(2022) 04 GAU CK 0019

In the Gauhati High Court

Case No : Writ Appeal No. 198, 199 Of 2021

Tafe Motors And Tractors Ltd — APPELLANT

Vs

State Of Assam — RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:
Constitution Of India, 1950 — Article 14, 226

Citation : (2022) 04 GAU CK 0019

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : K.N. Choudhury, J. Patowary, D. Saikia, B. Choudhury

Final Decision : Disposed Of

Judgement

Soumitra Saikia, J

1. This Writ Appeal arises out of a common Judgment and Order dated 01.06.2021 passed by the learned Single Judge whereby the challenge made to the fresh financial price bids called for by the respondents and the prayers for not giving effect to the fresh financial bids submitted, were negated and the writ petitions were dismissed.

2. Under the Chief Minister Samagra Gramya Unnayan Yojna, Jaya Nagar, (CMSGUY) Khanapara, Guwahati scheme, it was decided that Tractors and Matching Implements were to be supplied in villages to members of the farming community across the State of Assam through beneficiary groups. In pursuance to the said scheme, by a Notice dated 04.02.2019, the Director of Agriculture, Government of Assam invited competitive rates for Tractors and Matching Implements from the manufacturers of tractors for phase-II of the scheme for distribution of tractors unit under the Chief Minister Samagra Gramya Unnayan Yojna, Jaya Nagar, Khanapara, Guwahati. By the NIT Bids were invited for supply of Tractors and Matching Implements in the following categories:-

i) 35 PTO HP or more than 35 PTO HP and up to 40 PTO HP.

ii) More than 40 PTO HP and up to 45 PTO HP.

iii) More than 45 PTO HP and 50 PTO HP.

3. Amongst the various conditions mentioned in the NIT the the following conditions have relevance in the present proceedings and are therefore extracted:-

"4. Most competitive rates offered by manufacturers in each category of models mentioned above would be selected and notified for procurement by the selected beneficiary groups as per their choice. In a particular category (Sl No.1), the most competitive rate offered by 50 (fifty) % of the technically responsive out of participating manufacturers against the particular model shall be selected.

5. The subsidy will be restricted to the L1 price quoted by the responsive manufacturer in each category.

6. The evaluation of the competitive price will be made only on the basis of the rate quoted against each of the make and model of a tractor by them manufacturer. In no case, the rates quoted against the matching implements will be loaded with the tractor for price evaluation.

11. The beneficiary group may procure the tractor of selected model and make along with implements, if so opted, from any authorized dealer of the manufacturer in the state. The group may negotiate with the dealer to bring rates below the price quoted by manufacturer."

4. Pursuant to the Tender Evaluation Committee Meeting held on 29.03.2019, the appellants and 6 (six) other bidders were found to be technically responsive in the 3 (three) categories as referred above. One of the bidder who was found to be technically non- responsive had filed a writ petition before this Court being WP (C) 2678/2019, which was disposed of vide order dated 19.06.2019 directing the respondents to consider the bid offered by the said bidder to be technically responsive and thereafter consider its price bid along with other technically responsive bidders.

5. The Financial bids were opened on 06.07.2019 and the appellants were found to be within the criteria specified. In terms of the Clause 4 of the NIT dated 04.02.2019, 50% of the most competitive rates offered against the particular model were to be selected. Against the nine (9) qualified bidders, the appellant in W.A. No. 198/2021 was the L-6 bidder in the category (i)- "35 PTO HP or more than 35 PTO HP and up to 40 PTO HP"; L-8 Bidder in category (ii)- "more than 40 PTO HP and upto 45 PTO HP" and L-5 Bidder in category (iii)- "More than 45 PTO HP and 50 PTO HP". The appellant in W.A No. 199/2021 was within the 50% technically qualified bidders as per Clause 4.

6. Thereafter, a cabinet decision was taken by the Government in respect of the present Chief Minister Samagra Gramya Unnayan Yojna, Jaya Nagar, Khanapara, Guwahati scheme regarding distribution of Tractors and Matching Implements.

