

**(2021) 08 GAU CK 0089**

**In the Gauhati High Court**

**Case No : Writ Petition (Civil) No. 4154 Of 2021**

Social Research And Development Centre And 5 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

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**Date of Decision : 24-08-2021**

**Acts Referred:**

**Citation : (2021) 08 GAU CK 0089**

**Hon'ble Judges : Prasanta Kumar Deka, J**

**Bench : Single Bench**

**Advocate : K N Choudhury**

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## **Judgement**

Heard Mr. K. N. Choudhury, the learned Senior Counsel assisted by Mr. H. K. Das, the learned counsel appearing on behalf of the petitioners.

The petitioners are the NGOs and in order to redress their common grievances have filed this writ petition thereby challenging the impugned Clause 4

Sub-Clauses- 9, 10 and 11 of the Notice Inviting Expression of Interest bearing No. DSW(ICDS)G/SNP/98/2021/1 dated, Guwahati, the 9th August,

2021 for lifting of Rice from FCI depots in Assam after making necessary payment to FCAI by the bidder and Re-packing of lifted rice from FCI

depots in Assam (to be allocated by Ministry of Women and Child Development, Govt. of India) and food items like Mix dal ( Moong and Masur Dal),

Moong Dal, Masur Dal and Soy nuggets, pea nuts, Bengal gram, (chana dal), yellow pea, egg, suji, sugar, milk (skimmed) etc. under the Scheme

Supplementary Nutrition Programme (SNP) issued by the respondent No. 3. The said Clauses are extracted herein below:-

â??Clause 4: Documents/particulars required for technical bid:-

9. The average annual turnover of the firm for the financial years i.e. 2017-18,

2018-19 & 2019-20 should be at least Rs. 700.00 lakhs (the calculation of average shall be carried out on the basis of total of yearly turnover of three financial years divided by three). Turnover Certificate issued by a competent Chartered Accountant having UDIN number must be submitted by the bidder for the proof of the same.

10. The bidders must furnish minimum of EMD of Rs. 50.00 Lakhs and upper Cap of EMD shall be 250.00 lakhs only which will have to be furnished in the form of Crossed Demand Draft/ Banker's Cheque/Fixed Deposit only issued by Scheduled Commercial Bank drawn in favour of the Director of Social Welfare, Assam and payable at Guwahati.

11. The bidder must have experience for supply of materials with either from Govt. of India/Govt. of Assam/PSUs for at least amounting to Rs. 300.00 lakhs in a single order within the last three financial years i.e. 2018-19, 2019-20 & 2020-21 (the bidder must furnish the copy of the work order along with work completion certificate for the concerned work order issued by competent authority).

It is submitted by Mr. Choudhury that on earlier occasion, the petitioner participated in the Expression of Interest wherein such qualifying criteria were not introduced following which the petitioners being the NGOs participate and were allotted various supply works. The aforesaid Clauses introduced in the E-tender dated 09.08.2021 is totally discriminatory and arbitrary purportedly with an oblique purpose to oust the petitioners from the competition giving way of corporate houses etc. It is submitted by Mr. Choudhury that there is no nexus in respect of scope of works and the subsequent changes introduced in the qualifying criteria of the bidders. Further Mr. Choudhury relies the case law of Vaishnorani Mahila Bachat Gat Vs- State of Maharashtra and Others reported in (2019) 15 SCC 718 wherein a similar issue was decided by the Apex Court. There it was held that fixing of unit area as a district players have been effectively ousted from the field. It would be appropriate to form groups of the smaller area such as at panchayat or group of panchayats, etc within the district so that the real intention behind the policy is fulfilled in its real sense and supply should be decentralized as much as possible as it is not for the big players/industrialists in the field to cater to the needs of the Scheme as they have usurped in past. It is open to the State Government to make alternative arrangement and they are

restrained from continuing the existing system of supply in the interregnum period. This decision as to alternative arrangement should be taken within ten days. Accordingly, Mr. Choudhury sought for interference in the said impugned Clauses of the impugned Expression of Interest dated 09.08.2021. As per the publication of the Expression of Interest dated 09.08.2021, the last date of submission of online bid is fixed on 06.09.2021 and the tender opening date is on 07.09.2021 at 11:00 AM.

Mr. K. Goswami, the learned Additional Senior Government Advocate, Assam has produced the instruction received by him and sought the leave of

this court to file affidavit-in-opposition immediately so that the matter can be decided. It is also stated that the present Expression of Interest was

issued on the basis of the guidelines dated 13.01.2021 issued to all the Chief Secretaries of the States/ Union Territories by the Government of India,

Ministry of Women & Child Development. By the terms of the Guidelines dated 13.01.2021, the earlier notification in respect of the Supplementary

Nutrition (under the Integrated Child Development Services Schemes) Rules, 2017 has been superseded logically.

In view of the contention made by Mr. Goswami and also considering the leave sought for by him, Mr. Goswami shall file an affidavit within

31.08.2021 and let this matter be listed on 02.09.2021 for Motion.

The petitioners shall accordingly participate however without passing any direction to the respondents at this stage.