

[2021] 131 taxmann.com 23 (Andhra Pradesh)[22-09-2021]

GST : Where even though petitioner-bidder was an entity involved in business of Healthcare Services and was exempted from registering under GST Act, but successful tenderer was required to supply medicines and other goods which were not exempted under GST Act, all bidders would be required to submit GST registration certificates and in absence of such a registration certificate, rejection of technical bid of petitioner could not be termed to be arbitrary

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[2021] 131 taxmann.com 23 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

ASR Hospitals (India) (P.) Ltd.

v.

State of Andhra Pradesh*

R. RAGHUNANDAN RAO, J.

W.P. NO.17415 OF 2021

SEPTEMBER 22, 2021

Section 22 of the Central Goods and Services Tax Act, 2017/Section 22 of the Andhra Pradesh Goods and Services Tax Act, 2017 - Registration - Persons liable for - Petitioner had submitted its tender document in response to a tender notice issued for provision of Sick New Born Care Units (SNCUs) at CHCs, AH, MCHs and DHs in Andhra Pradesh - Petitioner was informed of certain deficiencies which were rectified - One deficiency pointed out was non-submission of GST registration certificate - Petitioner took stand that it was an entity involved in business of Healthcare Services, which were exempted from payment of GST and as such requirement of producing GST registration certificate would not apply to petitioner - However, tender of petitioner was rejected for want of registration - It was found that a person is exempted from requirement of GST registration if he is engaged in supplying only those goods and services which are exempt from registration and does not supply any other goods or services, however, if such a person deals in any other goods or services, he will not be eligible for such exemption - In instant case, successful tenderer would be required to supply medicines and other goods, which are not exempted under GST Act - Hence, all bidders were required to submit GST registration Certificates - Whether therefore, in absence of registration certificate, rejection of technical bid of petitioner could not be termed to be arbitrary - Held, yes [Paras 23, 26 and 31] [In favour of revenue]

Circulars and Notifications : [Notification No. 9/2017-Integrated Tax \(Rate\), dated 28-6-2017](#)

FACTS

- The petitioner submitted its tender document in response to a tender notice issued for provision of Sick New Born Care Units (SNCUs) at CHCs, AH, MCHs and DHs in Andhra Pradesh .after complying with all the required formalities. The tender evaluation process was to be done in two stages, i.e., technical bid and financial bid. Instruction No. 4 of 'Instructions to bidder' in the tender document required the bidders to submit copy of the certificate of registration of GST, EPF, ESI with the appropriate authority valid as on the date of submission of tender documents.
- However, the petitioner did not submit certificate of registration under the GST Act. In this regard, assessee took a view that it was an entity involved in the business of Healthcare Services, which were

exempted from payment of Goods and Services Tax by Notification No. 9/2017-Integrated Tax (Rate), dated 28-6-2017 and as such the petitioner was exempted from registering it under the GST Act and the requirement of producing GST registration certificate would not apply to petitioner.

- The 2nd respondent rejected the technical bid of the petitioner and cleared the technical bids of the 3rd and 4th respondents.
- On writ petition:

