

GAHC010050492024



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

Case No. : WP(C)/1384/2024

PRASANTA GOGOI
S/O LATE RAMESH CHANDRA GOGOI
RESIDENT OF NO. 1 BORGOLAI MARGHERITA, PO AND PS MARGHERIAT,
DIST TINSUKIA, ASSAM 786181

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY DEPARTMENT
OF EXCISE, DISPUR GUWAHATI ASSAM 781006

2:THE COMMISSIONER OF EXCISE

ASSAM HOUSEFED COMPLEX
DISPUR GUWAHATI ASSAM 781006

3:THE DISTRICT COMMISSIONER
TINSUKIA
ASSAM 786125

4:THE TENDER /BID COMMITTEE FOR GRANT OF FRESH IMFL OFF SHOPS
IN TINSUKIA DISTRICT
REPRESENTED BY THE ADDITIONAL DISTRICT COLLECTOR CUM
CHAIRMAN OF THE BID COMMITTEE
O/O THE DEPUTY COMMISSIONER
TINSUKIA
ASSAM 786125

5:ARUNJYOTI BARUAH @ ARUNJYOTI BORUAH
S/O LATE JYOTI PRASAD BARUAH

NEAR NEPALI BISHNU MANDIR

PO AND PS DIGBOI
DIST TINSUKIA
ASSAM 78617

Linked Case : WP(C)/1385/2024

SWAGATAM BORHAJOWAL
S/O NUMAL CHANDRA BORHAJOWAL
RESIDENT OF GILLAPUKHURI ROAD
PO AND PS TINSUKIA DIST TINSUKIA
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY DEPARTMENT
OF EXCISE
DISPUR GUWAHATI ASSAM 781006

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O/O THE DEPUTY COMMISSIONER
TINSUKIA
ASSAM 786125

5:RAJDEEP RAJKHOWA
S/O SRI CHANDAN RAJKHOWA JYOTI NAGAR
MAKUM NEAR MAKUM JUNCTION
PS AND PO MAKUM
DIST TINSUKIA
ASSAM 786125

Linked Case : WP(C)/1496/2024

PALLAB JYOTI GOSWAMI
SON OF LATE ATUL CH. GOSWAMI

RESIDENT OF BORHAPJAN
A.T. ROAD

P.O.- BORHAPJAN
DISTRICT- TINSUKIA

ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY

DEPARTMENT OF EXCISE

DISPUR
GUWAHATI
ASSAM.

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR

GUWAHATI
ASSAM.

3:THE DISTRICT COLLECTOR
TINSUKIA
ASSAM.

4:THE TENDER/ BID COMMITTEE FOR GRANT OF FRESH IMFL OFF SHOPS
IN TINSUKIA DISTRICT
REPRESENTED BY THE ADDL. DISTRICT COMMISSIONER (EXCISE) CUM
CHAIRMAN

OFFICE OF THE DISTRICT COMMISSIONER
TINSUKIA

ASSAM.

5:RAHDEEP RAJKHOWA

SON OF SRI CHANDAN RAJKHOWA

RESIDENT OF OIL VALLEY GAS AGENCY

JYOTI NAGAR
MAKUM JUNCTION

BONGALI GAON
TINSUKIA
ASSAM

PIN- 786170.

Advocate for the Petitioners : Mr. P. J. Saikia, Sr. Advocate
Mr. A. K. Gupta, Advocate
Mr. S. Borthakur, Advocate

Advocate for the Respondents : Mr. K. Agawal, Sr. Advocate
Mr. M. Das, Advocate
Mr. K. P. Pathak,
SC. Excise Deptt.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 24.09.2024

Date of Judgment : 24.09.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. P. J. Saikia, the learned senior counsel assisted by Mr. A. K. Gupta, the learned counsel appearing on behalf of the petitioner in WP(C) No.1496/2024 and Mr. S. Borthakur, the learned counsel appearing on behalf of the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024. Mr. K. P. Pathak, the learned standing counsel appears on behalf of the Excise Department of the Government of Assam and Mr. K. Agarwal, the learned senior counsel assisted by Mr. M. Das, the learned

counsel appears on behalf of the private respondents in WP(C) No.1385/2024 and WP(C) No.1496/2024 as well as Mr. N. Deka, the learned counsel appears on behalf of the private respondent in WP(C) No.1384/2024.

