted by the bidder should be inclusive of all taxes, duties, levies, etc. as applicable and all expenses. Moreover, it was envisaged that the bidders would visit the site and familiarize themselves thoroughly with the site conditions before submitting the tender by further clarifying that non- familiarity with the site conditions will not be considered a reason either for extra claim or for not carrying out the works in strict conformity with the drawings and specifications. However, in the bid submitted by the petitioner, it has offered to supply and lay only 6 Mtr. 80 mm.

M.S. suction pipeline and 6 Mtr. 50 mm. M.S. delivery pipeline and claimed extra charges on per metre basis if there was additional requirement of MS pipe. Accordingly, it is submitted that the said condition was contrary to para-1.10 of SIB and was also considered prejudicial to the financial interest of the respondents No.1 to 4 because it was one of the tender conditions that the rates quoted would be inclusive of all supplies and, as such, though the petitioner had quoted about Rs.80 lakh below the next higher tenderer, there still can still be a scope of a huge cost overrun if the GMC had to pay extra for additional pipe length and additional cost of laying down extra length of pipe. It is also submitted that the respondent No.5 had quoted their rate which would be inclusive of supply and laying down of any length of pipe that may be required to be installed.

13. By referring to the comparative statement filed along with the A/o of the respondents No.1 to 4, it is submitted that the deficiencies which were found on the opening of the technical bid of the petitioner is recorded therein. It is also submitted that as a sequel to rejection of the bid of the petitioner on 09.07.2018, the GMC authorities had issued the Letter of Acceptance to the Respondent No.5, namely, M/s. Industrial Systems LLP on 11.07.2018 and according to his instructions, some works are being carried out by the respondent No.5.

14. In support of his submissions, the learned senior advocate for the respondents No.1 to 4 has placed reliance on the following cases, viz., (i) Eastern Coalfields Limited Vs. SLL SML (JV Consortium), (2016) 8 SCC 622 (para-37, 43, 47, 48), (ii) G. J. Fernandez Vs. State of Karnataka and Ors., (1990) 2 SCC 488 (para 15).

15. The learned advocate for the respondent No.5 has submitted that the respondent No.5 was one of the bidders for same tender and for the same group for which the petitioner had submitted his tender. The respondent No.5 had uploaded documents having file size of 34.58 MB in contrast to document file size of 12.764 MB uploaded by the petitioner. It is submitted that in one file, 25 MB data space was available, but the petitioner did not uploaded documents anywhere close to 25 MB data. The learned advocate for the respondent No.5

has produced a pen-drive, containing 84 pages of documents, which are annexed to this writ petition, and it is submitted that the said 84 page documents were scanned by him at 100 (one-hundred) dpi (in black and white mode) in the 'pdf' format. It is demonstrated before this Court that the space used by the said 84 documents is 3.20MB and if compressed, the said documents have used 2.78 MB space in the pen-drive. Moreover, by adopting the submissions made by the learned senior advocate for the respondents No.1 to 4, it is submitted that in the meanwhile, the work order has already been given to the respondent No.5 and as per instructions received, substantial work has already been completed by them.

16. Having considered the submissions made by the learned senior advocate for the petitioner, for respondents No.1 to 4 and by the learned advocate for respondent No.5, the following points arise for determination in this case:-

- a. Whether GMC authorities were obliged to seek clarification from the petitioner to collect further information in respect of the bid/ tender submitted by the petitioner?
- b. Whether the hard copies of documents submitted physically by the petitioner were liable to be evaluated by the respondents No.1 to 4?
- c. Whether the rejection of the bid of the petitioner by holding the petitioner to be technically disqualified is liable to be interfered with?

Point of determination No.(a):

17. It is seen that in the comparative statement (Annexure-II of A/o filed by respondents No.1 to 4), the following negative remarks have been made against the petitioner:-

- a. In respect of Column-4, against "experience in works in similar nature for last 3 years", the remark was 'No' (The PO submitted is more than 3 years old).
- b. In respect of Column-5, against "Major equipments to carry on proposed job", the remark was 'no'.
- c. In respect of Column-6 "Profit & Loss statement and auditors report for last three years", the remark was "Auditors Report not submitted only Profit & Loss Account submitted."
- d. In respect of Column-7, "whether submitted authority to seek references from the bidders bankers", the remark was 'No'.
- e. In respect of Column-8, "Information on Litigation history", the remark was 'No'.
- f. In respect of Column-8, "whether bidder shall be deemed to have visited the site", the remark was 'As this is a STIC tender and bidders and site visit before participating in the tender was mandatory and any extra claim cannot be considered. Bidder made extra claim.'

