HIGH COURT OF TRIPURA
AGARTALA
W.P.(C).No.715 of 2023

M-TECH INNOVATIONS LIMITED
having its registered office at Plot No. P-1/2, Rajib Gandhi Infotech Park, Phase I, Hinjawadi, Pune-411057, represented by Rajkumar M Gandhi, Director of M- Tech, Innovations Limited

.............Petitioner(s)

Versus

1.THE STATE OF TRIPURA AND ORS
Represented by the Secretary, Transport Department, Government of Tripura, New Capital Complex, PO- Kunjaban, PS- New Capital Complex, Agartala, District-West Tripura
2.THE DEPUTY SECRETARY
Government of Tripura, Transport Department, New Capital Complex, P.O- Kunjaban, PS- New Capital Complex, Agartala, District- West Tripura
3.THE TRANSPORT COMMISSIONER
Paribahan Bhawan, Agartala, PS- West Agartala, PO and Sub-Division-Agartala, District- West Tripura
4.THE ADDITIONAL TRANSPORT COMMISSIONER
Paribahan Bhawan Agartala, PS- West Agartala, PO and Sub- Division-Agartala, District-West Tripura
5.THE JOINT TRANSPORT COMMISSIONER,
Paribhahan Bhawan, Agartala, PS-West Agartala, PO and Sub-Division- Agartala, District-West Tripura
6.ROSMERTHA TECHNOLOGY LIMITED
having its office at 402, 4th Floor, World Trade Tower Barakhamba Lane, Connaught Place, Central Delhi, New Delhi, Delhi, India, 110001

..............Respondent(s)

For Petitioner(s)	:	Ms Rumela Guha, Advocate
For Respondent(s)	:	Mr. BN Majumder, Sr. Advocate, Mr. Kohinoor N Bhattacharyya, GA Mr. Suman Bhattacharjee, Advocate Mr. Samrat Sarkar, Advocate

Date of hearing	:	**01.07.2026.**
Date of pronouncement	:	**09.07.2026**.
Whether fit for reporting	:	YES.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT

JUDGMENT & ORDER

JUDGMENT (BY THE CHIEF JUSTICE):

1. The petitioner is a Company registered under the Companies Act, 2013 and is engaged in the business inter alia of manufacture of Smart Cards.

2. The Respondent no.1 is the State of Tripura rep., by it's Secretary, Transport Department and respondents 2-5 are employees of the said Department.

3. The petitioner had been awarded the tender for Personalisation of Smart Card based Driving Licence and vehicle registration Certificate Project on BOOT basis on Public-Private on 6.6.2017 for 5 years by the respondents previously.

4. The Additional Transport Commissioner (respondent no.4) published a Request for Proposal (for short 'RFP') dt.28.12.2022 for selection of service provider for Personalisation of Smart Card based Driving Licence and vehicle registration Certificate Project on BOOT basis on Public-Private Basis for the next 5 years. It was also uploaded on the e-procurement system of the Govt. of Tripura on the same day. A corrigendum was also issued to it on 16.1.2023.

5. The petitioner submitted it's bid online with certain annexures by the stipulated date. The respondent no.6 was also one of the bidders.

6. The result of evaluation of the technical bids submitted by all bidders including the petitioner was uploaded on 9.6.2023 on the web site.

7. The Technical Evaluation Summary (Annexure-6) so uploaded indicated that bid of petitioner and one other bidder M/s PHO-COM-NET Pvt.Ltd were declared 'non-responsive' and that the bid of respondent no.6 was accepted. No reasons were indicated why the petitioner's bid was termed 'non-responsive'.

8. The record further reveals that financial bid was opened thereafter and was approved on 14.8.2023 and the Contract Agreement was signed on 16.11.2023 between the respondent no.1 and respondent no.6. On 26.11.2023, work order was issued to respondent no.6 to commence work.

9. The petitioner filed this Writ Petition on 16.11.2023 challenging the decision of the Technical Evaluation Committee of the respondents 1-5, seeking it's revocation/rescission and for a direction to the respondents 1-5 to take a fresh decision.

10. Petitioner contended in the Writ Petition that no reasons were assigned for treating it's proposal/bid as 'non-responsive' inspite of representations dt.13.6.2023 and dt.12.9.2023 given by the petitioner. It contended that the action of respondents 1-5 in treating it's bid as 'non-responsive' is illegal and was done with a malafide intention only to favour respondent no.6.