2. All the three writ petitions are taken up together taking into account that the issues involved in the writ petitions, i.e. WP(C) No.1384/2024 and WP(C) No.1385/2024 are similar and the issue involved in WP(C) No.1385/2024 is interconnected with WP(C) No.1496/2024.

3. The material facts which arise for consideration is that a Notice Inviting E-Bids was issued on 29.11.2023 by the District Collector, Tinsukia District thereby inviting shop-wise electronic bids (E-Bids) for grant of Indian Made Foreign Liquor (IMFL) Retail 'Off' Licenses in the district of Tinsukia at the locations mentioned in the list of shops contained in the E-Bid document.

4. At this stage, it is very pertinent to mention that the bid documents in its draft form was addressed to the District Collector, Tinsukia by the Commissioner of Excise, Assam vide the communication dated 18.09.2023 with the direction that the required data may be filled pertaining to the district after finalization of the Date-Sheet as provided at Page No.7 of the draft bid documents. In pursuance thereto, the bid document was published in the website <https://assamtenders.gov.in>. In the said bid documents, there are various conditions stipulated. Clause 2 of the said bid document stipulates the eligibility required for participation in the bidding. The relevant portion of Clause-2 is extracted below:-

“2. OVERVIEW OF ELIGIBILITY REQUIREMENT FOR PARTICIPATION IN BIDDING

An individual, a partnership firm, a limited liability partnership (LLP) or a company registered under the Companies Act, 1956 or subsequent enactments who has proof of filing Income Tax Returns-for the three financial years out of the last four financial years (2019-20, 2020-21, 2021-22 and 2022-23) duly certified by a Chartered Accountant, is eligible to participate in the bid."

5. From a perusal of the above extracted portion of the Clause-2, it would be seen that an individual, a partnership firm, a limited liability partnership (LLP) or a Company registered under the Companies Act, 1956 or subsequent enactment who has proof of filing Income Tax Returns for the three financial years, out of the last four financial years, i.e. 2019-20; 2020-21; 2021-22 and 2022-23 duly certified by a Chartered Accountant is eligible to participate in the bid. The effect of the above extracted portion of Clause 2 of the bid document would be seen in Clause 6 which stipulates what the technical bid should consist of. Amongst the various documents which have been enlisted, one of such document is "copy of Income Tax Returns along with Balance Sheets for the year 2019-20, 2020-21, 2021-22 and 2022-23 (any three years in sequence) and the statement of 'net worth' as certified by a Chartered Accountant". Therefore, it would be seen that the requirement of the said documents has a direct correlation with the eligibility criteria. In addition to that, it is also very relevant to mention that amongst the very other documents as mandated in Clause 6 of the tender documents, the bidder has also to submit a duly filled up Application Form as per Annexure-A.

6. A perusal of the Annexure-A would show that various details are required to be filled in. Clause 12 of Annexure-A stipulates filing in details of bank account(s) and proof to be submitted In the said Column, it has

been further provided in the Tabular Form the name of the bank with address, the type of the account as well as the account number.

7. In the instant batch of writ petitions, this Court is concerned with two IMFL 'Off' License Shops, i.e. TSK-6, Pengree and TSK-10, Gellapukhuri (Urban). In the shop, i.e. TSK-6, Penegree, two persons, i.e. the petitioner in WP(C) No.1384/2024 and the private respondent in the said writ petition had participated in the said bid process. In TSK-10 Gellapukhuri (Urban) Shop, six persons participated in the said bid process, including the petitioners in WP(C) No.1385/2024 and WP(C) No.1496/2024 and the private respondent therein.

