

**IN THE HIGH COURT OF MADHYA PRADESH AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 1<sup>st</sup> OF SEPTEMBER, 2022

**WRIT PETITION No. 18376 of 2022**

Between:-

M/S MAX CHEMICALS INDIA THROUGH ITS  
AUTHORIZED SIGNATORY SHRI VIJAY GOYAL S/O  
LATE SHRI SHANKARLAL GOYAL, AGED ABOUT 57  
YEARS, OCCUPATION: BUSINESS 41/1 SAMPAT  
AVENUE BICHOLI MARDANA INDORE (MADHYA  
PRADESH)

.....PETITIONER

*(BY SHRI VINAY SARAF, SENIOR COUNSEL ASSISTED  
BY SHRI RAHUL MAHESHWARI, ADVOCATE)*

AND

1. MINISTRY OF COMMERCE AND INDUSTRY  
THROUGH PRINCIPAL SECRETARY VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)
2. M.P. LAGHU UDYOG NIGAM LTD. THROUGH ITS  
MANAGING DIRECTOR HAVING ITS OFFICE AT  
FIRST FLOOR, PANCHANAN BHAVAN, MALVIYA  
NAGAR, BHOPAL (MADHYA PRADESH)
3. MANAGING DIRECTOR M.P. LAGHU UDYOG  
NIGAM LTD. HAVING ITS OFFICE AT FIRST FLOOR,  
PANCHANAN BHAVAN, MALVIYA NAGAR, BHOPAL  
(MADHYA PRADESH)
4. RAMSHREE CHEMICALS PVT. LTD THROUGH ITS

MANAGING DIRECTOR HAVING ITS OFFICE AT PLOT NO. 51-52 B SECTOR, AREA ROAD, MANDIDEEP INSUSTRIAL AREA, DISTRICT RAISEN (MADHYA PRADESH)

5. SHRINATHJI KAYAKALP REMEDIES PVT. LTD. THROUGH ITS MANAGING DIRECTOR HAVING ITS OFFICE AT PLOT NO. 98 DISTRICT SECTOR A, INSUSTRIAL AREA, MANDIDEEP BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

*(RESPONDENT NO.1 BY SHRI BHASKAR AGRAWAL, GOVT. ADVOCATE)*

*(RESPONDENTS NO.2 & 3 BY SHRI AJINKYA DAGAONKAR, ADVOCATE)*

*(RESPONDENTS NO.4 & 5 BY SHRI PRATYUSH TRIPATHI, ADVOCATE)*

*This petition coming on for admission this day,*

***JUSTICE VIVEK RUSIA passed the following:***

#### ORDER

The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved by the communication dated 22.07.2022 issued by respondents No.2 & 3 informing the petitioner about the rejection of tender during the technical evaluation by the duly constituted committee.

02. The facts of the case in short are as under:-

2.1. Respondents No.2 & 3 issued a Notice Inviting Tender (NIT) i.e. NIT No.01-A/2022 – 23 for enlisting a supplier for the supply of Water Field Testing Kits (Multi-Parameter). The last date and time for submission of the bid was 05.07.2022 at 4:00 pm. The date and time for the opening of the technical bid were 06.07.2022 at 4:00 pm. Vide email dated 05.07.2022, the petitioner was

informed about the re-submission of the bid successfully at 3:07 pm. Thereafter, vide email dated 08.07.2022, the petitioner was informed that its bid has been opened and admitted by the Committee and asked to get in touch with the Tender Inviting Authority. According to the petitioner, suddenly vide impugned communication dated 22.07.2022, information has been sent about the rejection of its bid during technical evaluation by the Committee for the reason '*does not qualify in QC Point No.11 & 17*'.

2.2. The petitioner filed a writ petition on 10.08.2022 challenging the impugned communication *inter alia* on the ground that respondents No.2 & 3 arbitrarily and malafidely rejected the bid while it had already been accepted on 08.07.2022. The reasons mentioned in the impugned communication for rejection of the bid i.e. QC Point No.11 & 17, are bogus and flimsy. So far as QC Point No.11 is concerned, the petitioner has already submitted the PAN Card of the proprietor and QC Point No.17 is a non-existing clause in the tender. The aforesaid two grounds were raised by learned Senior Counsel for the petitioner on 16.08.2022 when the Writ Petition was taken up for admission. Trusting on these submissions respondents No.2 & 3 were called upon to verify the aforesaid facts.

