

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL  
W.P. (C) No. 259 of 2020**

**M/S S.A. Ngamo Agency** having its Head Office at Senapati, Tahamzam, P.O. & P.S. Senapati, Pin- 795106, Manipur through its Proprietor namely Shri S.A. Ngamo aged about 35 years old, S/o Kh. Shikhap Aimnal, a permanent resident of Khongdei khuman, Senapati Lakhamei, Manipur – 795001.

**... Petitioner**

**-Versus-**

1. The Food Corporation of India through the Chairman and Managing Director, 16/20 Barakhamba Lane, New Delhi– 110001.
2. The Executive Director (Zone), Food Corporation of India (NE), Zonal Office (NE), Publication Building, G.S. Road, Lachit Nagar, Guwahati, Assam -7.
3. The Deputy General Manager (R), Food Corporation of India, Regional Office, Old Assembly Complex, Imphal, Manipur– 795001.
4. M/s G.B. Chowdhury Holding Pvt. Ltd., through its Proprietor/ Director/ Managing Director, Chowdhury Tilla, Opp., to Assam Sachibalaya Sarumtoria, Dispur, Guwahati, Assam - 781006.

**... Respondents**

**B E F O R E  
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the petitioner	::	Shri H.S. Paonam, Sr. Advocate
For the respondents	::	Shri W. Darakishwor, Sr. PCCG & Shri N. Ibotombi, Sr. Advocate.
Date of Hearing	::	<b>16-06-2020</b>
Date of Judgment & Order	::	<b>25-06-2020</b>

**JUDGMENT AND ORDER**

**[1]** Heard Shri H.S. Paonam, learned Senior Advocate appearing for the petitioner while Shri W. Darakishwor, learned Senior PCCG

appearing for the FCI and Shri N. Ibotombi, learned Senior Advocate appearing for the private respondent.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the order dated 26-05-2020 issued by the Grievance Redressal Committee, FCI and the letter dated 28-05-2020 issued by the FCI, Regional Office, Manipur and also for issuing a writ of mandamus or any other appropriate writ to direct the respondents to reconsider the case of the petitioner for appointment as the Road Transport Contractor for the Sector RH/FSD Jiribam to FSD Bishnupur.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner which is a registered proprietorship firm, is a Contractor. The FCI, Regional Office, Manipur issued the NIT dated 19-11-2018 for appointment of Road Transport Contractor for transportation of foodgrains from RH/FSD Jiribam to FSD Bishnupur. The petitioner being eligible for it, applied for appointment as the Road Transport Contractor. The private respondent also participated in the said tender process for the same purpose. The bid of the petitioner was declared as unqualified while that of the private respondent being declared as qualified, although the private respondent had allegedly submitted a defective bid. Being aggrieved by the action of the FCI, Regional Office, Manipur rejecting its bid while allowing the bid of the private respondent, the petitioner is alleged to have submitted a

representation dated 06-05-2019 praying for reconsideration of its bid or for floating a fresh tender for protecting the interest of all the bidders.

**[3.2]** A writ petition being WP(C) No.148 of 2018 was filed by M/S Shiva Transport which was one of the disqualified bidders and in view of the pendency of the said writ petition, the tender process could not be proceeded further resulting in loss of time in the transportation and commercial venture to all the bidders. But in spite of pendency of the said writ petition, the NIT dated 19-11-2018 was finalized and a letter of acceptance dated 29-10-2019 was issued by the FCI, Regional Office, Manipur in favour of the private respondent by overlooking the defect of leaving certain pages 'blank' in the bid submitted by it. Being aggrieved by the issuance of the said letter of acceptance, the petitioner is alleged to have submitted another representation dated 04-11-2019 for revoking it.

**[3.3]** In a similar case of leaving certain pages 'blank' in the MTF-RTC, the Grievance Redressal Committee, FCI took a general decision pursuant to the direction given by this Court in WP(C) No.216 of 2019 and accordingly, it issued an order dated 21-11-2019 stating that the submission of blank undertaking would render the bidder technically disqualified. As a consequence of it, the FCI, Regional Office, Manipur by applying the Grievance Redressal Committee's order, issued a letter dated 24-12-2019 scrapping the NIT dated 19-11-2018. According to the petitioner, as the relief sought for by it had been taken care of, the

petitioner was waiting for a fair reconsideration of its bid by the FCI, Regional Office, Manipur.