HELD

- It is true that the writ petitions filed against the State or its instrumentalities in relation to contractual matters are maintainable. However, that general proposition has certain limitations. The Court exercising jurisdiction under article 226 would have to consider the factors, on a case to case basis, before exercising its discretion to hear a writ Petition, relating to contractual disputes, under article 226 of the Constitution of India.[Para 21]
- Applying the above principles to the present case, the petitioner has not been able to make out any case of discrimination or bias against the respondents. The only ground that could be raised by the petitioner is that of an arbitrary action of the 2nd respondent, in rejecting the bid of the petitioner and allowing the respondents to participate in the financial bids. It would now be necessary to see whether the said allegations hold.[Para 22]
- The first allegation of arbitrariness is the disqualification of the petitioner. Instruction No. 4 of 'Instructions to bidder' in the tender document required the bidders to submit copy of the certificate of registration of GST, EPF, ESI with the appropriate authority valid as on the date of submission of tender documents. It is the admitted case of all sides that the petitioner did not submit certificate of registration under the GST Act. The defence of the petitioner is that the Central Government had issued a notification exempting various services, including the primary activity of the petitioner from payment of tax under the GST Act. The petitioner's case is that in view of such an exemption from payment of tax, the petitioner need not register under the GST Act and as such does not have to possess a registration certificate under the GST Act to participate in the tenders called by the 2nd respondent.[Para 23]
- Section 23 of the Andhra Pradesh GST Act enumerates the persons who are not liable to register themselves under the said Act.[Para 24]
- This would mean that a person is exempted from the requirement of registration if he is engaged in supplying only those goods and services which are exempt from registration and does not supply any other goods or services. If such a person deals in any other goods or services, he will not be eligible for such exemption.[Para 25]
- The 2nd respondent submits that the successful tenderer would be required, as per section IV of the Tender Documents, to supply medicine and other goods, which are not exempted under the GST Act, in the process of maintaining SNCUs, and for that reason the 2nd respondent had required all bidders to submit GST registration certificates. It is clear that in such a situation, the petitioner would have to supply drugs and goods which are not exempt from levy of GST and the petitioner would require to be registered, under the GST Act. In the absence of such a registration certificate, the action of the 2nd respondent in rejecting the technical bid of the petitioner cannot be termed to be arbitrary.[Para 26]
- The second allegation of arbitrariness against the 2nd respondent is the refusal to reject the technical bid of the 3rd respondent. The contention of the petitioner is that the 3rd respondent was one of the members of a consortium, which was participating in the tender and could not have submitted the bid as it was not the lead member in the said consortium. This contention is disputed by both respondent Nos.2 and 3. It is the specific stand of both these respondents that there is no stipulation in the tender document that only the lead member of the consortium who filed the bid documents, and that the other members of the consortium cannot file the bid documents.[Para 27]
- The petitioner would seek to point out certain provisions where details of the lead member are required and where the lead member has to give certain assurances etc. However, this requirement cannot be taken to mean that the bid document has to be filed only by the lead member. All such information and assurances can always be obtained by any other member and file before the tender authority. As such it

cannot be said that the 3rd respondent is disqualified on that count and the action of the 2nd respondent in allowing the 3rd respondent in participating in the financial bid cannot be termed arbitrary.[Para 28]

- The 3rd allegation of arbitrariness against the 2nd respondent is that the 2nd respondent allowed the 4th respondent to participate in the financial bid even though the 4th respondent did not have the necessary experience to qualify in the technical bid. Criteria No. 2 in the eligibility criteria set out under section-V of the tender document requires the bidder to have a minimum of three years experience in carrying out operation and maintenance of SNCUs in private or public sector. The said experience being demonstrated by users certificate regarding satisfactory completion of assignments. The 4th respondent had submitted a certificate from the NRI Academy of Sciences stating that NRI Academy of Sciences through the 4th respondent had provided such services to CHC Seethampeta in ITDA area of Seethampeta, A.P, from March, 2018 to 13-8-2020 and the certificate from the medical officer of the area hospital Seethampeta that such services were being given at CHC Seethampeta in ITDA area of Seethampeta from 14-8-2020 till 29-7-2021. This would show that the 4th respondent has been giving services for more than three years required under the said eligibility criteria.[Para 29]
- The contention of the petitioner that such services were not in accordance with the contract between NRI Academy of Science and the State of A.P., has not been demonstrated by the petitioner. Except a statement that it is not in accordance with the contract between the parties, the petitioner has not placed any material before this Court to take such a view. Further, the requirement under the eligibility criteria is to ascertain whether such a bidder would have the experience and capacity to execute the contract if it is awarded to such a bidder. The certificates produced by the 4th Respondent do attest to the experience claimed by the 4th respondent. In the circumstances, the contention of the petitioner that the action of the 2nd respondent in this regard is arbitrary must fail.[Para 30]
- The Writ is dismissed.[Para 31]

CASES REFERRED TO

Michigan Rubber (India) Ltd. v. State of Karnataka [2012] 8 SCC 216 (para 5), *Ramana Dayaram Shetty v. International Airport Authority of India* [1979] 3 SCC 489 (para 10), *Quippo Oil & Gas Infrastructure Ltd. v. Oil & Natural Gas Corpn. Ltd.* [WP(C) No. 2604 of 2017, dated 8-5-2017] (para 10), *Tata Cellular v. Union of India* [1994] 6 SCC 651 (para 17), *Joshi Technologies International Inc. v. Union of India* [2015] 57 taxmann.com 290/232 *Taxman* 201/374 *ITR* 322 (SC) (para 19) and *Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.* [2019] 14 SCC 81 (para 20).

