HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

Writ Petition No. 11136/2018

M/s Goel Roadways	PETITIONER
Versus	
State of M.P. & Another	RESPONDENTS
CORAM: Hon'ble Shri Justice Hemant Ge Hon'ble Shri Justice Vijay Kum	-
Appearance:	
Shri Kishore Shrivastava, Senior Adv	vocate with Shri Kapil Jain,
Advocate for the petitioner.	
Shri Ashish Anand Barnard, Deputy	Advocate General for the
respondents/State.	
Whether Approved for Reporting : YesLaw Laid Down:	
✓ The argument of the petitioner that the response particular property to assess the net worth as the respondents cannot resort to such me the tenderer.	of the tenderer is not acceptable
✓ The decision taken by the Technical Ex- Committee, which is a committee of expert exercising writ jurisdiction of this Court, power of judicial review examines the deci- ultimate decision.	s cannot be interfered with while as this Court while exercising
Significant Paragraph Nos.: 4, 5, 6, 10 to 14	

ORDER

(17/05/2018)

Per: Hemant Gupta, Chief Justice:

The challenge in the present writ petition is to the notice dated 10.05.2018 (Annexure P-7) whereby a list of technically qualified bidders in respect of Mineral Block – Hinauti-1 (Compartment 767) (Limestone) and Mineral Block – Hinauti-2 (Compartment 766) (Limestone) was published. Since the name of the petitioner does not find mention in the list, thus the bid of the petitioner stands rejected on the ground that it is not technically qualified.

- 2. Learned counsel for the respondents has produced the minutes of the sixth meeting of Technical Evaluation and Tender Approval Committee held on 7th May, 2018 wherein bid of the petitioner has been rejected in respect of two notice inviting tenders by assigning the reasons. The relevant extract of the said minutes dated 7th May, 2018 is reproduced as under:-
 - "5. The list of Bidders declared as Not Technically Qualified Bidders (and the reason thereof) by TETAC is as below. The same is also placed at *Annexure 2*.

S. No.	Bidder	Mineral Block	Reason for non-selection as TQB
***			***
3.	Goel Roadways	Hinauti-1	In the net worth certificate submitted by the Bidder the computation of the Net worth is not as per the prescribed computation methodology detailed in "Clause 5(b)(c) Explanation 4" of the Tender document.
	***		***
5.	Goel Roadways	Hinauti-2	In the net worth certificate submitted by the Bidder the

	computation of the Net worth is not as per the prescribed computation methodology detailed in "Clause 5(b)(c) Explanation 4" of the Tender
	document.

3. The petitioner is a sole Proprietorship Firm of Shri Motilal Goel. The relevant conditions of eligibility as per tender document to participate in the online tender process is as under:-

"5. Eligibility

Pursuant to Rule 6 of the Auction Rules, the eligibility for participating in the e-auction shall be as follows:

(a) The Bidder must meet the Conditions specified in Section 5 which is quoted below:

- (b) The Bidder must meet the terms and conditions regarding eligibility as stipulated in Schedule I of the Auction Rules for eauction of Mineral Block for grant of Mining Lease as quoted below. Accordingly, the net worth of the Bidder must be more than INR 1,17,68,791 (Rupees One Crore Seventeen Lakh Sixty Eight Thousand Seven Hundred Ninety One), calculated in accordance with the following conditions, as applicable;
 - a. If the Value of Estimated Resources equal or more than one thousand crore rupees, the applicant, including an individual, shall have a net worth more than 2 per cent of Value of Estimated Resources.
 - b. If the Value of Estimated Resources is less than one thousand crore rupees but more than one hundred crore rupees, the applicant, including an individual, shall have a net worth more than 1 per cent. of Value of Estimated Resources.
 - c. If the Value of Estimated Resources is less than or equal to one hundred crore rupees, the applicant, including an individual, shall have a net worth of more than 0.5 per cent. of the Value of Estimated Resources.