8. At this stage, it is further pertinent to mention that in the bid documents itself, and more particularly at Clause 3, how the Tender Bid Committee is to be constituted is mentioned. In terms with Clause 3, the District Collector or the Additional District Collector of the district as nominated by the District Collector shall be the Chairman. In addition to that, there would be four Members and a Member Secretary. The Superintendent of Excise of the district or the Seniormost Excise Officer of the district if there is no Superintendent of Excise to be the Member Secretary. The senior most official of the National Informatics Centre (NIC) in the district, The Finance and Accounts Officer in the district, the Sub-divisional Officer and the Deputy Superintendent of Excise in respect of the shops located in the respective Divisions of the district shall be the Members.

9. The Tender Bid Committee carried out the evaluation on 13.02.2024. In the said minutes so recorded as regards to the IMFL 'OFF' License Shop TSK-6 (Penegree), both the petitioner and the private respondent in

WP(C) No.1384/2024 were held to be technically qualified and entitled to be considered for the financial bid. In respect to IMFL 'OFF' License Shop TSK-10 {Gellapukhuri, (Urban)}, the Technical Committee had rejected the bid of one bidder, namely Sri Bhabesh Borgohain as he fell under the rural area. However, the technical bids of other five bidders were accepted and were held to be eligible for financial bid.

10. The eligible bidders in respect to the said IMFL 'OFF' License Shops TSK-6 and TSK-10 were duly intimated in the portal that their bids have been technically evaluated and accepted by the Technical Committee. In addition to that, each of the eligible bidders were informed that their technical bids upon being accepted, their financial bids would be opened.

11. Subsequent thereto, the record reveals that certain complaints were received by the District Collector in respect to the eligibility of the technical bids of some other Shops, and as such, the District Collector vide a communication dated 15.02.2024, directed that there should be another re-scrutiny of the technical bids. Accordingly, a re-scrutiny was carried out on 22.02.2024 by the same Technical Bid Committee and in the said re-scrutiny carried out, the Technical Bids of the petitioner in WP(C) No.1384/2024 and the petitioner in WP(C) No.1385/2024 were rejected in respect to the Shops TSK-6 and TSK-10 respectively on the ground of non-submission of the proof of the bank account.

12. It is also very pertinent to note that the petitioner in WP(C) No.1496/2024 submitted a representation to the District Collector on 23.02.2024 informing the District Collector that the private respondent in WP(C) No.1496/2024 who is also the private respondent in WP(C) No.1385/2024 was not eligible in as much as the copies of the Income Tax

Returns and the Balance Sheet so submitted by the said private respondent in WP(C) No.1496/2024 were not certified by the Chartered Accountant. In addition to that the private respondent did not submit Application Form signed on all pages. However, the said representation was not considered and the financial bid was opened on 26.02.2024 wherein the private respondent in WP(C) No.1385/2024 who is also the private respondent in WP(C) No.1496/2024 was recommended to be the successful bidder and for issuance of the Letter of Acceptance. In respect to IMFL 'OFF' License Shop TSK-6, the private respondent in WP(C) No.1384/2024 was also recommended as he was the sole eligible bidder. It is under such circumstances that the three writ petitions were filed before this Court. It is relevant to take note of that while issuing respective notice, this Court had also directed the respondent authorities not to issue the license to the private respondents in the writ petitions.

13. The record reveals that pursuant to the notice issued in the writ petitions, the respondent authorities including the private respondents have filed their affidavit-in-opposition whereby the stand taken by the respondent authorities were justified.

14. In the backdrop of the above, this Court finds it relevant to take note of the respective submissions made by the learned counsels appearing on behalf of the parties.

15. Mr. S. Borthakur, the learned counsel appearing on behalf of the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 submitted that all the documents which were necessary in terms with Clause 6 of the bid documents were duly submitted by the petitioners. In the Application Form wherein at Clause 12, the requirement of submission of the details

of the bank account(s) were mentioned, the same were also furnished and in support thereof, certificates were enclosed that the petitioners were reputed customers of the said bank. The learned counsel for the petitioners submitted that from a perusal of Clause 12 of the Application Form, it would show that only the details of the bank account were sought for which the petitioners have duly provided in the Application Form itself. There was no mention that in the certificate to be enclosed, there was a requirement of putting the bank account number.