V.R. Reddy Kovvuri for the Petitioner. **Venkat Reddy Chittam, K. Rathanga Pani Reddy and P. Gangaiah Naidu**, Sr. Counsel for the Respondent.

ORDER

1. The 2nd respondent had issued a tender notice through Tender Enquiry No. 11.1B/APMSIDC/2021-22, dated 15-7-2021 requesting for provision of Sick New Born Care Units (SNCUs) at CHCs, AH, MCHs and DHs in Andhra Pradesh. The petitioner had submitted its tender document on 31-7-2021 after complying with all the required formalities. The tender evaluation process was to be done in two stages, i.e., technical bid and financial bid. The procedure adopted by the 2nd respondent was that after preliminary evaluation of the technical bid, the bidders would be informed of their deficiencies which could be rectified by them. In the case of the petitioner, the 2nd respondent had pointed out certain deficiencies, which were rectified by the petitioner. However, one of the deficiencies pointed out by the 2nd respondent was the non-submission of GST registration certificate. The petitioner took the stand that it was an entity involved in the business of Healthcare Services, which were exempted from payment of Goods and Services Tax by Notification No. 9/2017-Integrated Tax (Rate), dated 28-6-2017 and as such the petitioner was exempted from registering it under the GST Act and the requirement of producing GST registration certificate would not apply to the petitioner.

2. The 2nd respondent rejected the technical bid of the Petitioner and cleared the technical bids of the 3rd and 4th respondents. Aggrieved by the said rejection of its bid and the acceptance of the technical bid of the 3rd and 4th Respondents, the Petitioner has filed the present writ petition.

3. The contentions of the Petitioner, in this regard, are as follows:

- A. The bid of the petitioner could not have been rejected on the ground of non-furnishing of GST registration certificate as there was no requirement for the Petitioner to register itself under the GST Act and consequently the 3rd respondent could not have insisted for production of such a registration certificate.
- B. The 3rd respondent is part of a consortium, which had bid for the tender. The lead partner of this consortium is Sri Ramachandra Children and Dental Hospital. As per the tender documents, wherever consortium is submitting a tender document, the said tender document can be submitted only by the lead bidder who should authenticate the bids with its digital signature. However, it was the 3rd respondent, who submitted the bid and not Sri Ramachandra Children and Dental Hospital, which is the lead member of the consortium. In such a situation the bid submitted by the 3rd respondent could not have been taken into account at all.
- C. The 4th respondent did not have minimum three years of experience in carrying out of operation and maintenance of operations of SNCU in private and public sectors and as such was not eligible to be considered in the technical bid. Further, the 4th respondent while giving its experience details had uploaded the certificate given by NRI Academy of Sciences, which states that the 4th respondent had carried out operations and maintenance of SNCUs through NRI Academy of Sciences in execution of a contract entered by NRI Academy of Sciences with the Government of A.P. The petitioner contends that such an experience cannot be taken into account as the contract between M/s. NRI Academy of Sciences and the Government of A.P. does not provide for subcontracting or subletting of the contract and as such any such subcontract would be illegal and cannot be taken into account.

4. Respondent Nos.2 and 4 have filed counter affidavits in the matter disputing the contentions raised by the petitioners. Sri Rathangapani Reddy, learned counsel appearing for the 3rd respondent made his submissions on the basis of the documents before the Court.

5. The 2nd respondent took the stand that the production of GST registration certificate is a mandatory requirement for being qualified in the technical bid and in view of the non-furnishing of such GST registration certificate, the petitioner had been disqualified. As far as the submission of the bid document by the 3rd respondent is concerned, the 2nd respondent contended that there is no requirement in the tender conditions that only the lead member of the consortium has to submit the bid and as such the submission of the bid by the 3rd respondent is not defective. The 2nd respondent submitted that the 4th respondent had produced certificates issued by NRI Academy of Sciences for complying with the minimum eligibility criteria of three years experience in operations and maintenance of SNCUs and its bid was also qualified at the technical bid stage. Finally, the 2nd respondent relied upon the judgment of the Hon'ble Supreme Court in the case of *Michigan Rubber (India) Ltd. v. State of Karnataka* [2012] 8 SCC 216 to contend that the writ petition itself is not maintainable. It is also stated in the counter affidavit of the 2nd respondent that the financial bids have also been processed and the consortium of the 3rd Respondent has been declared as L1.