The stand of the respondents and it's consideration by the Court

The grounds for interference by High Court in Tender matters

11. The scope of judicial review in the matters relating to award of tenders by State/Instrumentalities of the State was elaborately considered in ***Tata Cellular v. Union of India***[1] and the Supreme Court had held:

> *"The duty of the court is to confine itself to the question of legality. Its concern should be:*
>
> *1. Whether a decision-making authority exceeded its powers,*
> *2. committed an error of law,*
> *3. committed a breach of the rules of natural justice,*
> *4. reached a decision which no reasonable tribunal would have reached or,*
> *5. abused its powers.*
>
> *"Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*

[1] (1994) 6 SCC 651

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time." (emphasis supplied)

12. Explaining the same , the Supreme Court stated in ***Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd.***[2]**,** :

"10. Therefore, though the principle of judicial review cannot be denied so far as exercise of contractual powers of government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the court that in the matter of award of a contract power has been exercised for any collateral purpose."

(emphasis supplied)

13. In ***Michigan Rubber (India) Ltd. v. State of Karnataka***[3]*,* this was again reiterated in the following terms:

"23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the

[2] (1997) 1 SCC 738, at page 746
[3] (2012) 8 SCC 216, at page 228 :

bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and

(ii) <u>Whether the public interest is affected</u>?"

14. In ***Municipal Corpn., Ujjain v. BVG India Ltd.***[4], the Supreme Court stated that the State has the right to refuse the lowest or any other tender, provided that it tries to get the best person or the best quotation. It held that where there is irrationality or arbitrariness, judicial review is permissible.

15. Keeping in mind the above legal principles, we shall consider the contentions of parties with reference to material on record.

<u>The tender conditions</u>

16. In the RFP dt.28.12.2022, certain conditions of eligibility for bidders were laid down in Section –II (A.General).

Clause 1.1. of the same which is relevant for the instant case stated that 'Bidder shall have to submit the copy of *latest Income Tax return* bearing Permanent Account Number (PAN) submitted to the Income Tax Officer of the Circle concerned, for the previous financial year along with the bid'. Clause 1 (n) of Section VIII of RFP also reiterates this.

Since the RFP was issued on 28.12.022, the previous financial year will be 2021-22 and the Assessment Year will be 2022-23.

The latest Income Tax return required to be filed is thus the return for Assessment Year 2022-23.

17. Section V (Evaluation for Qualification) of the RFP under the heading "4. Financial Capability" is relevant.

(a) Clause 4.1 therein stated that the Financial Capability of the Bidders would be evaluated on the basis of the 'Average Annual Turnover for the *last three* financial years'. Clause 1 (m) of Section VIII indicates that the

[4] (2018) 5 SCC 462 : (2018) 3 SCC (Civ) 291, at page 475

bidder must submit a certificate issued by a CA as proof of turnover condition of minimum of Rs.1 Cr from IT business – IT services, Hardware /Network equipment sales and Maintenance and Smart project for financial years 2019-20,2020-21 and 2021-22.

(b) Clause 4.3 states that the Proposal must be accompanied by the audited annual financial statements of the bidder for the last 3 completed financial years.

Since the RFP was issued on 28.12.022, the previous 3 completed financial years will be 2019-20, 2020-21 and 2021-22.

18. In para 6 of the counter affidavit filed by respondents 1-5 , they say as regards compliance of clause 4.1 by petitioner that it had filed only acknowledgment of Income Tax Return instead of audited certificate for last three years.

But at pg.279 of the paper book, petitioner has filed along with it's rejoinder, the document complying with clause 4.1. It indicates the petitioner's Gross turnover for 2019-20, 2020-21 and 2020-21 separately from IT enabled citizen centric services, Hardware/Network Equipment Sales maintenance and Integration of Smart Card based project each of which is above Rs.1 Cr.

19. As regards compliance with clause 4.3, the respondent No.s 1-5 contend that the petitioner did not submit audited certificate for assessment years 2017-18, 2018-19 and 2019-20.

But at pg.269-274, petitioner has also filed along with it's rejoinder, the document complying with clause 4.3 i.e., audited annual financial statements of the bidder for the last 3 completed financial years 2019-20, 2020-21 and 2020-21.

20. The petitioner has stated that the above documents were filed online with it's bid which statement is not disputed by the respondent No.s1-5.