**[3.4]** The private respondent challenged the letter dated 24-12-2019 by way of a writ petition being WP(C) No.37 of 2020 wherein this court was pleased to dispose of the same vide its order dated 31-01-2020 with the direction that the petitioner therein may submit a detailed representation to the Dispute/ Grievance Redressal Committee within 10 (ten) days there from and in the event of such a representation being submitted by the petitioner therein, the Grievance Redressal Committee, FCI shall consider and decide it after giving an opportunity of being heard to the parties. It was also observed by this Court that till a week after the disposal of the representation, no fresh tender could be issued by the FCI.

**[3.5]** In the meantime, the Manipur Truck Owners' Welfare Association challenged the letter of acceptance dated 29-10-2019 issued in favour of the private respondent for its appointment as the Road Transport Contractor in respect of the Sector, RH/ FSD Jiribam to FSD Sawombung by way of a writ petition being WP(C) No.903 of 2019 which was disposed of vide its order dated 21-02-2020 in a similar manner in which the order dated 31-01-2020 was passed by this Court in WP(C) No.37 of 2020. The order dated 21-02-2020 had not been complied with but consequent upon the order dated 26-05-2020 issued by the Grievance Redressal Committee, the FCI, Regional Office, Manipur issued the letter dated 28-05-2020 appointing the private respondent as

Road Transport Contractor for the Sector, RH-FSD Jiribam to FSD Bishnupur. Being aggrieved by the order dated 26-05-2020 of the Grievance Redressal Committee, FCI and the letter dated 28-05-2020 issued by the FCI, Regional Office, Manipur, the instant writ petition has been filed by the petitioner questioning their validity and correctness on the inter-alia grounds that the order dated 26-05-2020 issued by the Grievance Redressal Committee, FCI is contrary to its earlier order dated 21-11-2019 applicable to all and that the order dated 26-05-2020 was issued by the Grievance Redressal Committee, FCI for favouring the private respondent which is arbitrary and illegal.

**[4.1]** An affidavit-in-opposition has been filed on behalf of the respondent Nos.1 to 3 stating that in respect of the NIT dated 19-11-2018, the technical bids were opened on 12-12-2018 and out of six bidders, only two bidders-one, the private respondent and two, M/S B. K Enterprises were found technically qualified and the result thereof was uploaded on 19-02-2019 on which their financial bids were also opened. The bid of the petitioner was rejected on the ground that although the petitioner uploaded the duly signed MTF, no supporting documents like Experience Certificate, Balance Sheet, P/L account, Pan Card, Income tax return etc. were not uploaded and on the contrary, it uploaded the documents of other firm namely M/S WAC Enterprises. In the intervening period from 19-02-2019 till date, no representation was received from the petitioner, though it had referred to copies of two representations dated 06-05-2019 and 04-11-2019 in the writ petition

which appear to be fake. The letter of acceptance dated 29-10-2019 was issued after a gap of about eight months only after the WP(C) No.148 of 2019 filed by M/S Shiva Transport having been disposed of by this Court. By that time, the order dated 21-11-2019 was not yet received and therefore, it did not apply to the private respondent but as a corrective measure, the NIT dated 19-11-2018 was scrapped by the FCI, Regional Office, Manipur. Pursuant to this Court's order dated 30-01-2010, the representation dated 05-02-2020 of the private respondent was considered by the Grievance Redressal Committee, FCI which set aside the letter dated 24-12-2019 on the ground that the Grievance Redressal Committee's order dated 21-11-2019 could not have been applied retrospectively to all contracts already awarded and that the corrective measure can be taken in future tendering process. Accordingly, the letter dated 28-05-2020 was issued in favour of the private respondent. The petitioner had been a silent spectator from the date on which the technical bids were opened till the issuance of the letter dated 28-05-2020. The writ petition has been filed with malafide intention. The issuance of the letter dated 28-05-2020 did not affect the fundamental rights of the petitioner which had not challenged its disqualification. It has also been stated that the private respondent was found technically qualified before the order dated 21-11-2019 was issued by the Grievance Redressal Committee, FCI. The scrapping of the NIT vide letter dated 24-12-2019 has nothing to do with the alleged representations which appear to be fake. Since the petitioner has not come before this Court

with clean hands, the petitioner is not entitled to any relief, as has been laid down by the Hon'ble Supreme Court in **Ramjas Foundation & anr. Vs. Union of India & ors, (2010) 14 SCC 38**. The stand of the private respondent is similar to that of the FCI and therefore, the details thereof are not referred to herein.