6. The 4th respondent in its counter affidavit had essentially taken the same stand as that of the 2nd respondent to contend that the certificate produced by the 4th respondent would be sufficient for the 4th respondent to be qualified to participate in the tender process.

7. Sri V.R. Reddy Kovvuri, learned counsel for the petitioner, would submit that once the primary activity of the petitioner had been exempted from the purview of GST Act, the 2nd respondent ought not to have insisted upon a GST registration certificate as the same is not necessary as far as the petitioner is concerned. He further submits that the 2nd respondent ought not to have qualified the 3rd and 4th respondents as both of them would have to fail at the technical bid stage itself as the lead manager of the consortium in which the 3rd respondent was a member, had not submitted the bid, which is a mandatory requirement under the bid document. He would also assail the action of the respondents in qualifying the 4th respondent on the ground that the 4th respondent does not have technical experience and the certificates produced by the 4th respondent would not have been accepted as appropriate certificates of experience.

8. Sri Chittem Venkat Reddy, learned counsel for the 2nd respondent, while reiterating the contention of the 2nd respondent that the writ petition itself is not maintainable, would also draw the attention of this Court to the scope of work set out in section IV of the Tender Documents and more specifically, the stipulation No. 2 in the scope of work which would require the service provider to provide all the drugs, medicines, samples and other material required for the SNCUs. He would submit that firstly, the exemption granted to the primary activity of the petitioner under the GST Act does not *ipso facto* exempt the petitioner from requiring

registration under the GST Act. He would further submit that even assuming that registration under GST Act is not required for the primary activity of the petitioner, the requirement to supply medicines and other samples while maintaining the SNCUs would require GST registration on the part of the petitioner. He submits that in view of this requirement, the petitioner cannot contend that non-production of GST registration certificate by the petitioner cannot be treated as a breach of the mandatory requirements under the tender document.

9. Sri P.Gangaiah Naidu, learned Senior Counsel appearing for the 4th respondent would submit that the given qualification requires the bidder to have an experience of three years in maintenance of SNCUs either in the private sector or in the public sector. He submits that in view of the certificates issued by the NRI Academy of Sciences declaring that the 4th respondent had maintained necessary SNCUs for a period of three years would suffice to meet the condition of minimum experience either under the public sector or under the private sector.

10. Sri Rathangapani Reddy, learned counsel appearing for the 3rd respondent would submit that the requirement of production of GST registration certificate is a mandatory requirement under the tender document. The petitioner having chosen not to challenge the said condition, cannot seek an exemption from production of such a GST registration nor claim that the said condition can be waived in favour of the petitioner. He would rely upon the judgments of the Hon'ble Supreme Court in *India Ramana Dayaram Shetty v. International Airport Authority of India* [1979] 3 SCC 489 and a judgment of the Hon'ble High Court of Delhi in *Quippo Oil & Gas Infrastructure Ltd. v. Oil Natural Gas Corporation Ltd.* [WP (C) No. 2604 of 2017, dated 8-5-2017] (paragraph 20).

11. Sri V.R. Reddy Kovvuri, replying to the above contentions would submit that the Writ petitioner is not challenging the condition requiring the bidders to submit GST registration certificates. On the contrary, it is the case of the petitioner that the said stipulation should be understood to mean that a certificate of registration would not be necessary for bidders who are exempt from such registration.

Consideration of the Court:

12. Before going into the merits of the case, the two preliminary issues of maintainability of the writ petition and the scope of judicial review in contractual matters would have to be dealt with.

13. Sri Rathangapani Reddy, learned counsel appearing for the 3rd respondent, contends that the petitioner, by insisting that no GST registration certificate has to be produced by him, is essentially challenging the condition in the tender requiring production of such a certificate. He further submits that once the petitioner knowing fully well the requirements of the tender document, has submitted itself to the tender process without any demur, the said petitioner cannot turn around and challenge the said requirement. Further, in the absence of such a challenge to such a stipulation, the petitioner would not be entitled to dispute the said requirement. As the petitioner, in the present case, has submitted itself to the tender process and has chosen to approach this Court without challenging the said stipulation, the petitioner cannot maintain the present writ petition.