The cabinet meeting was held on 21.10.2019, whereby it was decided that since the price bids were received more than 6 months ago and during this period since the automobile sector experienced significant slump in the demand leading to discounts/lowering of effective price in the open market, in order that the benefit is passed on to the farmers/beneficiaries and the Government, the Council of Ministers took a decision in the Cabinet to direct the Agricultural Department to give opportunity to all technically qualified participating bidders to lower their price bids and submit fresh financial bids within 15 (fifteen) days. Pursuant to the said cabinet decision the department of Agriculture, Government of Assam invited fresh competitive rates for Tractors and Matching Implements vide Notice dated 30.10.2019. The fresh financial bids were required to be submitted on or before 15.11.2019 up to 1.00 p.m and the fresh financial bids submitted will be opened on the same day at 2.00 p.m. All the bidders, who were earlier selected, were permitted to submit fresh financial bids. The appellants, however, did not submit any fresh price bids but instead objected to the procedure adopted by the State and filed their objections through their representation dated 14.11.2019. The appellants objected that after the Bids were opened and the qualifiers were declared in each category alongwith their prices offered were known, it was unfair to call for a re-bid as the same might be construed to be done in order to accommodate non-qualified manufacturers. The said representation was, however, rejected by the authorities. The Evaluation Committee thereafter held its meeting on 16.11.2019 as per clause 4 of the Notice and the bids offered were evaluated as under:-

Category :- Equal or more than 35 up to 40 PTO HP

Ranking

Name of Manufacturer

Brand

Model

PTO HP

Fresh quoted price as on 15.11.2019

L-1

M/S Skylight Automotive Pvt. Ltd

ACE

350 NG

37

381888.00

L-2

M/s International Tractor Limited

Sonalika

DI-740 III

CM Series

37.9

384000.00

L-3

M/s Mahindra & Mahindra Ltd. (FES)

Swaraj

Swaraj

843XM

38.9

426720.00

L-4

M/s Gromax Agri Equipment Ltd.

Shaktimaan

45 DLX

39

459536.00

L-5

M/s Escorts Ltd.

Powerac

439 EI

38.5

465000.00

L-6

M/s CNH Industrial (I) Pvt. Ltd.

New Holland

3230

38.2

468786.000

L-7

M/s Same Deutz Fahr India (P) Ltd.

DEUTZ FAHR

3040 E

35

469711.00

L-8

M/s Tafe Motors and Tractors Ltd.

Eicher

368 USJ

35.8

470225.00

L-9

M/s Tractors and Farms Equipment Ltd.

TAFE

MF 1035 DI

Mahashakti VI

35.5

485000.00

L-10

M/s John Deere India Pvt. Ltd.

John Deere

5042 DV3

497989.00

L-11

M/s Mahindra and Mahindra Ltd.

Mahindra

YOVO 415 DI

35.6

516500.00

Category :- More than 40 up to 45 PTO HP

Ranking

Name of Manufacturer

Brand

Model

PTO HP

Fresh quoted price as on 15.11.2019

L-1

M/s International

Sonalika international

DI-47 RX

Heavy Duty

43.2

445000.00

Tractor Limited

L-2

M/s Mahindra & Mahindra Ltd. (FES)

Swaraj

Swaraj

744 FE

41.2

478240.00

L-3

M/s Tafe Motors & Tractors Ltd.

Eicher

485

Hydromatic

41.6

500000.00

L-4

M/s Escorts Ltd.

Farmtrac

45 F9

43.9

510000.00

L-5

M/s Mahindra & Mahindra Ltd.

Mahindra Bhumiputra

575 DI MKM DLX

40.07

513410.00

L-6

M/s CNH Industrial (I) Pvt. Ltd.

New Holland

4710 A

42.23

516786.00

L-7

M/s John Deere India Pvt. Ltd.

John Deere

5050 D VS

43.2

521950.00

L-8

M/s Same Deutz Fahr India (P) Ltd.