21. Further, clause 4.3 uses the words "audited annual financial statements of the bidder *for the last 3 completed financial years".*

Such financial years would obviously be the three financial years before 28.12.2022 i.e., financial years 2019-20, 2020-21 and 2021-22.

It is ridiculous for the respondents to contend that the words 'last three financial years' occurring in clause 4.3 refer to 2017-18, 2018-19 and 2019-20, and because petitioner did not submit them, it is not technically qualified.

22. These pleas in the counter affidavit are false pleas disproved by record and appear to have made with the intention to mislead the Court.

23. Relying on a Check list contained in Annexure VII to the RFP, it is contended by counsel for respondent No.s 1-5 that petitioner had not submitted last 3 years IT return Copies i.e., for AY 2017-18, 2018-19 and 2019-20, and that petitioner had submitted only acknowledgments of filing of returns, that too of 2020-21, 2021-22 and 2022-23 AY and that this is not as per requirement of RFP.

24. There is actually no mention in clause 1.1 in Section –II (A.General) about filing of last 3 years Income Tax returns. It only mentions *latest Income Tax return* i.e.2021-22 FY (2022-23 AY).

25. The check list, in our opinion, cannot override the clause 1.1 and the respondents cannot take advantage of the check list to insist that Income Tax returns of AY 2017-18, 2018-19 and 2019-20 ought to have been filed by petitioner.

26. As decided above, the words ‘last 3 years’ used in Check list also cannot mean AY 2017-18, 2018-19 and 2019-20 as is being contended by the respondents 1-5, and can only mean AY 2020-21, 2021-22 and 2022-23.

27. Thus the respondents have deliberately misread the condition in the RFP and again tried to mislead the Court.

28. As stated supra the Income Tax return for 2022-23 AY alone was necessary and the petitioner did not file it and it had only filed acknowledgments issued by the IT department of last 3 years (pg.280-282). But she contended that that these acknowledgments show the income and tax paid and other details are also contained in the audited financial statements filed by petitioner referred to above.

29. More importantly, the petitioner has alleged that respondent no.6 did not submit IT return for AY 2022-23 (FY 2021-22) and that it has also filed only acknowledgment receipts instead of IT return for AYs 2018-19,2019-20, 2010-21 and 2021-22.

30. In other words, respondent no.6 also did not file it’s full IT returns for those years or even for AY 2022-23 (FY 2021-22) (which is required to be filed by clause 1.1 in Section –II (A.General) of the RFP) or even acknowledgment of filing such a return along with it’s bid.

31. So even the bid of respondent no.6 is defective and did not conform to the conditions prescribed in the RFP.

32. The counsel for respondent no.s 1-5 and the counsel for respondent no.s 1-6 have not disputed the above allegation of the petitioner.

33. So if the respondent no.s 1-5 have waived for respondent no.6, compliance of this requirement of filing full IT return for last 3 financial years as mentioned in 'Check List' in Annexure VII to the RFP or IT return for AY 2022-23 as mentioned in clause 1.1 in Section –II (A.General) of the RFP, they cannot apply the said requirement to the petitioner to disqualify the petitioner.

34. It must be applied to both petitioner and respondent no.6 *or* waived for both parties. It cannot be selectively be applied to petitioner, and waived for respondent no.6. That would be blatantly arbitrary, but that is what the respondent No.s 1-5 did.

35. Counsel for respondents also contended that petitioner did not submit certificate from the Statutory Auditor in the format indicated in Annexure-X, but such a certificate was uploaded by petitioner, and it is at pg.277 of the papers filed along with rejoinder by it. Firstly there is no such plea in the counter affidavit and secondly, as the record shows, the contention is without any merit.

36. In ***Ramana Dayaram Shetty v. International Airport Authority of India***[5], the Supreme Court of India held that the State has to abide by the standards it lays down in tenders and if it does not, it's action can be invalidated. It held:

> ***"10.*** *Now, <u>there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender</u>. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. <u>This was the standard or norm of eligibility laid down by Respondent 1 and since the Respondents 4 did not satisfy this standard or norm, it was not competent to Respondent 1 to entertain the tender of Respondents 4.</u> <u>It is a well-settled rule of administrative</u>*

[5] (1979) 3 SCC 489, at page 503 :

law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in ***Viteralli v. Saton***[1] *where the learned Judge said:*