Explanation:

- (1) In case an applicant is a subsidiary of another company incorporated in India, the net worth of such holding company may also be considered:
 - Provided that, in such case, the applicant shall continue to be a subsidiary of such holding company until such time the applicant meets the aforementioned net worth threshold.
- (2) In case of a company, the net worth shall be the sum of paid up share capital and the free reserves as per the audited balance sheet of the financial year ended immediately preceding the date of issuance of notice inviting tender.
- (3) In case the notice inviting tender is issued between 1st April to 30th September (both days inclusive) of a year, the audited balance sheet of the financial year before the immediately preceding financial year, from the date of issuance of notice inviting tender, may be submitted by the bidder, if the audited balance sheet of the immediately preceding financial year is not available.
- (4) In case of an individual, the net worth shall be the closing cash balance on the last date for submission of application, and such amount may include amount in savings bank accounts in Scheduled Bank or Post Office, free and un-encumbered fixed deposits in Scheduled Banks, Post Office, Listed Companies or Government organisation or Public Undertakings of a State and the Central Government, Kisan Vikas Patra, National Saving Certificate, Bonds, Shares of Listed Companies, Listed Mutual Funds, Unit Linked Insurance Plan, Public Provident Fund, Surrender Value of Life Insurance policies, and unencumbered immovable property in the name of Applicant."

In case of an individual, the valuation of un-encumbered immovable property shall be derived from the latest income tax return filed by the said individual which shall consist a list of all immovable property owned by the said individual along with its valuation. Along with the income tax return, the individual shall submit an undertaking, on a stamp paper of adequate stamp duty, inter alia to the effect that the immovable property enlisted in the income tax return are un-encumbered and free from all charges including not limited to lien, mortgage, pledge and that the said individual is the owner of the immovable property."

4. The tender document also contains instructions for submission of the bid letter and the relevant instructions, which read as under:-

Schedule I: Format of Technical Bid

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B. Instructions for submission of the Bid Letter:

(d) Documents to evidence compliance with the eligibility conditions must be enclosed with the bid letter, duly certified by the Authorised Signatory of the Bidder, in case the Bidder is a company, or self-attested in case the Bidder is an individual. Such documents must include:

Net worth certificate issued by: (a) In case of a company, statutory auditors of the Bidder (certificate should clearly mention that it has been issued by the statutory auditor of the company and the Net worth stated therein is the sum of paid up share capital and the free reserves, in terms of Explanation No.2 to Schedule I of Auction Rules); (b) In case of an individual, certificate issued by a chartered accountant regarding the total amount as closing cash balance including unencumbered immoveable property, derived from the latest income tax return filed by the said individual, as per Clause 5(b) of the Tender Document. The certificate shall have a list of all immovable property owned by the said individual along with its valuation and an undertaking from the individual on a stamp paper of adequate stamp duty, inter alia to the effect that the immovable property enlisted in the income tax return are un-encumbered and free from all charges including not limited to lien, mortgage, pledge and that the said individual is the owner of the immovable property."

(emphasis supplied)

5. The petitioner has produced net worth certificate issued by a Chartered Accountant (Annexure P/3 page 143), which reads as under:-

NET WORTH CERTIFICATE

We hereby certify below the position of Assets & Liabilities of the person mentioned hereunder as on 31.03.2017 (Date)

The same has been verified from the records & other details produced before us:

Name : MOTI LAL GOEL

PAN : ACJPA5414B

Date of Incorporation :

Registered Address : HARYANA BHAWAN, PANNA ROAD,

SATNA (M.P.) 485001

Office Address : HARYANA BHAWAN, PANNA ROAD,

SATNA (M.P.) 485001

(A) Total Value of Immoveable Property:

(This includes beneficial share owned in Land, Building, Flat, Factory, Shop, House etc.)

Nature of Asset	Location with Complete Address	Value at Cost (In Lacs)
AS PER LIST		1724.86
ENCLOSED		
TOTAL		1724.86

(B) Total Value of Other Assets:

(This includes Cash, Bank balance, Gold, Other Jewellery, Investment in Shares/Mutual Funds/FD's/LIC etc, Vehicles, Capital in Business etc.)

Nature of Asset	Particulars of Asset/Complete Description	Qty.	Value at Cost (In Lacs)
CASH			0.5
JEWELLARY			8.5
CAPITAL IN GOEL			765
ROADWAYS			
CAPITAL IN GOEL			272.21
FILLING STATION			
CAPITAL IN GOEL			8.08
TRANSPORT CO.			
TOTAL			1054.29

(C) Total Liabilities:

Borrowed From	Amount & Securities offered	Purpose	O/s as on date (In Lacs)
HOUSING LOAN			188.27
FROM ALLAHABAD			
BANK			
Total			188.27

(D) Net Worth: (A+B-C) = 2590.88

Sd/

CA firm (with Seal/Membership Number)"

The petitioner, however, has not produced list of all properties along with the writ petition.