DEUTZ FAHR

Agromaxx 50

41.78

536000.00

L-9

M/s Tractors and Farms Equipment Ltd.

TAFE

MF-7250 DI

43.0

550000.00

Category :- More than 45 up to 50 PTO HP

Ranking

Name of Manufacturer

Brand

Model

PTO HP

Fresh quoted price as on 15.11.2019

L-1

M/s International Tractor Limited

Sonalika

DI 750 III HDM SI

46.1

480000.00

L-2

M/s Mahindra & Mahindra Ltd. (FES)

Swaraj

Swaraj

855 FE

46.0

490560.00

L-3

M/s Escorts Ltd

Powertrac

Euro 50

45.3

499000.00

L-4

M/s Mahindra & Mahindra

Mahindra

555 DI Power +

48.0

530930.00

L-5

M/s CNH Industrial (I) Pvt. Ltd.

New Holland

3630 TX

46.0

548786.00

L-6

M/s Tractors and Farms Equipment Ltd.

TAFE

MF 5245 DI MAHAMAHAAN

46.6

575000.00

L=7

M/s John Deere India Pvt. Ltd.

John Deere

5310 V3

49.6

603000.00

L-8

M/s Tafe Motors & Tractors Ltd.

Eicher

557

45.8

605000.00

Accordingly, the Evaluation Committee recommended L-1 to L-6 in the category 35-40 PTO HP, L-1 to L-5 in the category 40-45 PTO HP and L-1 to L-4 in the category45-50 PTO HP to be given the Letter of Award. Subsidy, however, was to be limited to L-1 price in each category.

7. Being aggrieved the present appellants approached this Court by filing WP (C) 8696/2019 and W.P(C) No. 8699/2019 respectively, challenging the evaluation as well as the award of the contracts to the short listed bidders.

8. The learned Single Judge while issuing Notice vide order dated 27.11.2019 permitted the State respondents to issue supply orders leaving aside 5000 numbers of Tractors. The matters were duly contested by the respondents by filing their counter and both the writ petitions were heard together and vide impugned Judgment and order dated 19.06.2019, the writ petitions were dismissed. Although the learned Single Judge held that there was no enabling provision in the ITB of NIT dated 04.02.2019 for such recalling of fresh competitive Price Bids after opening of the Price Bids, it upheld such action of the State respondents that such deviation was for a larger public interest. Aggrieved the present Appeals have been filed.

9. The learned Senior counsel for the appellants, Mr. K. N. Choudhury has strenuously urged that the impugned Judgment and order passed by the learned Single Judge is contrary to the law laid down by the Apex Court in matters of contract and distribution of State Largesse and therefore erroneous and the same should therefore be interfered with and set aside. Mr. Choudhury, learned counsel further submits that the process by which the bids were evaluated and the tenderers were selected and the bidders were selected is also in complete violation to the CVC guidelines and therefore, the evaluation of the NIT ought to have been interfered with by the learned Single Judge and thereby the writ petitions ought to have been allowed.

10. The manner in which the contract was awarded is totally opposed to the settled principles in respect of the distribution of state largesse. The learned Senior Counsel urged that once the price bids are opened and the prices are known to all the bidders and the authorities concerned, calling for fresh financial bids affects the sanctity of the entire bid process. The learned Senior counsel contended that each of the bidders are within their rights to quote the price which they deem it proper in response to the NIT. It is contended that during the process of opening the price bid as had been initially notified in the NIT and the evaluation thereto, the present short-listed bidders were not even close to be considered lowest bidders. The quoted bids of the appellants were lower than the subsequently short listed bidders. However, because of the process adopted by the State calling for fresh financial bids to be submitted by all the 50% of the technically responsive bidders, the bids submitted by the short-listed bidders