**[4.2]** In its rejoinder, it has been submitted by the petitioner that although the private respondent had submitted its defective bid, in the sense that it had submitted unfilled undertaking of the bid which is not permissible in MTF-RTC. The private respondent had actually submitted the representation dated 06-05-2019 followed by a representation dated 04-11-2019 and the omission to record about their receipts in the receipt register by the FCI, cannot be the basis to claim that the representations were not submitted by the petitioner. Moreover, the true copies of the representations available with the petitioner are just marked as singed but the representations were submitted with the original signatures. Since the counsel appearing for the FCI submitted during the course of hearing on 09-06-2020 that the representations were never submitted to it, the petitioner submitted another representation dated 10-06-2020 requesting for conducting an enquiry into the misplacement of the documents. The petitioner being a participant in the tender process, it could challenge the award of contract. Since the bid submitted by the private respondent being defective, the letter of acceptance issued to it in violation of clause 5(ii) of NIT and MTF, is illegal. The scrapping of the NIT was the correct approach, as all the bidders were found technically disqualified. The

reasoning given by the Grievance Redressal Committee, FCI regarding retrospective operation of the corrective measure is unfounded and the decisions are to be taken in accordance with the MTF and NIT. The contention that the speaking order dated 21-11-2019 should not have been applied retrospectively, indicates that the order dated 26-05-2020 is illegal.

[5] The submissions of Shri H.S. Paonam, learned Senior Advocate appearing for the petitioner are that the private respondent had submitted a defective bid by leaving certain pages 'blank' in the Tender Submission Undertaking but its bid was allowed as technically qualified, while the petitioner's bid was technically rejected. In other words, the bid of the private respondent was liable to be technically disqualified, as clause 8 of the MTF-RTC indicates that the tender which does not comply with the instructions, shall be summarily rejected by the FCI. Being aggrieved by the declaration of the private respondent's bid as technically qualified, the petitioner submitted two representations dated 06-05-2019 and 04-11-2019. It has further been submitted by him that the scrapping of the NIT vide letter dated 24-12-2019, despite the letter of acceptance having been issued in favour of the private respondent, was the correct approach and therefore, the petitioner did not have any grievance at that point of time. But the Grievance Redressal Committee, FCI issued an order dated 26-05-2020 which is contrary to its earlier order dated 21-11-2019 and pursuant to the order dated 26-05-2020 of the Grievance Redressal Committee, the FCI, Regional Office, Manipur issued the erroneous letter



dated 28-05-2020 in favour of the private respondent. Combating his submissions, Shri W. Darakishwor, learned Advocate appearing for the FCI has submitted that the technical bids were opened on 12-12-2018 and the result thereof was uploaded on 19-02-2019 but the petitioner did not question the result of the technical bids including its disqualification and only M/S Shiva Transport Co. filed a writ petition being WP(C) No.148 of 2019 challenging its disqualification which was disposed of by this Court on 14-09-2019. After about eight months, the letter of acceptance dated 29-10-2019 was issued in favour of the private respondent but in the meantime, in respect of a similar NIT for appointment of Road Transport Contractor in respect of the Sector, RH/FSD, Jiribam to FSD, Sawombung, the Grievance Redressal Committee, FCI while considering the representation of M/S K.C Group, issued an order dated 21-11-2019 observing that a blank undertaking without duly filled up with desirable particulars, cannot be said to be complete in terms of the provisions stipulated in the NIT and MTF. As a corrective measure, the FCI, Regional Office, Manipur scrapped the tender for appointment of the contractor for transportation of foodgrains from RH/FSD Jiribam to FSD, Bishnupur which was challenged by the Private respondent. The High Court vide its order dated 30-01-2020 directed the petitioner to approach the Grievance Redressal Committee, FCI which on consideration of the representation dated 05-02-2020 submitted by the private respondent, set aside the letter dated 24-12-2019 observing that the corrective action could not have been applied retrospectively to all