- 6. The petitioner was called upon to make up the deficiency in the tender documents by the Respondent vide communication dated 13th April, 2018. The relevant clause in the said letter in respect of net worth certificate reads as under:-
 - "4. Upon perusal of the net worth certificate submitted by you along with the Technical Bid of the captioned block, it is observed that the certificate specify that immovable properties have been valued at cost and no undertaking has been submitted. Kindly provide revised net worth certificate stating value of immovable properties at prevailing circle rate, published by the relevant government authority, and supported by true copies of the relevant published circle rates. Also provide an undertaking, on a stamp paper of adequate value, stating, inter alia that the immovable property (accounted for calculation of net worth) is un-encumbered and free from all charges (including, but not limited to, lien, mortgage, and pledge), and that the said individual is the owner of the immovable property."

7. The requisite information was to be submitted up to 17:00 hours on 26th April, 2018. The petitioner submitted net worth certificate dated 18.04.2018 by the Chartered Accountant (Annexure P/6), which is to the following effect:-

"This is to certify that net worth of Shri Motilal Goel (Prop. Goel Filling Station & Goel Roadways) as on 31.03.2017 is Rs.103721511/-. The above figures have been checked from books of accounts and other records of the assessee. Details of net worth Firm Wise is as under:

	Goel Filling Station	Goel Roadways	Total
Net Worth	27220751	76500760	103721511

For M.R. DAGA & COMPANY Chartered Accountants

Sd/ Pankaj Daga, FCA Partner Mem no.404056"

- 8. It is, in this background, the argument of the learned counsel for the petitioner is that as per the tender documents, net worth of the bidder should have been more than Rs.1,17,68,791/- whereas net worth of the petitioner is manifold than the said condition. It is also pointed out that even if one or the other properties are excluded from the net worth certificates, the petitioner meets out the condition relating to net worth as required by the respondents. It is also argued that the information sought on 13th April, 2018 of the valuation of the immovable property at the prevailing circle rate is not the condition prescribed in the tender condition, therefore, while seeking information, additional condition could not have been imposed.
- **9**. We have heard learned counsel for the parties and find no merit in the present petition.

- 10. The instructions for submission of the bid deal with the net worth certificate, its format and the conditions. In case of individual, the certificate is to be issued by a Chartered Accountant regarding total amount as closing cash balance including un-encumbered immovable property. It also contemplates that the certificate shall have a list of all immovable property along with its valuation and undertaking from the individual on a stamp paper of an adequate stamp duty.
- 11. We do not find any merit in the argument that the valuation of the property could not be sought as per the prevailing circle rate. The condition No.B(d)(iii)(b) of Schedule-I of the Tender Document is categorical that the certificate to be furnished by a Chartered Accountant shall disclose "list of all immovable properties along with its valuation". How the valuation is required to be furnished by the bidder, has been clarified in the communication dated 13th April, 2018 to mean 'the valuation as per the circle rate'. Therefore, the circle rate is not a condition introduced subsequently but is only to specify the method of valuation.
- 12. The net worth certificates Annexure P-3 (at page 143) and Annexure P-6 (at page 159) are issued by the Chartered Accountant but the certificates do not show the valuation of each of the un-encumbered immovable property. Therefore, the condition in the tender document was not satisfied by the petitioner while submitting his initial technical bid.
- 13. The argument of the learned counsel for the petitioner that even if some of the property is excluded, still the petitioner would satisfy the

requirement of tender is again not tenable. It is not open to the respondent to pick and choose a particular property to assess the net worth of a tenderer. The petitioner has disclosed a particular net worth but such net worth is not in the manner sought by the tender document.

14. Therefore, it cannot be said that the decision to declare the petitioner as not technically qualified lacks *bona fide*. It is a decision taken by the Technical Evaluation and Tender Approval Committee, which is a committee of experts. Therefore, such decision taken by the experts cannot be interfered with while exercising writ jurisdiction of this Court, as this Court while exercising power of judicial review examines the decision making process and not the ultimate decision. In view thereof, we do not find any merit in the present petition. The same is **dismissed**.

(HEMANT GUPTA) CHIEF JUSTICE (VIJAY KUMAR SHUKLA) JUDGE