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WP-40571-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,  
CHIEF JUSTICE

&amp;

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 17<sup>th</sup> OF OCTOBER, 2025

WRIT PETITION No. 40571 of 2025

*M/S. GAP ENTERPRISES AND OTHERS*

*Versus*

*THE STATE OF MADHYA PRADESH AND OTHERS*

.....  
Appearance:

*Shri Anoop Nair, Senior Advocate with Shri Mihir Lunawat - Advocate for petitioner.*

*Shri Abhijeet Awasthi - Deputy Advocate General for respondents/State.*  
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ORDER

*Per. Hon'ble Shri Justice Sanjeev Sachdeva, Chief Justice*

1. Petitioners impugn certain conditions in the tender issued by the Directorate of Public Instructions M.P. Government inviting bids for class room furniture for schools of Madhya Pradesh. Challenge in the subject petition is to Clause 3, 4 and 5 of Section -V of the notice inviting tender which reads as under:-

**" 3. Past Performance: (As per tender Condition)**

*(i) The Bidder should have experience of successfully completing similar nature of work (Supply of Furniture) in any Central. Government/State Government/PSU/ Government Educational Institute in last four financial years (2021-22, 2022-23, 2023-24 & 2024-25) of value:*

*a- For Large/Medium Enterprises: Single Contract of 50 Crore or Two Contracts of 30 Crores each or Three Contracts of 25 Crores each or should have supplied items costing not less than Rs.100 Crores in any of the preceding four financial years(2021-22, 2022-23, 2023- 24 & 2024-25). To Validate it Work Order (with clearly Define the value of Furniture) and completion certificate/ CRAC must be uploaded.*



*b- For MSE's of Madhya Pradesh: The bidder must have supplied furniture items of value not less than Rs. 10.0 Crore in any of the preceding last four financial years (2021-22, 2022- 23, 2023-24& 2024-25). To Validate it Work Order (with clearly Define the value of Furniture) and completion certificate/ CRAC must be. uploaded.*

#### **4. financial Criteria**

*Average Annual Turnover of the bidder entity (Average of any three consecutive financial years) i.e. 2021-22, 2022-23, 2023-24 & 2024-25 should not be less than Rs 400 Crores - for Large Enterprises, Rs 100 Crores for Medium Enterprises and 10 Crores for Micro. and Small Enterprises of M.P.*

#### **5. Certifications**

- i. ISO 9001:2015, ISO 14001:2015, ISO 45001:2018, ISO 50001:2018, certifying agencies of ISO should be listed with "NABCB" ("National Accreditation Board for Certifying Bodies")*
- ii. AIOTA in Educational Furniture Range*
- iii -Green Pro Certificate by CII*
- iv./ BIFMA Membership*
- v. IGBC Membership*
- vi. . Green Co by CII /Green Guard by UL"*

2. Insofar as Clause 3 & 4 are concerned, the challenge is with the eligibility criteria prescribed in respect of past performance for MSEs of Madhya Pradesh is that the bidder should have supplied furniture of item of value not less than 10 Crores in any of the preceding last 4 financial years. In respect of financial criteria, the annual turn over of the bidder in any of the three consecutive financial years is prescribed as more than 400 Crores for Large Enterprises, 100 Crores for Medium Enterprises and 10 Crores for Micro and Small Enterprises.

3. Learned senior counsel for petitioners submits that petitioners do not satisfy the criteria of past performance as well as financial criteria of 10 Crores. He submits that by prescribing a high value of 10 crores the respondents have trying to favour big players and have not created a level playing field.

4. Copy of the representations filed by the petitioners show that the



petitioners have categorically admitted that petitioners do not meet the requisite criteria of 10 Crores. As per petitioners, the petitioners have average annual turnover of Rs.8 Crores as against the required turnover of 10 Crores and in past experience they only have the work experience of 1.30 Crores which is 10% of the prescribed condition.

5. The tender value in the instant case is 250 Crores for Large Enterprises. The financial criteria has been fixed at Rs.400 Crores for large enterprises and 100 crores for Medium enterprises and only 10 Crores for Micro and Small Enterprises of Madhya Pradesh. Insofar as the past experience the value of executed contract has been fixed as Rs.10 Crores in any of the preceding four financial years which is about 4% of the tender value.

6. It is not the case of the petitioners that the tender conditions have been prescribed in a manner that it completely ousts the Micro and Small Enterprises or no benefit is being granted to them. We noted that insofar as the past performance criteria is concerned, the criteria for MSEs has been kept at 20% of what has been kept for Large/Medium Enterprises i.e. 10 Crores for MSEs *viz a viz* 50 Crores for Large and Medium Enterprises and in financial criteria it has been kept at 2.5% of Large Enterprises. For Large Enterprises average annual turn over financial criteria has been prescribed as 400 Crores and for Micro and Small Enterprises only 10 Crores. We are of the view that adequate relaxations have been granted in the subject tender for Small and Medium Enterprises. Just because petitioners do not even clarify the prescribed eligibility criteria and the financial criteria, does not



implies that respondents have not created a level playing field. As noticed above sufficient relaxation has been prescribed in the tender for MSEs.

7. Further the challenge in the Clause 5 is that there is a requirement to provide a certificate from some foreign entities and it is very expensive to obtain such a certificate. The apprehension expressed by the petitioners is misplaced for a reason that there are six different categories of certificate which have been prescribed including certificate from a body duly accredited by NABCB (National Accreditation Board for Certifying Bodies) which is an Indian Institute besides other institutes which are national as mentioned in Clause 5. The contention of the petitioners that obtaining a certificate from an American Trade Association is not substantiated from mere reading of Clause 5 of the tender document. Even otherwise as noticed hereinabove, petitioners do not satisfy the financial and other eligibility criteria for the tender.

8. Reliance placed by learned senior counsel for the petitioners on the judgment of the Supreme Court in **Vinishma Technologies Pvt. Ltd vs. State of Chhattisgarh and Another**, 2025 INSC 1182 to contend that the High Court can interfere if the tender does not create a level playing field, is misplaced for the reason that in the **Vinishma Technologies (supra)** the State of Chhattisgarh had decided to oust all manufacturers who were outside the State of Chhattisgarh and in those circumstances the Supreme Court held that the objects of public procurement is to secure quality goods and services for the benefit of the exchequer and said object could be achieved by requiring the bidders to demonstrate financial capacity, technical experience and past



performance in contracts of similar nature regardless of place of performance of the contract and to confine the eligibility to participate in the tender within one State was irrational and dis-proportionate to the goal of ensuring effective delivery of the subject product. The Supreme Court further held that such a restriction could not be justified as reasonable within the meaning of Article 19(6) of the Constitution of India and accordingly, the Supreme Court struck down the tender condition which as noticed by the Supreme Court, excluded competent and experience suppliers who had executed contracts of far greater magnitude in other States or for the Central Government departments from participating in the tender. In these circumstances that the Supreme Court held that the State of Chhattisgarh had not created a level playing field. Clearly the said judgment is not applicable to the facts of the present case.

9. In view of the above, we do not find that the past performance condition financial criteria or certification condition prescribed in the tender are unreasonable or warrant any interference.

10. We find no merit in the petition, the petition is consequently dismissed.

(SANJEEV SACHDEVA)  
CHIEF JUSTICE

(VINAY SARAF)  
JUDGE