g. In respect of Column-14, referable to 4.1 of bid SIB, "offer received with deviation is liable for rejection", the remark was 'deviation'.

h. In respect of Column-15, "whether bidder filled-in and signed the required Annexure, Specification Sheet as specified in tender", the remark was 'No (mandatory specification sheet not filled up)'.

i. In respect of Column-16, "whether Bidder submitted offer from its respective single manufacture products only", the remark was 'Make of the motor not mentioned which is mandatory'.

j. In respect of Column-19 "whether Bidder submitted certificate from manufacturer against test facilities", the remark was 'No'.

k. In respect of Column-21, "whether bidder provided after sales service support", the remark was 'No'.

l. In respect of Column-23, "whether bidder provided an undertaking regarding warranty cover of their offered product", the remark was 'No'.

m. In respect of Column-24, "whether Bidder provided an undertaking regarding an acceptable of techno- commercial terms and conditions mentioned in the tender documents", the remark was 'No'.

n. However, as against all the said columns, the remark against the respondent No.5 was in positive.

18. From the minutes of the Technical Evaluation Committee meeting held on 09.07.2018, it appears that the said Committee consisted of (i) Addl. Commissioner, GMC (Chairman), (ii) Chief Engineer, GMC (Member), (iii) CA & AO, GMC (Member), (iv) F.A. GMC (Member), and (v) In- Charge Water Works, GMC. In respect of the tender of the petitioner, it was recorded that the petitioner was found to have technically disqualified as they did have not quoted (i) the brand of motor, (ii) MOC (material of construction), (ii) performance curve, (iii) declaring of internal quoting of pump from manufacturing unit, and (iv) not fulfilled technical data sheet. In this regard, there is no dispute in the Bar that for the aforesaid particulars no documents were uploaded in the e-tendering portal by the petitioner. The point whether the deficiencies which remained in course of submitting e-tenders could be rectified by furnishing hard copy of relevant documents, would be addressed later. At this stage, there is no dispute that as soft copy of document were not submitted with e-tender, sufficient materials were lacking before the GMC, making it impossible for them to effectively evaluate the e-tender submitted by the petitioner. Moreover, it is also not in dispute that the respondents No.1 to 5 have been able to demonstrate that the respondent No.5 had uploaded all the relevant documents or necessary particulars along with its on-line tender.

19. The learned senior advocate for the petitioner had submitted that the GMC authorities could have asked for clarification from the petitioner to disclose the

motor make. Upon perusal of para- 6.0 of SIB, it appears that it is clearly stated therein that "Negotiations will not be conducted with the bidders as a matter of routine. However, GMC reserves the right to conduct negotiation. The bidders to quote competitive prices considering the fact that price negotiation, if required, to be held." Thus, from above, it does not appear that there was any scope for negotiation before technical bid was opened, but negotiation could have been held in respect of price bid only. Moreover, it is also seen that as per para- 10 of SIB, it was made clear that the bidders should offer pumps and motors of one single manufacturer's product only. It was specifically mentioned that if bidder is offering say 'A' make pumps and 'X' make motors, which are appearing from approved makes, he should offer the same 'A' make pumps and 'X' make motors for all the required pump sets and it was also explained that in case bidder submitting bid with multiple makes of pumps of motors of different tags, the same shall be out rightly rejected. Therefore, if no make of motor is indicated in the tender, there is every possibility that the said para-10 of SIB could be violated. Similarly, the deficiencies of (i) not furnishing documents relating to material of construction, (ii) performance curve, (iii) non declaring of internal quoting of pump from manufacturing unit, and (iv) non filling up of Technical Data form while submitting e- tenders, are of such nature that could be permitted to be rectified or subsequently met by submitting documents in form of hard copy. In the considered opinion of this Court, the uploading of all documents through e-portal lends more credibility and transparency to the tendering process than the process of submitting documents in form of hard copy in light of the specific Note-5 of IFB that the documents submitted on-line would prevail over hard copy. Therefore, in view of the discussions above, the considered opinion of this Court, (i) the defect of non- disclosure of make of motor, and (ii) consideration of documents which are not submitted on-line, could not have been allowed to be incorporated by way of clarification, as such procedure was not envisaged under the IFB and SIB.

