

GAHC010010762024



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/246/2024**

M/S FULL AGRITECH INDIA  
HAVING ITS OFFICE AT 28, 29 RATI RAM PARK,  
NAYA BAZAR, NAJAFGARH, NEW DELHI-43,  
REPRESENTED BY ITS SIGNATORY SRI BABLU DUTTA,  
SON OF NOVA KUMAR DUTTA,  
AGED ABOUT 35 YEARS,  
H/NO. 50, SATI JOYMATI ROAD, NEAR RAM JANKI MANDIR,  
CHABIPOOL, GUWAHATI, KAMRUP(M),  
ASSAM, PIN- 781008.

VERSUS

STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
DEPARTMENT OF AGRICULTURE AND HORTICULTURE,  
E- BLOCK, 1ST FLOOR, ASSAM SECRETARIAT,  
G.S. ROAD, GUWAHATI- 781006.

2:THE DIRECTOR OF AGRICULTURE  
KHANAPARA GUWAHATI ASSAM  
PIN- 781022.

3:THE DEPARTMENTAL BID COMMITTEE  
REPRESENTED BY THE CHAIRMAN  
CONSTITUTED FOR EVALUATING TENDERS PERTAINING TO TENDER  
DOCUMENT BEARING NO. AGRI/IPMU/E-BID/MICRONUTRIENT/2023-  
34/01 DATED 29.09.2023  
FOR SUPPLY F MICRONUTRIENTS FOR THE YEAR 2023-24

**Advocate for the Petitioner : MR. A SARMA**

**Advocate for the Respondent : SC, AGRI. DEPARTMENT**

**BEFORE**  
**HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**  
**ORDER**

Date : **18.06.2024**

Heard Mr. A. Sarma, learned counsel for the petitioner and Mr. B. Choudhury, learned counsel for the Agriculture Department.

2. The petitioner's grievance in this writ petition is with regard to the disqualification of his technical bid, pursuant to Bid Inviting Tender Notice (NIT in short) dated 29.09.2023 and the corrigendum dated 19.10.2023, issued by the Director of Agriculture.

3. The specific case of the petitioner is that in terms of the NIT and the corrigendum, the required experience for tenderers is that they should have the experience of having manufactured two times the amount of the Zinc Sulphate Heptahydrate 21% required to be supplied. However, the petitioner did not have the said qualification/experience required in respect of the Zinc Sulphate Hepta Hydrate 21%, as the petitioner had manufactured approximately 23,000 quintals in the last 3 years ending on 31.03.2023, while the experience required was that the tenderer should have manufactured at least 40,000 quintals.

4. The petitioner's counsel submits that the petitioner manufactures not only Zinc Sulphate Hepta Hydrate 21%, but also Zink Sulphate Monohydrate 33%. He submits that when the combined manufactured quantity for Zinc Sulphate Hepta Hydrate 21% and Zink Sulphate Monohydrate 33% is taken, the petitioner meets the qualifying manufacturing experience required in terms of the NIT. He also submits that as Zinc Sulphate Hepta Hydrate 21% and Zinc Sulphate Monohydrate 33% are more or less similar in nature, the petitioner's technical bid could not have been disqualified, only on the ground that the

experience required only for Zinc Sulphate Heptahydrate did not meet the requirement of the NIT.

5. Mr. B. Choudhury, learned counsel for the Agriculture Department, on the other hand, submits that there is a difference between the Zinc Sulphate Hepta Hydrate 21% and Zinc Sulphate Monohydrate 33%. As the respondents are the authors of the tender document, the disqualification of the petitioner's technical bid was correctly done, as he did not have the experience required in the NIT.