> *"An executive agency must be rigorously held to the standards by which it professes its action to be judged …. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed .... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."*

This Court accepted the rule as valid and applicable in India in ***A.S. Ahluwalia v. Punjab***[6] *and in subsequent decision given in* ***Sukhdev v. Bhagatram***[7]*, Mathew, J., quoted the above-referred observations of Mr Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority."*

(emphasis supplied)

37. This principle has been reiterated in several subsequent decisions of the Supreme Court such as ***Netai Beg v. State of W.B***[8] and ***M.P.Power Management Co.Pvt.Ltd v. Sky Power Southeast Solar India (P) Ltd***[9]**.**

38. But in the instant case, for obvious oblique motives, they have chosen not to follow the above principle.

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[6] (1975) 3 SCC 503
[7] (1975) 1 SCC 421
[8] (2000) 8 SCC 262
[9] (2023) 2 SCC 703

39. In other words, the Technical Evaluation Committee of respondent No.s 1-5 has (a) deliberately ignored material filed by petitioner, (b) misread the tender conditions wrongly, (c) ignored the fact that respondent no.6 has also not complied with the tender conditions, and held that the bid of respondent no.6 was 'responsive' while that of the petitioner is 'non-responsive'. This is arbitrary, unreasonable and violates Art.14 of the Constitution of India.

40. They have also raised false, frivolous and vexatious pleas instead of acting like a model litigant.

41. In ***Popatrao Vyankatrao Patil v. State of Maharashtra***[10]**,** it was held by the Supreme Court that the State should be a model litigant and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. It held:

> *"14. This Court, has time and again held, that the State should act as a model litigant. In this respect, we can gainfully refer to the following observations made by this Court in* ***Urban Improvement Trust, Bikaner v. Mohan Lal****11 : (SCC pp. 515-16, paras 6-9)*
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> *"6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.*
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> *7. In* ***Dilbagh Rai Jarry v. Union of India****12 this Court extracted with approval the following statement [from an earlier decision of the Kerala High Court (***P.P. Abubacker case***13, AIR pp. 107-08, para 5)] : (SCC p. 562, para 25)*
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> *'25. ... "5. ... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and*

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[10] (2020) 19 SCC 241, at page 245
[11] (2010) 1 SCC 512
[12] (1974) 3 SCC 554
[13] AIR 1972 KERALA 103

inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957." '

*8. In **Madras Port Trust v. Hymanshu International**14 this Court held : (SCC p. 177, para 2)*

'2. ... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and

[14] (1979) 4 SCC 176

by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.'

9. In a three-Judge Bench judgment of ***Bhag Singh v. State (UT of Chandigarh)****15 this Court held : (SCC p. 741, para 3)*
'3. … The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.'" (emphasis supplied)

42. For the aforesaid reasons, we hold that this action of respondents in awarding of the contract to respondent no.6 is arbitrary, unreasonable and violative of Art.14 of the Constitution of India and they had acted deliberately with a malafide intention to disqualify the petitioner and favour the respondent no.6.

43. The respondents no.1-5, in para 5 of their counter affidavit dt.22.12.2023, referred to certain lapses by petitioner when it performed the same work which had been entrusted to it earlier during the period 6.6.2017- 30.11.2023.

44. These pleas are not relevant because admittedly the petitioner was allowed to continue the work during the 5 years it was awarded the said work and even thereafter upto 30.11.2023 without interruption, and it was never informed by respondent No.s 1-5 about these things during the said period. In our view, these pleas are now being raised only as an afterthought by respondent no.s1-5 to justify their illegal and arbitrary actions.

45. For all the aforesaid reasons, the decision of the respondents to award the work of the subject RFP dt.28.12.2022 to respondent no.6 is declared,

[15] (1984) 3 SCC 737

arbitrary, unreasonable, malafide and violative of Art.14 of the Constitution of India; and consequently, the work order dt. 28.11.2023 issued by respondent no.s 1-5 to respondent no.6, and the Agreement dt.16.11.2023 entered into by respondent no.1 with the respondent no.6, are set aside. The respondents are directed to call for fresh tenders for the said work immediately. The respondent No.s 1-5 together and respondent no.6 individually shall also pay costs of Rs.20,000/- each to petitioner within 6 weeks.

46. All other applications shall stand disposed off.

(BISWAJIT PALIT), J **(M.S. RAMACHANDRA RAO), CJ**

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