16. He further submitted that taking into account the amendment made to the Assam Excise Rules, 2016 (for short, 'the Rules of 2016') vide the Assam Excise (Amendment) Rules, 2023 (for short, 'the Amending Rules') and the insertion of Rule 114A, the respondent authorities after having held that the petitioners in both the writ petitions were eligible as per their technical bids could not have again rejected the technical bids in as much as upon being notified that the petitioners were technically eligible, the petitioners had also a right accrued to be considered for the financial bids in terms with Sub-rule (vi) of Rule 114A (1). The learned counsel for the petitioners further submitted that if the petitioners had a right to be considered for the financial bid and that right is sought to be curtailed after having been already declared to be technically qualified, the petitioners ought to have been given an opportunity to explain. The opportunity not being granted makes the action of the respondent authorities unreasonable and unfair and thereby violates the mandate of Article 14 of the Constitution.

17. Mr. P. J. Saikia, the learned senior counsel appearing on behalf of the writ petitioner in WP(C) No.1496/2024 submitted that the respondent

authorities ought to have rejected the technical bid of the private respondent of the said writ petition on the ground that he did not submit the copy of the Income Tax Returns along with Balance Sheet duly certified by the Chartered Accountant for the respective years. The learned senior counsel for the petitioner submitted that the justification so given in the affidavit filed by the respondent is completely misconceived taking into account that the copy of the Income Tax Returns as well as the Balance Sheet cannot be verified by the authorities themselves unless the said authorities approach the Income Tax Authorities. It is under such circumstances, it was mandated in the bid documents that these Income Tax Returns and the Balance Sheets were required to be certified by the Chartered Accountant. The learned senior counsel further submitted that a further perusal of the bid documents would show that in respect to proprietorship firms, there is a further requirement of a net worth certificate which is not there in the case of partnership firms as well as Directors of the Company. The learned senior counsel submitted that in the case of partnership firms, what is required is copies of the Income Tax Returns of the partnership firms which are duly certified by the Chartered Accountant and in the case of a Company, what is required are the copies of the Income Tax Returns duly certified by the Chartered Accountant as well as those of the individual Directors. The learned senior counsel therefore submits that the acceptance of the technical bid of the private respondent is a clear infraction to the bid document and the manner in which it has been accepted clearly shows an unfair, unreasonable and irrational mode had been adopted in order to favour the private respondent. He further submitted that not only the copies of the Income

Tax Returns as well as the Balance Sheet were not certified by the Chartered Accountant, even the application form which was submitted by the private respondent was not signed in all the pages. He submitted in terms with Clause 7, it is the requirement that all pages of the documents submitted by the bidder has to be signed by the authorized signatory and shall also be affixed with the bidder's entity's stamp.

18. Per contra, Mr. K. P. Pathak, the learned counsel appearing on behalf of the Excise Department submitted that the District Collector in terms with the amended Rule 114A (1) and more particularly Clause (xii) of the Rule 114A(1) is the authority to conduct the process of selection of the successful bidders for the grant of license. The learned counsel submitted that in terms of the Rules of 2016 and more particularly Rule 114 (ii) stipulates the grant of retail sale of foreign liquor 'Off' or 'On' the premises is to be issued by the District Collector. The learned counsel further submitted that in terms with the said Rule, the foreign liquor 'Off' or 'On' license shall be granted by the District Collector with the previous sanction of the State Government. In consonance with Rule 114(ii), Rule 114A (1) (xii) stipulate that the District Collector shall be the authority to conduct the process of selection of successful bidder for the grant of license. On the basis of the said provisions, the learned counsel submitted that the District Collector, apart from being a Member of the Technical Bid Committee, has also the supervisory and plenary powers conferred to see to it that the process of selection of the successful bidders is done in accordance with the tender conditions as well as the provisions of the Act of 2000 and the Rules framed therein under. The learned counsel therefore submitted that in the instant case, after the Technical Bid