were subsequently found to be lower than the bids submitted by the appellants and thereby they were considered to be bidders eligible for the award of the contract. It is urged that because of the unfair process adopted by the Government, bidders like respondent No. 6, who were earlier nowhere within the 50% technically responsive bidders with competitive rates, became L-5, L-4 and L-3 respectively in categories (i), (ii) and (iii). The appellants did not submit fresh financial bids and maintained the price bids submitted by them earlier. It is urged that such procedure adopted by the State or its instrumentalities are absolutely unfair and arbitrary and are therefore violative of Article 14, besides being contrary to the CVC guidelines laid down. The learned Senior counsel urged that merely because the State has entered into commercial contract/ transactions, the requirement of fairness under Article 14 cannot be given a go-by the State or its instrumentally as has been done during the tender evaluation of the NIT in the present proceedings. The learned Senior counsel urged that where there is an unfairness and arbitrariness, its strikes at the root of Article 14 and such action is required to be interfered with and set aside in judicial review under Article 226 of the Constitution of India.

11. Per contra Mr. D. Saikia, learned Advocate General, Assam has strongly objected to the contentions of the learned counsel for the petitioner. The learned Advocate General, Assam, submits that the whole scheme is for offering benefits to the farmers and agriculturists in the rural area. The cabinet decision taken on 21.10.2019 is absolutely in public interest as public revenue is involved. The learned Advocate General further submits that the cabinet decision dated 21.10.2019 was never assailed by the appellants and the calling of the fresh competitive prices by the petitioners are in pursuance to the said cabinet decision and therefore, the same has been rightly upheld by the learned Single Judge. The learned Advocate General submits further that as is evident from the cabinet decision that pursuant to the opening of the price bid initially, on 06.07.2019, the NIT could not be processed because of the situation prevailing in the State due to COVID-19 pandemic and various other connected reasons and therefore admittedly there was a slump in the automobile industry. The prices quoted by the bidders were pre-Covid prices and, therefore, as per information available from the market sources, the prices of the same models had gone down substantially and therefore the cabinet had rightly taken a decision in the interest of public policy to seek for revised price bids from the intending tenderers. That apart, the learned Advocate General, Assam, contended, that as per clause 11 of the NIT it was still open for the beneficiary to negotiate the price with the bidder subsequently. The learned Advocate General, Assam further submitted that the present NIT pertains to the Chief Minister Samagra Gramya Unnayan Yojna, Jaya Nagar, (CMSGUY) Khanapara, Guwahati scheme. He submits that during the earlier phase-I process, a similar situation had arisen, wherein the appellants along with other tenderers were also intending bidders. The appellant was actually a beneficiary of such similar subsequent call for price bid to which he did not object at the relevant point in time rather he participated and was benefited

accordingly. Therefore, the writ petition filed before the learned Single Judge by the present appellant is frivolous and lacks merit was rightly rejected by the learned Single Judge. He submits that there is no infirmity in the Judgment of the learned Single Judge and accordingly the present writ appeal should be dismissed.

12. We have heard the learned counsels for the parties and we have perused the pleadings on record. The impugned Judgment by the learned Single Judge is also carefully perused.

13. From the facts extracted above, it is seen that pursuant to the initial evaluation of bids held on 06.07.2019 the appellant in W.A. No. 198/2021 was L-6, L-5 and L-8 in the categories (i) 35 -40 PTO HP, (ii) 40-45 PTO HP and (iii) 45-50 PTO HP respectively. And the Appellant in W.A. No. 199/2021 was within the most competitive rates offered by 50% of the technically responsive bidders as per clause 4 of the Notice. However, pursuant to the fresh price bids offered in response to the Notice dated 30.10.2019 and the evaluation undertaken on 16.11.2019, the appellants were pushed down the respective categories resulting in their ouster from the selection criteria on the basis of competitive rates submitted afresh by their competitors. On the contrary respondent no.6, who was not qualified under clause 4 prior to 30.10.2019 became L-5, L-4 and L-3 respectively in the three categories respectively pursuant to the fresh price bids submitted.