2.3 On 22.08.2022, learned counsel appearing for respondents No.2 & 3 sought two weeks' time to file a reply, despite that no reply has been filed, hence, no more time is hereby granted to file a

reply, however, Shri Dagaonkar, learned counsel is permitted to argue on behalf of respondents No.2 & 3 without giving further time to file reply.

2.4. Respondents No.4 & 5 have filed a reply in support of the action of respondents No.2 & 3 for rejecting the bid during technical evaluation. Respondents No.4 & 5 have stated in the reply that at the time of evaluation of the technical bid, the tender of the petitioner was not rejected due to non-submission of PAN Card and QC Point No.17. In fact the tender was rejected due to non-compliance of QC Point No.11 of Technical Specification i.e. non-providing of test report and training certificate from Bhabha Atomic Research Centre ('BARC') and this fact was well within the knowledge of the petitioner as the specific ground has been taken in the petition in a paragraph (1).

03. Shri Pratyush Tripathi, learned counsel for respondents No.4 & 5 submits that there is a specific clause i.e. Clause 21.5 about the resolution of the dispute under the M.P. Madhyastham Adhikaran Adhiniyam, 1983 and Clause 30 is in respect of all disputes and difference arising out of or under this rate contract before the Principal Civil Court at Bhopal, hence, the Writ Petition is not maintainable.

04. Shri Saraf, learned Senior Counsel for the petitioner submits that Clause 11 of Section VII of Technical Specification is applicable to the tenderer and not to the bidder. Even otherwise, the petitioner is having a certificate of accreditation from National

Accreditation Board for testing of calibration laboratory as well as the agreement with 'BARC', Mumbai for Technology Transfer of '*FDK-Fluoride Detection Kit For Groundwater*' Technology which are already annexed with the tender document. The petitioner was orally informed by a member of the Committee of M.P. Laghu Udyog Nigam Limited (MPLUN) about the non-fulfillment of the aforesaid condition. Learned Senior Counsel submits that as per QC Point No.14, the petitioner was only under obligation to submit an evaluation and test report of kits from any of the institutions mentioned therein. The petitioner had already submitted a test report duly issued by National Accreditation Board for Testing and Calibration Laboratories which is an accredited lab as per the tender documents.

05. We have heard learned counsel for the parties at length and perused the record.

06. Clause 7 of Section III of the bidding document specifically provides that documentary evidence in accordance with *Qualification Criteria* is to be supplied by the bidder. As per Clause 9.1, the bidder shall furnish all the required documents. Clause 9.2 specifically mandates that the bidder should furnish required documents compulsorily as indicated in the Qualification Criteria and specification failing which their bid shall not be accepted.

07. Clause 7, 9.1 and 9.2 are reproduced below:-

**7. Documents Essential for the Bid**

7.1. The bid prepared by the bidder shall comprise the

following components:

- (a) Price Schedule (Rate Performa) completed in accordance with relevant terms and conditions of the Bid. Bidders are requested to note that they must submit their financial bids in the format provided in the tender and no other format is acceptable.
- (b) Documentary evidence established in accordance with Qualification Criteria, that the Bidder is eligible to bid and will be qualified to perform the rate contract if its bid is accepted;
- (c) Documentary evidence established in accordance with Qualification Criteria and Specification, that the goods and ancillary services to be supplied by the Bidder are suitable goods and services and conforming to the Bidding Documents; and
- (d) Bid Security (EMD) has been furnished.

9.1. The Bidder shall furnish, all required and necessary self-certified documents / papers / information's as part of its bid, documents establishing the bidder's eligibility to bid and its qualification to perform the Rate Contract if its bid is accepted.

9.2. The documentary evidence of the Bidder's qualification to perform the Rate Contract if its bid is accepted, shall establish to the MPLUN/Purchaser's satisfactions. The bidder should furnish the required documents compulsorily as indicated in Qualification Criteria and specification failing which their bid shall not be accepted.”