Committee had in its Minutes dated 13.02.2024 decided the technical eligibility, the same was placed before the District Collector for approval. Upon receipt of certain complaints, the District Collector therefore being the supervisory authority directed re-scrutiny of the technical bids and in that process it was found that the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 did not submit proof of documents as regards the bank account of the petitioners. He therefore submitted that there is no illegality in respect to the rejection of technical bid of the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024. He further submitted that as the petitioners in both the writ petitions, i.e., in WP(C) No.1384/2024 and WP(C) No.1385/2024 are not technically eligible, they cannot challenge the recommendations so made in favour of the private respondents therein. The learned counsel appearing on behalf of the Excise Department submitted that in respect to the certification to be given by the Chartered Accountant to the Income Tax Returns as well as the Balance Sheets, the Technical Bid Committee has held it to be directory, and as such, the wisdom of the said Technical Bid Committee ought not to be interfered with by this Court on the well settled principles of law. As regards the fact that the private respondent in WP(C) No.1496/2024 had not signed all the pages of the application form, the learned counsel submitted that the said statement is factually correct. However, the Tender Committee had decided that, it was not necessary to sign on all the pages.

19. Mr. K. Agarwal, the learned senior counsel appearing on behalf of the private respondent in WP(C) No.1385/2024 and WP(C) No.1496/2024 submitted that a perusal of the tender conditions mentioned in Clause 6

would show that it is only in respect to the net worth certificate which is required to be certified by the Chartered Accountant and not in respect to the Income Tax Returns and the Balance Sheets. Mr. K. Agarwal, the learned senior counsel further submitted that what was required in terms with Clause 12 of the application form is proof of bank details and not a solvency certification. The petitioner could have submitted Passbook, the Cheque Book or even a certificate from the bank stating that the petitioner is a customer having a particular bank account number. He therefore submitted that as the petitioners in WP(C) No.1385/2024 had not submitted the said documents, the petitioner's bid was not technically qualified for which at the first place itself, the petitioner's bid ought to have been rejected. However, it was inadvertently not done which was later on corrected.

20. As regards the submission made by Mr. P. J. Saikia, the learned senior counsel for the petitioner that the private respondent had not signed in all the pages of the application, Mr. K. Agarwal, the learned senior counsel for the private respondent submitted that the same is not required taking into account that Clause 7 only refers to the documents to be submitted and not the application form.

21. Mr. N. Deka, the learned counsel appearing on behalf of the private respondent in WP(C) No.1384/2024 has made similar submission to that of Mr. K. Agarwal, the learned senior counsel has submitted, and as such, for the sake of brevity, this Court is not repeating the same.

22. This Court further finds it pertinent to take note of the rejoicing submissions made by Mr. P. J. Saikia, the learned senior counsel wherein he submitted that the requirement as per Clause 7 is not only limited to

sign in all pages of the document, but also to the application form, in as much as it is specifically mentioned in Clause 7 that the registered bidder shall also be required to sign, scan and upload all pages of the bid documents which includes the application.

23. I have heard the learned counsels appearing on behalf of the parties and given my anxious consideration in respect to their respective submissions.

24. Let this Court first take note of the rejection of the petitioners bids in WP(C) No.1384/2024 and WP(C) No.1385/2024 taking into account that the reason for rejection of the petitioners' bids in both the cases are one and the same. From a perusal of the Clause 6 of the bid documents, there is no mention that the bank account details along with the proof thereof are required to be submitted. It is only in Annexure-A which is the Application Form, there is a requirement of proof to be submitted as regards the details of the bank account. From a perusal of the Application Form which has been enclosed to the writ petitions, it is seen the petitioners have duly provided the bank account details, the name of the bank, the type of the account as well as the account number. In proof of the same, the petitioners have submitted a certificate given by the concerned bank that he is a reputed customer of the said bank. It is also relevant to take note of that in Clause 6 of the bid documents the authorities concerned have specifically mentioned which are the documents required to be submitted. It seems taking into account Clause 6 of the Bid Document, the Technical Bid Committee had initially on 13.02.2024 decided that the bids of the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 were technically valid.