14. Sri V.R. Reddy Kovvuri, learned counsel for the petitioner submits that the petitioner is not challenging the stipulation that a GST registration certificate should be filed as part of the tender document. It is his contention that the said condition does not take into account the cases of persons who are exempt from obtaining such registration and that the 2nd respondent should have taken that fact into account and permitted the petitioner to participate in the financial bid also.

15. In view of the above submission of Sri V.R. Reddy Kovvuri, learned counsel for the petitioner, that the question that would arise is whether the petitioner is exempt from registration under the GST Act itself, the contention raised by Sri Rathangapani Reddy would not arise at all. If it is found that the petitioner is not required to register itself under the GST Act, the contention of Sri V.R. Reddy Kovvuri would have to be accepted. In the event it is found that the petitioner cannot claim such an exemption, it would have to be held that the decision of the 2nd respondent in rejecting the technical bid of the petitioner is correct.

16. The scope of judicial review of contractual matters or disputes has been a matter of evolving jurisprudence. However, the law in this regard is fairly settled. A few of the leading judgments, which have set the guidelines on such review are:

17. In *Tata Cellular v. Union of India* [1994] 6 SCC 65, the Hon'ble Supreme Court, at page 687, held as under:

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

18. In *Michigan Rubber (India) Ltd.'s case (supra)*, the Hon'ble Supreme Court at paragraph No. 23 held as under:

"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 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."

19. The Hon'ble Supreme Court in *Joshi Technologies International Inc. v. Union of India* [\[2015\] 57 taxmann.com 290/232 Taxman 201/374 ITR 322](#), at paragraphs 69 & 70, held as under:

"69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:

69.1 The Court may not examine the issue unless the action has some public law character attached to it.

69.2 Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3 If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4 Money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1 At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2 State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3 Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, *etc.*

70.4 Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5 Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6 Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7 Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8 If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9 The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into

consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10 Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11 The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

20. The Supreme Court in *Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.* [2019] 14 SCC 81 at paragraphs 37 and 38 held as under:

"Epilogue

37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and public sector enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by government and public sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the public sector.

38. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.* [*Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818], this Court has expounded further on this aspect, while observing that the decision-making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision-making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a decision. It has been cautioned that constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice."

21. It is true that the writ petitions filed against the State or its instrumentalities in relation to contractual matters are maintainable. However, that general proposition has certain limitations. The Court exercising jurisdiction under article 226 would have to consider the factors, enumerated above, among others, on a case to case basis, before exercising its discretion to hear a writ Petition, relating to contractual disputes, under article 226 of the Constitution of India.

22. Applying the above principles to the present case, the Petitioner has not been able to make out any case of discrimination or bias against the Respondents. The only ground that could be raised by the petitioner is that of an arbitrary action of the 2nd Respondent, in rejecting the bid of the Petitioner and allowing the Respondents to participate in the financial bids. It would now be necessary to see whether the said allegations hold.

23. The first allegation of arbitrariness is the disqualification of the Petitioner. Instruction No. 4 of "Instructions to bidder" in the tender document required the bidders to submit copy of the certificate of registration of GST, EPF, ESI with the appropriate authority valid as on the date of submission of tender documents. It is the admitted case of all sides that the petitioner did not submit certificate of registration under the GST Act. The defence of the petitioner is that the Central Government had issued a notification exempting various services, including the primary activity of the petitioner from payment of tax under the GST Act. The petitioner's case is that in view of such an exemption from payment of tax, the petitioner need not register

under the GST Act and as such does not have to possess a registration certificate under the GST Act to participate in the tenders called by the 2nd respondent.

24. Section 23 of the Andhra Pradesh GST ACT enumerates the persons who are not liable to register themselves under the said Act. Section 23 (1) (a) reads as follows:

"23. *Appeal to Special Appellate Tribunal.* – (1) Any dealer objecting to an order relating to assessment passed by the (Commissioner of Commercial Taxes *suo motu* under sub-section (1) of Section 20 Joint Commissioner *suo motu* under sub-section (4-C) of section 14 or under sub-section (2) of section 20 may appeal to the Special Appellate Tribunal within sixty days from the date on which the order was communicated to him.