14. A careful perusal of the conditions of the NIT reveals that out of the technically qualified bidders, only 50% would be selected for offering the financial bids. There is no other provision in the NIT which permits change and/or recalling of any prices offered by the bidders. There is also no Clause prescribing for negotiation by the Government with all the technically responsive bidders after the price bids are opened. Although as per clause 11 of the NIT the beneficiary group is permitted to negotiate with the dealer to bring down the rates below the price quoted by the manufacturer, the said clause cannot be expanded to mean that the Government can enter into negotiations with all the technically responsive bidders after the price bids are opened. The State, however, contends that offer of fresh competitive prices in pursuance to the Cabinet decision was also invited from the appellants, but however they did not choose to offer fresh Price Bids as had been offered by other bidders. The learned Single Judge has accepted that there was no enabling provision in the ITB to the NIT dated 04.02.2019 for calling of fresh competitive bids after opening of the price bids, however, the learned Single Judge has taken a view that such procedure was indeed necessary for larger public interest in view of the fact that the Tractors and Tractors and Matching Implements are required for distribution to the rural public. The learned Single Judge arrived at a conclusion that larger public interest justified the deviation made by the State in calling for fresh competitive prices although not provided for in the ITB to the NIT. It was held that the petitioners (the appellants herein) had failed to discharge their

burden to disprove the fact of larger public interest being involved in such deviations.

15. Judgments of the Apex Court rendered in— Rammana Dayaram Shetty Vs International Airport Authority of India & Ors reported in (1979) 3 SCC 489, Jagdish Mandal -Vs- State of Orissa &Ors reported in (2007) 14 SCC 517 and Central Coalfields Limited & Anr-Vs- SLL-SML & Ors reported in (2016) 8 SCC 622, were relied upon by the learned Single Judge to arrive at his conclusions. The learned Single Judge concluded that there was indeed deviation and that deviation was taken in larger public interest. Under such circumstances, the learned Single Judge declined to interfere with the decisions taken and the award of the contracts made, in exercise of powers of judicial review.

16. We have given our anxious thoughts to the issues raised in the present appeal. Although there is no quarrel with the proposition that the employer/the Government can deviate from the tender conditions for larger public interest, however, such deviation is to be scrutinized in each individual case to arrive at a finding, whether such deviation was indeed necessary in the facts of the case. In the facts of the present case, if the Government was of the view that there was a substantial reduction in the prices of automobiles because of the Covid pandemic situation, then it ought to have either called for fresh bids and / or alternatively entered into negotiations with only the lowest bidder. What was done instead by the Government was that it permitted all the technically responsive bidders to submit fresh competitive prices. It is apparent that upon opening of the financial bids submitted earlier, the prices offered by the bidders including the present appellants were disclosed to all the participants. That enabled the Bidders who offered Fresh Bids to offer more competitive Bids than what was offered earlier by them and which bids were below the prices offered by the appellants.

Such procedure is alien to the process of evaluation of bids in an NIT initiated by the State, unless specifically provided for in the terms of the NIT.

17. It is all too well settled that the State is under no compulsion to enter into negotiation or enter into contract with any party in respect of supply of any goods and services. However, it is also widely accepted that to remove any arbitrariness and to make the entire process transparent, invitation to bid or NIT is considered to be the most widely accepted procedure to invite for supply of Goods and Services by the State. However, where the State has called for such NITs or tenders, with specific conditions laid down therein with regard to the process of evaluation and settlement of such tenders, it is required to adhere to the process published by which it has invited bidders to offer their bids for supply of Goods and Services. The Apex Court in Vice Chairman and Managing Director, City and Industrial Development Corporation, of Maharastra Ltd. And another Vs Shishir Realty Private Limited and Others reported in 2021 SCC Online SC 1141, examined the Role of constitutional Courts in reviewing tender process. The Apex Court held that merely instilling an agency with discretion may not be prohibited by the constitution, rather its unfettered use of such discretion that is prohibited.