25. At this stage, this Court finds it very pertinent to take note of the amended Rule 114A of the Rules of 2016. The said Rule categorically mandates the procedure for grant of the Indian Made Foreign Liquor License. Clause (iv), (v), (vi) and (vii) of Clause 114A (1) of the Rules of 2016 being relevant, is reproduced herein under:-

- (iv) The technical bids of the bidders shall be opened on a pre-notified date by the tender committee and the bidders or their authorized representatives shall be allowed to be present;*
- (v) The Tender Committee (TC) shall prepare a list of technically qualified bidders after such scrutiny/enquiry as it may deem necessary for the purpose. The list of such technically successful bidders shall be published by the concerned District Collector of the district;*
- (vi) The financial bids of the technically qualified bidders shall be opened in presence of the bidders or their authorised representatives. However, their absence shall not be a ground for halting the bid opening process;*
- (vii) The highest eligible financial bidder (offering the highest Initial Grant Bid, 1.e H! bidder) shall become eligible for grant of the licence with the previous approval of the State Government. In case more than one bid quoting the same highest Initial Grant Bid are received, the successful bidder shall be determined by a draw of lots amongst the bidder quoting the same highest amount. In case, there is no bid or no eligible bid equal to or above the base bid, the bids shall be invited again;*

26. From a perusal of the above clauses of Rule 114A (1), it would be seen that the technical bid of the bidders shall be opened only on a pre-notified date by the Tender Committee and at the time of opening, the bidders or their authorized representatives shall be allowed to be present. It appears that for the purpose of transparency such requirement of

opening of bids in presence of bidders have been stipulated. In terms with Clause (v), the Tender Committee shall prepare a list of technically qualified bidders after such scrutiny/enquiry as it may deem necessary for the purpose and this list would be published by the concerned District Collector of the district. In the instant cases, it would be seen that pursuant to the minutes of the meeting of the Technical Committee held on 13.02.2024, the petitioners bids in both WP(C) No.1384/2024 and WP(C) No.1385/2024 were held to be technically valid and this aspect of the matter was duly informed to the petitioners as could be seen from the records. All of a sudden, a decision was taken for scrutininny at the direction of the District Collector, that too when the District Collector or his delegate was the Chairperson of the same Technical Bid Committee.

27. At this stage, if this Court duty takes note of Rule 114A (1) (vi) of the Rules of 2016, it would be seen that the financial bids of the technically qualified bidders shall be opened also in presence of the bidders or their authorized representatives. Therefore, a person/entity who had been adjudged to be technically qualified has a valuable right to be considered for the financial bid. Mr. K. P. Pathak, the learned counsel appearing on behalf of the Excise Department submitted that there is no vested right upon a bidder even after opening of a financial bid, and as such, the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 had no rights on the basis that they were informed inevitably that their bids were technically qualified. The said proposition, in the opinion of this Court, would hold good in a usual tender process. However, when the grant of Indian Made Foreign Liquor 'Off' License is decided on the basis of Rule 114A which is a statutory Rule, a right is conferred upon the

bidder after having been adjudged as being technically qualified to be considered for the financial bid as per the clear mandate of Clause (v) and (vi) of Rule 114A (1) of the Rules of 2016. This Court is further of the opinion that if a right is created for the purpose of being considered for the opening of the financial bid, this right can only be taken away after duly providing an opportunity to the bidder to explain the deficiency which came into light subsequently after being initially held to be technically qualified and duly informed to the bidder. The same is required for the reason that the action on the part of the respondent authorities should also be seen to be fair and transparent while settling State Largesse and keeping in mind that Rule 114A had been inserted to settle licences in a fair and transparent manner. It is also paramount to observe that fairness and transparency in State dealings are hallmark of Article 14 of the Constitution.

28. In the instant cases what is seen that inspite of the fact that the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 were informed that their bids were technically accepted and financial bids would be open on 16th of February, 2024 but on 22nd of February, 2024, the respondent authorities overturned the said decision thereby rejecting the petitioners' bids in WP(C) No.1384/2024 and WP(C) No.1385/2024, that too on a condition which is not a part of Clause 6 of the bid documents. Additionally, the petitioners were never informed of the deficiency which came into light subsequently.