Provided that the Special Appellate Tribunal may admit an appeal preferred after the period of sixty days aforesaid if it is satisfied that the dealer had sufficient cause for not preferring the appeal within that period.

(2) The appeal shall be in the prescribed form, shall be verified in the prescribed manner and shall be accompanied by a (fee which shall not be less than five hundred rupees but which shall not exceed two thousand rupees as may be prescribed.

(3) The Special Appellate Tribunal shall, after giving both parties to the appeal, a reasonable opportunity of being heard, pass such order thereon as it thinks fit.

(4) The provisions of sub sections (6), (7) and (8) of section 22, shall apply in relation to appeals preferred under sub section (1) as they apply in relation to petitions preferred under sub section (1) of section 22."

25. This would mean that a person is exempted from the requirement of registration if he is engaged in supplying only those goods and services which are exempt from registration and does not supply any other goods or services. If such a person deals in any other goods or services, he will not be eligible for such exemption.

26. Sri Chittem Venkata Reddy, the learned counsel appearing for the 2nd respondent submits that the successful tenderer would be required, as per section IV of the Tender Documents, to supply medicines and other goods, which are not exempted under the GST Act, in the process of maintaining SNCUs, and for that reason the 2nd Respondent had required all bidders to submit GST registration certificates. It is clear that in such a situation, the Petitioner would have to supply drugs and goods which are not exempt from levy of GST and the petitioner would require to be registered, under the GST Act. In the absence of such a registration certificate, the action of the 2nd Respondent in rejecting the technical bid of the Petitioner cannot be termed to be arbitrary.

27. The second allegation of arbitrariness against the 2nd respondent is the refusal to reject the technical bid of the 3rd Respondent. The contention of the petitioner is that the 3rd respondent was one of the members of a consortium, which was participating in the tender and could not have submitted the bid as it was not the lead member in the said consortium. This contention is disputed by both respondent Nos.2 and 3. It is the specific stand of both these respondents that there is no stipulation in the tender document that only the lead member of the consortium who filed the bid documents, and that the other members of the consortium cannot file the bid documents.

28. Sri V.R. Reddy Kovvuri, learned counsel for the petitioner would seek to point out certain provisions where details of the lead member are required and where the lead member has to give certain assurances etc. However, this requirement cannot be taken to mean that the bid document has to be filed only by the lead member. All such information and assurances can always be obtained by any other member and file before the tender authority. As such it cannot be said that the 3rd respondent is disqualified on that count and the action of the 2nd Respondent in allowing the 3rd respondent in participating in the financial bid cannot be termed arbitrary.

29. The 3rd Allegation of arbitrariness against the 2nd Respondent is that the 2nd respondent allowed the 4th Respondent to participate in the financial bid even though the 4th Respondent did not have the necessary experience to qualify in the technical bid. Criteria No. 2 in the eligibility criteria set out under section-V of the tender document requires the bidder to have a minimum of three years experience in carrying out operation and maintenance of SNCUs in private or public sector. The said experience being demonstrated by users

certificate regarding satisfactory completion of assignments. The 4th respondent had submitted a certificate from the NRI Academy of Sciences stating that NRI Academy of Sciences through the 4th respondent had provided such services to CHC Seethampeta in ITDA area of Seethampeta, A.P, from March, 2018 to 13-8-2020 and the certificate from the medical officer of the area hospital Seethampeta that such services were being given at CHC Seethampeta in ITDA area of Seethampeta from 14-8-2020 till 29-7-2021. This would show that the 4th respondent has been giving services for more than three years required under the said eligibility criteria.

30. The contention of the petitioner that such services were not in accordance with the contract between M/s. NRI Academy of Sciences and the State of A.P., has not been demonstrated by the petitioner. Except a statement that it is not in accordance with the contract between the parties, the petitioner has not placed any material before this Court to take such a view. Further, the requirement under the eligibility criteria is to ascertain whether such a bidder would have the experience and capacity to execute the contract if it is awarded to such a bidder. The certificates produced by the 4th Respondent do attest to the experience claimed by the 4th respondent. In the circumstances, the contention of the petitioner that the action of the 2nd respondent in this regard is arbitrary must fail.

31. The Writ is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JYOTI

*In favour of revenue.