The Apex Court held that while recognizing the existing principle of freedom to enter or not to enter into contracts by the State and its instrumentalities, the manner, method, and motive behind the aforesaid decision can be subjected to the judicial review on the touchstone of equality, fairness, proportionality and natural justice. The Apex Court held that when a contract has been evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. Courts need to have a broader understanding of public interest, while reviewing such contracts.

18. The Apex Court held that Governmental bodies being public authorities are expected to uphold fairness, equality and Rule of law even while dealing with contractual matters. It is a settled principle that right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process. A transparent bidding process is much favoured by this Court to ensure that constitutional requirements are satisfied. Fairness and good faith stand ingrained in the contracts entered into by public authorities’ mandates such public authorities to conduct themselves in a non-arbitrary manner during the performance of their contractual obligations. The constitutional guarantee against arbitrariness as provided under Article 14, demands the State to act in a fair and reasonable manner unless public interest demands otherwise. However, the degree of compromise of any private legitimate interest must correspond proportionately to the public interest, so claimed.

It was further held that merely by using grounds of public interest or loss to the treasury, the successor public authority cannot undo the work undertaken by the previous authority. Such a claim must be proven using material facts, evidence and figures. If it were otherwise, then there will remain no sanctity in the words and undertaking of the Government. Businessmen will be hesitant to enter Government contract or make any investment in furtherance of the same. Such a practice is counter-productive to the economy and the business environment in general.

19. In the facts of the present proceedings, the NIT issued was a 2 (two) bids system comprising of technical bids and Financial bids. The terms of the NIT prescribed that 50% of the technically qualified bidders would be called for offering their Financial bids. The Financial bids were opened on 06.07.2019. All the bidders who fulfilled the criteria would have a reasonable expectation of being shortlisted as a successful bidder(s). The NIT Clause does not provide for negotiations by the Government. However, there is a provision for the beneficiary to negotiate with the dealer to bring the rates below the price quoted by the manufacturer. In view of the such specific Clauses available in the NIT, the decision of the authorities to request for fresh price bids on the ground of their

being a slump in the automotive sector in view of the Covid pandemic situation is not supported by the required facts and the data in the pleadings filed. The Apex Court has succinctly held that fairness and good faith which is ingrained in the contracts entered into by public authorities demands that such public authorities conduct themselves in a manner not arbitrary during the performance of their contractual obligations. The deviation resorted to by the respondents was alien to the tender process initiated. Such deviations from the published tender conditions without supporting materials for the reason therefore, has violated the rights, the appellants to be considered in a fair and transparent manner. Such actions of the respondents will have to be held to be arbitrary and therefore unsustainable.

20. In view of the all the above discussions, we do not agree with the conclusions arrived at by the learned Single Judge that public interest is the sole ground which will permit governmental authorities to deviate from the tender clauses / conditions which are published by such Government authorities, without sufficient supporting data and materials.

21. Under the circumstances, we hold that the findings of the learned Single Judge that the deviation in the NIT resorted to by the State respondents was for larger public interest, which view being opposed to the law laid down by the Apex Court cannot be upheld and the same is accordingly interfered with. To that extent we set aside the Judgment of the learned Single Judge.

22. Having held as such, it is also to be mentioned herein that during the course of the arguments, upon specific instructions received, the learned Advocate General, Assam has submitted that during the pendency of the present proceedings, because of change in the policy, the Government has decided not to make any further supply of Tractors and Matching Implements under the Chief Minister Samagra Gramya Unnayan Yojna, Jaya Nagar, (CMSGUY) Khanapara, Guwahati scheme, phase-II. The learned Advocate General, State of Assam submits that in view of the interim order dated 27.11.2019, whereby liberty was granted to the State respondents to issue supply order, leaving aside a quantity of 5000 nos. of tractors; about 15,624 Tractors and Implements were already supplied and 5000 nos. of Tractors were left to be supplied. The learned Advocate General, Assam submits that there are 22,620 identifiable revenue villages, where the distribution of tractors was required to be undertaken under the scheme. As on date a total of 15,624 numbers of tractors have already been distributed. Further distribution of Tractors will not be made due to change in Government Policy.