29. Under such circumstances, in the opinion of this Court, the impugned actions on the part of the respondent authorities in rejecting the technical bids of the petitioners in WP(C) No.1384/2024 and WP(C)

No.1385/2024 have resulted in arbitrariness, unfairness and unreasonableness for which the minutes of the meeting dated 22.02.2024 in so far as the rejection of the technical bids of the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 in respect to IMFL 'Off' license shops being TSK-6 (Penegree) and TSK-10 {Gellapukhuri (Urban)} are bad in law and required to be interfered with.

30. In the backdrop of the above, let this Court deal with WP(C) No.1496/2024. Admittedly the private respondent herein who is also the private respondent in WP(C) No.1385/2024 did not submit the Income Tax Returns as well as the Balance Sheets for the relevant periods duly certified by the Chartered Accountant. The learned senior counsel appearing on behalf of the private respondent as well as the counsel appearing on behalf of the respondent authorities submitted that the same has been held to be directory by the Technical Bid Committee. However, a conjoint reading of the extracted Clause 2 and Clause 6 would show that the requirement of submission of the Income Tax Returns as well as the Balance Sheets duly certified by the Chartered Accountant touches on the very eligibility of the bidder to participate in bid process and as such in the opinion of this Court, the decision of the Tender Committee to treat the said condition to be directory appears to be unreasonable and unfair, more so, when the same Tender Bid Committee has been so hyper technical in respect to the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024. At the cost of repetition, this Court would like to reiterate that the same Tender Bid Committee initially held the petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 were technically qualified. Upon re-scrutiny had rejected on the basis of

the bank document furnished did not contain the bank details. It is pertinent to note that this document was not a part of Clause 6 of the bid documents. On the other hand, the same Tender bid Committee approved the private respondent's bid inspite of the fact that he did not submit Income Tax Returns and Balance Sheet duly certified by the Chartered Accountant which was mandated as per Clause 6 of the Bid Document and more so when the said condition touches on the very eligibility of the bidder to participate. The above, therefore, clearly shows the arbitrariness and unreasonableness on the part of the Technical Bid Committee in dealing with the bids pertaining to IMFL 'OFF' license shops TSK-6 and TSK-10 for which the said recommendations so made in favour of the private respondent in WP(C) No.1385/2024 and WP(C) No.1496/2024 are set aside and quashed.

31. In that view of the matter, this Court disposes of the instant three writ petitions with the following observations and directions:-

- (A) The impugned Minutes of the Technical Bid Committee dated 22.02.2024 in so far as the rejection of the Technical Bids of the writ petitioners in WP(C) No.1384/2024 and WP(C) No.1385/2024 are concerned are unfair, unreasonable, arbitrary and irrational and accordingly interfered with and set aside only to the extent of the IMFL 'OFF' License Shops TSK-6 (Penegree) and TSK-10 {Gellapukhuri (Urban)}.
- (B) The impugned Minutes of the Meeting of the Technical Bid Committee dated 22.02.2024 is so far as accepting the Technical Bid of the private respondent in WP(C) No.1496/2024 is unfair and arbitrary.

- (C) All consequential actions taken in pursuance to the impugned Minutes of the Technical Bid Committee dated 22.02.2024 in so far as IMFL 'OFF' License Shops TSK-6 (Penegree) and TSK-10 {Gellapukhuri (Urban)} are interfered with and set aside.
- (D) As a result of the interference and setting aside of the decision to grant IMFL 'OFF" License Shops in so far as TSK-6 (Penegree) and TSK-10 {Gellapukhuri (Urban)}, the respondent authorities are given liberty to proceed with fresh settlement procedures by following the mandate of law.
- (E) The counsels for the private respondents submitted that they have paid certain amounts pursuant to the Letter of Acceptance issued to them. The private respondents would be at liberty to request the respondent authorities for refund of the same which the respondent authorities shall do as per the extant law.

JUDGE

Comparing Assistant