contracts already awarded and the corrective measures can be taken in the future tendering process. There is no record to show that the representations dated 06-05-2019 and 04-11-2019 have been received by the FCI, Regional Office, Manipur and the petitioner filed the writ petition by enclosing fake documents. Relying upon the decision rendered by the Hon'ble Supreme Court in **Ramjas Foundation & anr. Vs. Union of India & ors., (2010) 14 SCC 38**, it has been submitted by him that since the petitioner has not come to this Court with clean hands, the writ petition is liable to be dismissed. It has further been submitted by him that the petitioner has participated in the tender by submitting MTF wherein as per clause XX (b), the petitioner ought to have approached the Grievance Redresal Committee, FCI for redressal of its grievance, before approaching this Court, for which the decision dated 06-08-2019 rendered by this Court in WP(C) No.216 of 2019 & ors was relied upon. It has been submitted by Shri N. Ibotombi, learned senior counsel appearing for the private respondent that since the petitioner has not challenged the disqualification of its bid nor did it challenge the letter of acceptance dated 29-10-2019, the petitioner has no locus standi to challenge the order dated 26-05-2020 of the Grievance Redressal Committee, FCI and the letter dated 28-05-2020 issued by the FCI, Regional Office, Manipur. As is evident from the affidavit of the FCI, the alleged representations were manufactured by the petitioner to get a favourable order from this Court and since the petitioner has not approached this Court with clean hands, the writ petition is liable to be

dismissed, the proposition of law of which is supported by the decisions rendered by the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by Lrs, (1994) 1 SCC 1** and **Badami (Dead) by LRs Bs. Bhali, (2012) 11 SCC 574**.

[6] The main issues, involved herein, which call for consideration by this Court, are as under:

- (a) Whether the petitioner has challenged the result of the technical bids which was uploaded in the website on 19-02-2019 in which the petitioner's bid was shown to be technically disqualified?
- (b) Whether the petitioner has challenged the result of the technical bids which was uploaded in the website on 19-02-2019 in which the private respondent's bid was shown to be technically qualified and the letter of acceptance dated 29-10-2019 which was issued later in favour of the private respondent?
- (c) Whether the petitioner has really submitted the representations dated 06-05-2019 and 04-11-2019 to the FCI, Regional Office, Manipur as alleged by it in the writ petition?
- (d) Whether the order dated 26-05-2020 issued by the Grievance Redressal Committee, FCI is illegal, when it observed that the corrective action could not have been applied retrospectively to the contracts already awarded and that the corrective measure can be taken in the future tendering process?

**In Re: Issue (a) & (b):**

[7.1] The above issues are connected to each other and therefore, both are considered by this Court together. It is the specific stand of the FCI that the petitioner has failed to challenge the result of the technical bids which was uploaded in the website on 19-02-2019. As per the result of the technical bids uploaded in the website on 19-02-2019, only two bidders viz. M/S G.B. Chowdhury Holdings, the private respondents herein and M/S B.K Enterprises were shown to be technically qualified, while others including the petitioner, were shown to be technically disqualified. It is nowhere averred in the writ petition that the petitioner has ever challenged the validity and correctness of its disqualification or the declaration of the bid of the private respondent being technically qualified and the only averment that is found in the writ petition, is that it has submitted two representations which have been denied by the FCI. The issue relating to the submission of the said two representations will be considered later at the appropriate place. But it is not denied by the FCI that one of the bidders namely M/S Shiva Transport Co. approached this Court questioning its technical disqualification by way of a writ petition being WP(C) No.148 of 2019 which was disposed on 14-09-2019. After about eight months and that too, after the disposal of the WP(C) No.148 of 2019, the letter of acceptance dated 29-10-2019 was issued by the FCI, Regional Office, Manipur in favour of the private respondent. This letter of acceptance appears to have not been challenged by the petitioner for the reason that it is nowhere stated in the writ petition that it

has challenged it before the appropriate forum. The inference that can be drawn by this Court, is that if the validity and correctness of the letter of acceptance dated 29-10-2019 was not challenged by anyone or for that matter, the petitioner before the appropriate forum which held it to be invalid, it became a valid document in the eyes of law and it remained valid till 24-12-2019 when the NIT was scrapped by the FCI, Regional Office, Manipur.