6. I have heard the learned counsels for the parties.

7. As can be seen from NIT dated 29.09.2023 and the subsequent corrigendum dated 19.10.2023, bidders were required to have the experience of manufacturing not less than two times the required items. In terms of the NIT, 20000 Qntls of Zinc Sulphate Hepta Hydrate was required to be supplied. As such, the petitioner was required to have the experience of manufacturing at least 40,000 Qntls of the said chemical. However, the petitioner had the experience of manufacturing approximately 23,000 Qntls of Zinc Sulphate Hepta Hydrate 21% during the last three financial year ending on 31.03.2023. Though the petitioner's counsel submits that the petitioner has the experience of manufacturing more than 40,000 Qntls of the combined Zinc Sulphate Monohydrate 33% and Zinc Sulphate Heptahydrate 21%, the NIT required the experience of manufacturing 40000 Qntls of Zinc Sulphate Heptahydrate only.

8. To verify whether Zinc Sulphate Hepta Hydrate 21% and Zinc Sulphate Monohydrate 33% are similar in nature, Schedule-I of the Fertilizer (Control) Order, 1985 issued by the Government of India, Ministry of Agriculture and Rural Development (Department of Agriculture and Cooperation) is to be seen,

as it provides the specification of fertilizers and their micronutrients, which is as follows:-

### **1 Zinc Sulphate Heptahydrate ( $ZnSO_4 \cdot 7H_2O$ )**

(i)	[Omitted]	
(ii)	Matter insoluble in water percent by weight, maximum	1.0
(iii)	Zinc (as Zn) per cent. by weight, minimum	<b>21.0</b>
(iv)	Lead (as Pb) per cent by weight maximum	0.003
(v)	Copper (as Cu) per cent by Weight, maximum	0.1
(vi)	Magnesium (as Mg) per cent by weight maximum	<b>10.0</b>
(vii)	pH not less than	4.0
(viii)	Sulphur (as S), percent by weight minimum	<b>10.0</b>
(ix)	Cadmium (as Cd), percent by weight, maximum	0.0025
(x)	Arsenic (as As), percent by weight, maximum	0.01

### **10 Zinc Sulphate Monohydrate ( $ZnSO_4 \cdot H_2O$ )**

(i)	Free flowing power form	
(ii)	Matter insoluble in water per cent by weight, maximum	1.0
(iii)	Zinc (as Zn) per cent. by weight, minimum	<b>33.0</b>
(iv)	Lead (as Pb) per cent by weight maximum	0.003
(v)	Copper (as Cu) per cent by weight, maximum	0.1
(vi)	Magnesium (as Mg) per cent by weight maximum	<b>0.5</b>
(vii)	Iron (as Fe), percent by weight, maximum	<b>1.0</b>

(viii)	pH not less than	4.0
(ix)	Sulphur (asS), percent by weight minimum	<b>15.0</b>
(x)	Cadmium (as Cd), percent by weight, minimum	0.0025
(xi)	Arsenic (as As), percent by weight, minimum	0.01

9. A perusal of the above two charts show that there is a difference in the Zinc, Magnesium and Sulphur per cent by weight vis-à-vis the above two chemicals. In respect of Iron percent by weight, it is found that only Zinc Sulphate Monohydrate has the said micro nutrient, which is totally absent from Zinc Sulphate Hepta Hydrate.

10. The above clearly shows that there is a different composition of compounds/chemical elements in Zinc Sulphate Hepta Hydrate vis-à-vis Zinc Sulphate Monohydrate. As such, this Court does not find any ground to infer that the two chemicals are similar in nature.

11. The above being said, though this is a matter for experts in the field to determine, a bare perusal of the charts clearly shows the difference in the composition of chemical elements contained in the two fertilizers, in terms of the Fertilizer (Control) Order, 1985.

12. Further, in the case of **Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr.**, reported in **(2016) 16 SCC 818**, the Supreme Court has held as follows-

*“The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its*

*requirements and interpret its documents."*

13. In view of the reasons stated above, this Court does not find any reason to interfere with the disqualification of the petitioner's technical bid at the technical bid evaluation stage, as it did not meet the requirements/specifications of bidder's experience required in the NIT. Accordingly, the writ petition is dismissed.

14. Interim order passed earlier stands vacated.

**JUDGE**

**Comparing Assistant**