23. In view of such submissions, this Court directed the State to bring such instructions by way of an affidavit. The affidavit was filed on behalf of the respondent no.2 on 08.12.2021. The relevant paragraphs of which are extracted below:-

“2. That the deponent begs to state that in the instant proceeding, the Appellant has assailed the Common Judgment and Order dated 01.06.2021 passed in W.P.(c) no 8696/2019 and W.P.(c) 8699/2019, whereby the Appellant challenge to Communication no Agri/Engg/4772/CMSGUY-PhaseII/2018-19/339 dated 30.10.2019 whereby fresh price bids from technically responsive bidder in response to NIT dated 04.02.2019 under Phase IT of Chief Minister Samagra Gramya Unnayan Yojana, were called for in respect of approved tractor models and technically approved matching implements was dismissed, by Ld Single Judge of this Hon'ble Court.

It is pertinent to state herein that in Phase I of Chief Minister Samagra Gramya Unnayan Yojana also fresh price bids were called for, wherein the Appellant participated and reaped the benefit of such fresh price bid.

3. The Govt. of Assam launched a program for Farm Mechanization under the Mission "Chief Minister Samagra Gramya Unnayan Yojana". Under the said program one Tractor with matching implements is to be provided to eligible selected group in each village at 70% Govt. subsidy covering total 25,425 nos. of villages. Under the said program the Department of Agriculture issued Notice no. Agri/Engg/4632/CMSGUY/2017-18/66 dated 07.07.2017 under Phase I and also Notice no Agri/Engg/4772/CMSGUY/2018-19/55 dated 04.02.2019, wherein all Manufacturers of Tractor and matching implements (as per guidelines) registered on the Farmers' Portal (http://farmer.gov.in) / Farm Mechanization and having presence in the State with adequate service facilities were requested to give their most competitive price for the scheme for the Tractors under 3 categories of horse power as mentioned therein with implements having normal warranty period and most competitive price for extended period upto 6 (six) years warranty

4. That the deponent begs to file this affidavit to bring on record certain facts and state that there are 22,620 identifiable revenue village based on the guidelines approved by the Mega Mission Society-Chief Minister Samagra Gramya Unnayan Yojana for distribution of Tractors units scheme. Out of the identifiable revenue village, in total under Phase I and Phase II, 15,624 numbers of tractors have been distributed till date.

With regard, to distribution of tractors to the remaining 6996 numbers of revenue villages under the aforesaid scheme, the deponent begs to state that as per communication no CEO/MMS-CMSGUY/94/2017/222 dated 08.10.2021 issued by the Project Officer, Mega Mission Society-Chief Minister Samagra Gremya Unnayan Yojana there would be no further distribution of tractor under CMSGUY and if required, t the same would be undertaken under Farm Machinery Bank Scheme of Govt. of India and the Department of Agriculture may provide assistance in this regard."

24. In the said affidavit filed by the respondent No. 2, it is stated that there will be no further distribution of tractors under Chief Minister Samagra Gramya Unnayan Yojna, Jaya Nagar, (CMSGUY) Khanapara, Guwahati scheme and if required the same would be undertaken under farm, machinery, bank scheme of

the Government of India, Department of Agriculture.

25. In view of the above, we dispose of the writ appeals by interfering with the findings arrived at in the impugned Judgment by the learned Single Judge that the deviation in the NIT was for larger public interest. In view of our such findings that the deviation in the NIT resorted to by the State was arbitrary and therefore colourable, the appellants are at liberty to pursue other legal remedies, before any appropriate forum of law, if so advised. However, considering the fact that the scheme has been abandoned after distribution of 15,624 tractors, it will not be proper for the Court to issue directions to the State to permit distribution/ supply of such Tractors and Matching Implements by the appellants at this stage.

26. Writ appeal is accordingly disposed of in terms of the above conditions.

27. No order as to cost.