20. In order to appreciate whether the decision making process was vitiated by arbitrariness and mala fide, some aspects of bid submitted by the petitioner is examined. The declaration for internal quoting of the pump of manufacturer was admittedly not provided. In this case, notwithstanding the plea that the manufacturer did not provide declaration of internal quoting, the tender by the petitioner without containing declaration of internal quoting is apparently not in conformity with the IFB, because the two other bidders i.e. respondents No.5 and 6 have been able to provide such data, as such, the decision by the GMC authorities on this count cannot be said to be vitiated by arbitrariness or mala fide. Moreover, it is seen that as per the terms of the tender, the supply and installation time given was 3 (three) months, but as per Commercial Terms and Conditions of Supply (pp.134 of writ petition), against delivery period, it is seen that the petitioner did not commit itself to carry out the work within the said definite time-line.

21. Thus, the point of determination No. (a) is answered by holding that in terms

of the tender (IFB and SIB), the GMC authorities were not obliged to seek clarification from the petitioner to collect further information in respect of the bid/ tender submitted by the petitioner, as it would have led to unequal treatment to the parties submitting their respective bids. It is held that the petitioner had taken a risk of not submitting all requisite documents with his on-line bid.

Point of determination No.(b):

22. From the terms and conditions of the tender, it is seen that in Note-2 of the IFB, it is clearly mentioned that "Online mode of submission of Bid is mandatory. Manual submission of Bid will not be accepted." In Note-5 it is made clear that "A hard copy of Bid submitted online is to be submitted on or before 08.07.2018 upto 14.00 hours for evaluation purpose. For any discrepancy between the online bid and the hard copy of the bid, the online bid will be governed and will be considered for evaluation." In Note-6, it was mentioned that "Bidders are advised to scan their Technical Papers at 100dpi (in black & white mode) in 'pdf' format for multiple pages with file size of 25 MB. If numbers of pages exceed, the bidders are advised to create multiple files and upload the same in 'Upload Additional Document' stage." In para-2.0 of the SIB, it is clearly stated that "Bids should be submitted online in 'two bid system' i.e. 'Unpriced bid' and Price bid'." Thus, from the above, it is seen that in the IFB and SIB, the respondents No.1 to 4 had made it amply clear that bids must be submitted online and that documents submitted online shall prevail.

23. The private respondent No.5, who was also a tenderer for same tender and same group had uploaded documents having file size of 34.58 MB in contrast to document file size of 12.764 MB uploaded by the petitioner, which negates the contention of the petitioner that they could not upload more than 25 MB data. In this case, the petitioner had not uploaded documents even anywhere near to the 25 MB data file-size. As mentioned herein before, the learned advocate for respondent No.5 had produced a pen-drive containing 84 pages of documents annexed to this writ petition by the petitioner, and it is submitted that the said documents were scanned at 100 (hundred) dpi (in black and white mode) in 'pdf' format. Without commenting on the correctness of the material produced by the learned advocate for the respondent No.5, from the contents of the said pen-drive, it appears that the space used by the said 84 documents is 3.20MB and if compressed, the said documents have used 2.78 MB space in the pen-drive. According to the statement made in paragraph 4(b) of the A/o filed by the respondents No.1 to 4, 200 pages of documents submitted by the respondent No.6 in the tendering web-portal had contained 12.764 MB, which would mean that on an average, each page was using up 0.6382 MB space. Therefore, there are materials on record to suggest that even on conservative estimate all the documents of the petitioner, as annexed to this writ petition by the petitioners as bid/ tender documents, could have been successfully uploaded within 25 MB space in one file. Moreover, the contents of Note- 6 of the IFB had made it amply

clear that if the numbers of pages exceeds, 25 MB size, the bidders were permitted to create multiple files and upload the same in "upload additional documents" mode. Note-2 and Note-5 of IFB also made it amply loud and clear that the bid and documents accompanying bid was mandatorily required to be submitted on-line. The contents of para-2, 5 and 8 of IFB shows that bidders were required to make online submission of bids on e-tendering process only and hard copy was only to supplement it and not to substitute it. Therefore, the plea of the petitioner that it had not been able to upload documents as those were more than 25 MB file size fails as the petitioner has not been able to demonstrate that they had uploaded anywhere near 25 MB data along with their tender/ bid. Moreover, there is no document to show that prior to the closing time of the submission of tender, the petitioner had approached the GMC authorities with complaint for not being able to upload its document along with the on-line tender.

24. Thus, from the materials available on record, this Court is unable to accept the submissions made by the learned senior advocate for the petitioner that as per the clauses contained in the IFB and SIB, or any other tender document of the GMC that the GMC had retained any discretion to accept, rely upon or to proceed to evaluate the tenders on the basis of stand-alone hard copy of the bid documents, even if such documents were not uploaded in course of submission of e-tenders.