***[Emphasis Supplied]***

08. Clause 12.1 also mandates that the bidder should upload all documents and certifications as required in *Qualification Criteria & specifications* compulsorily on the portal, failing which their bid shall be rejected. Clause 11 specifically provides that the tenderer must submit a test report and training certificate from 'BARC'. This clause specifically provides that fluoride reagents should be based on technology from the 'BARC' and the tenderer

must submit a test report and training certificate from 'BARC'. Admittedly, the petitioner has not submitted the aforesaid report along with the bid. QC Point No.14 is about the evaluation / test report of kits from reputed institutions like 'BARC' or accredited labs which is different from a test report about the fluoride reagents based on the technology from 'BARC'. The petitioner may have an agreement with 'BARC' for transfer of the technology, but no test report or training certificate from 'BARC' has been filed in respect of fluoride reagents. The word bidder and tenderer are synonyms, hence, makes no difference if the word tender is used in QC Point No. 11.

09. Clause 27 specifically provides that MPLUN may in its sole discretion and at any time during the processing of the bid disqualify any bidder from the bidding process at any stage, if the bidder submits a bid document which is not accompanied by any required document and earnest money.

Clause 27.1 is reproduced below:-

“27.1. MPLUN may in its sole discretion and at any time during the processing of Bid, disqualify any bidder from the Biding process at any stage, if the bidder:-

27.1.1. Submits Bid document, which is not accompanied by required documents and Earnest Money Deposit (EMD).

27.1.2. Has not submitted the bid in accordance with the bid document.

27.1.3. Does not meet the qualification criteria as mentioned in the bid document.

27.1.4. Mislead or made false representations in the forms, statements and attachments submitted in proof

of the qualification criteria requirements.

27.1.5. Has imposed conditions in his bid, during validity of the bid or its extended period.

27.1.6. Bidder who is found to canvass, influence of attempt to influence in any manner the qualification or selection process, including without limitation, by offering bribes or other illegal gratification, shall be disqualified from the process at any stage.

27.1.7. A bid not valid for 120 days shall not be considered as non-responsive and would be disqualified.

27.1.8. Bidder(s) should submit documentary evidence in support of fulfillment of all criteria's, while submitting its bid(s). The scanned and legible copy of these documents should be uploaded on the portal. Failure to comply with these requirements may result in the bid being rejected. No hard copy of the bid shall be accepted in the office of MPLUN.”

***[Emphasis Supplied]***

10. The Tender Evaluation Committee has examined the document and rejected the bid of the petitioner at the technical qualifying stage. It is settled law that the High Court in a writ petition under Article 226 of the Constitution of India cannot act as an appellate authority to examine the decision taken by the experts. In the case of ***N.G. Projects Ltd. v. Vinod Kumar Jain*** reported in ***(2022) 6 SCC 127*** the Supreme Court of India has held as under:-

“17. Therefore, the position of law with regard to the interpretation of terms of the contract is that the question as to whether a term of the contract is essential or not is to be viewed from the perspective of the employer and by the employer. Applying the aforesaid position of law to the present case, it has been the contention of Respondent 1 that the format for bank guarantee was not followed strictly by the State and that the relaxation given was not uniform, in that Respondent 1 was singled out. The said contention has



found favour with the courts below.

**22.** The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e. not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.

**23.** In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and

is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work.”

11. Even otherwise, after rejection of the technical bid of the petitioner, financial bids of the successful bidders have been opened and an agreement has been executed with respondent No.5. During the arguments, learned counsel for respondents No.2 & 3 produced a letter dated 25.07.2022 written by the petitioner to MPLUN admitting that no test report of fluoride has been submitted and the technical bid be admitted sympathetically. The petitioner has suppressed the aforesaid letter before this Court and argued on two grounds which were raised on 16.08.2022 which are not the reasons for rejection of the technical bid. In view of the above discussion, we are not inclined to entertain the present writ petition.

In view of the above, Writ Petition stands dismissed.

(VIVEK RUSIA)  
J U D G E

(AMAR NATH (KESHARWANI))  
J U D G E

Ravi