25. In the opinion of this Court, the GMC, being the tendering authority, had the right to rigidly apply its rules and terms and conditions of accepting bids documents submitted only by e- tender. Accordingly, if any document submitted along with e-tender were deficient, there is no way that the documents submitted in form of hard copy could prevail. Note-5 of IFB had prescribed that "A hard copy of Bid submitted online is to be submitted on or before 08.07.2018 upto 14.00 hours for evaluation purpose. For any discrepancy between the online bid and the hard copy of the bid, the online bid will be governed and will be considered for evaluation", as such, there was no way that the GMC authorities could have evaluated any documents, which the petitioner had not submitted online. Thus, in view of the discussions above, it appears to this Court that the submission of online tender with scanned copy of accompanying documents was an essential condition of the tender.

26. Moreover, a conjoint reading of the contents of Note-2, Note-5, Note-6 and para-2.0 of the SIB indicates that online submissions of bid was mandatory, otherwise, the GMC would not have gone to the extent of advising the bidders to scan their technical data in 100dpi in black & white mode and submitted in multiple file-size of 25MB each. As already indicated earlier, the bids was required to be submit online and it was provided that in case of discrepancy between the hard copy and soft copy, the soft copy submitted by e-tender would prevail. Thus, as the "vendor's confirmation" column of Technical Data Sheet was not filled up in soft copy uploaded, the hard copy cannot be permitted to prevail over soft copy, which would be in violation of tender condition contained in

Clause 8 of SIB to accept online bid and not to accept off-line documents.

27. From the materials available on record, especially the "bid submission confirmation" (pp. 11-15 of A/o filed by respondents No.1 to 4), it is seen that the petitioner had submitted documents containing Technical Data in form of 12765.00 KB (equivalent to 12.764 MB). Thus, the petitioner is found to have not uploaded documents to the extent of 25 MB, as such, this Court is unable to accept that the petitioner could not upload more than 25 MB file-size documents. The respondent No.5 is seen to have uploaded 33671.00 KB file size technical documents within 12 minutes after the petitioner had uploaded their tender. Thus, this Court is unable to hold that the petitioner was unable to upload documents above 25 MB file size. Hence, as the soft copies were found to be deficient, the rejection of technical bid of the petitioner cannot be faulted with. Thus, from the discussions above, it is seen that the petitioner's bid had remained deficient in complying with the terms and conditions of IFB. The learned senior advocate for the respondents No.1 to 4 has been able to demonstrate that such deficiencies could not have been condoned to accept the bid of the petitioner as technically valid, as the bid of the petitioner is vitiated by uncertainty, both with regard to price and quality (i.e. make of motors).

28. Thus, the point of determination (b) is answered by holding that the hard copies of documents submitted physically by the petitioner was not liable to be evaluated by the respondents No.1 to 4, because such evaluation would have been contrary to the essential tender conditions.

Point of determination No. (c):

29. In view of the decision in the two points as answered herein before, in the considered opinion of this Court, the rejection of the bid of the petitioner by holding the petitioner to be technically disqualified is liable to be interfered with. The point of determination No. (c) is answered accordingly.

30. It is seen that in this case, the respondents No.1 to 4 were following the procedure as incorporated in the IFB and SIB, by considering only the documents which were submitted with on-line tender submitted by the bidders, without deviating from their prescribed procedure. Therefore, the cases cited by the learned senior advocate for the petitioners, including the cited case of G.J. Fernandez (*supra*), are not found to help the petitioner in any way and, as such, this judgment is not burdened by reproducing those four cited cases and discussing them.

Conclusion:

31. The respondents No.1 to 4 have been able to demonstrate that by non-submissions of online documents, they could not have proceeded to have evaluated the off-line documents. Moreover, in this case, the respondents No.1 to 4 have also demonstrated that because the technical data sheet was left unfilled in online submitted bid, and as the rates were not all inclusive, the bid submitted

by the petitioner left many scope for uncertainty as regards make of motors, technical parameters, performance, absence of test facilities, cost over-run on installation of additional length of pipes and its installation cost. These, are held to be good grounds for the respondents to hold that the petitioner was required to be technically disqualified. Thus, in view of the discussions above, for reasons indicated above, this Court is unable to hold that the decision making process on part of the respondents No.1 to 4 can be held to be flawed, arbitrary, unreasonable or perverse. Hence, the decision making process of the respondents No.1 to 4 in holding the petitioner to be disqualified, prima facie, cannot be faulted with.

32. As a result, this writ petition fails and accordingly, this writ petition stands dismissed, leaving the parties to bear their own loss.

33. The Court Master may return back the pen-drive to the learned advocate for the respondent No.5.