**[7.2]** It so happened that in a similar matter namely WP(C) No.216 of 2019 filed by M/S K.C Group relating to NIT dated 19-11-2018 for appointment of contractor for transportation of foodgrains from RH/FSD Jiribam to FSD Sawombung, this Court passed an order directing that it might approach the Grievance Redressal Committee, FCI by way of a representation which it did on 19-08-2019. While disposing of the representation dated 19-08-2019, the Grievance Redressal Committee, FCI vide its order dated 21-11-2019 observed that the tender submission undertaking submitted by M/S K.C. Group was left 'blank' with respect to details viz. website, page number etc and that the reply filed by it did not satisfy the requirement of the terms and conditions of the MTF. It has further been observed that a blank undertaking without dully filled with desirable particulars, cannot be said to be complete in all aspects in terms of the provisions stipulated in the NIT and MTF. After the receipt of the order dated 21-11-2019 and even though it was not applicable to the private respondent, the FCI, Regional Office, Manipur scrapped the NIT dated 19-11-2018 vide its letter dated 24-12-2019 as a corrective

measure. This letter dated 24-12-2019 came to be challenged by the private respondent by way of a writ petition being WP(C) No.37 of 2020 which was disposed of on 30-01-2020 with the direction that the private respondent may approach the Grievance Redressal Committee, FCI for redressal of its grievance. The representation dated 05-02-2020 submitted by the private respondent was considered and disposed of by the Grievance Redressal Committee, FCI vide its order dated 26-05-2020 setting aside the letter dated 24-12-2019 and observing that the corrective action pursuant to the order dated 21-11-2019 could not have been applied retrospectively to all the contracts already awarded and the corrective action can be taken in the future tendering process. Upon receipt of the order dated 26-05-2020, the FCI Regional Office, Manipur issued the letter dated 28-05-2020 awarding transport contract to the private respondent.

**In Re: Issue (c):**

[8] As regards this issue, it has been vehemently submitted by Shri H.S Paonam, the learned Senior Advocate appearing for the petitioner that being aggrieved by the action of the FCI rejecting the petitioner's bid, while allowing the bid of the private respondent, the petitioner submitted a representation dated 06-05-2019 for reconsideration of its bid or for a fresh tender to be floated by the FCI. After the letter of acceptance dated 29-10-2019 being issued in favour of the private respondent, the petitioner submitted another representation dated 04-11-2019 praying for revoking it. It is no doubt true that there are averments made in the writ

petition about the allegation of having submitted the said representations by the petitioner to the FCI. But the said averments are denied by the FCI stating that there is no record with it to show that the said representations have been received by it by producing a copy of the register maintained by it for the period from 16-02-2019 to 24-12-2019. On perusal of the register, the contention of the FCI appears to be correct. According to the FCI, the copies of the alleged representations filed by the petitioner along with its writ petition, appear to be all fake ones and since the petitioner has not come before this with clean hands, the writ petition is liable to be dismissed by this Court. Except stating in the writ petition that the petition has submitted the said representations, no material has been placed on record by the petitioner to substantiate its allegation. No receipt issued by the FCI, Regional Office, Manipur for having received the representations or any endorsement on the copies of the representations maintained by the petitioner has been produced by it before this Court. It is hard to believe the contention of the petitioner that although the representations were in fact submitted by it, the factum thereof was not entered or recorded by the FCI in its register. In the absence of sufficient materials, the averments made in the writ petition as regards the submission of the representations cannot be accepted by this Court. In the rejoinder affidavit, it has been stated by the petitioner that since the counsel appearing for the FCI has submitted before this Court during the course of hearing on 09-06-2020 that the said representations were not received by the FCI, the petitioner submitted a representation dated 10-06-2020

requesting for conducting an enquiry into the matter so that such acts of misplacement of documents/ letters are not repeated in future. The submission of the representation dated 10-06-2020 appears to be an afterthought because it has failed to produce any material to show the factum of having submitted the earlier representations. In this regard, the law laid down by the Hon'ble Supreme Court relating to the issue of not approaching the Court by a party with clean hands, is well settled and therefore, the decisions relied upon by the counsels appearing for the respondents are not required to be elaborately referred to herein. In other words, it is well settled that if any person approaches the Court without clean hands, he is not entitled to any relief or in other words, the Court shall not give any indulgence to him. Even the counsel appearing for the petitioner will have no any dispute with respect to the settled law. Therefore, the instant writ petition can be dismissed by this Court on this ground alone.

**In Re: Issue (d):**

[9] The order dated 26-05-2020 issued by the Grievance Redressal Committee, FCI and the letter dated 28-05-2020 issued by the FCI, Regional Office, Manipur are under challenge in this writ petition. The fate of the letter dated 28-05-2020 issued by the FCI, Regional Office, Manipur will depend upon the outcome of what this Court decides as regards the validity and correctness of the order dated 26-05-2020 for the reason that the letter dated 28-05-2020 has been issued pursuant thereto. The order dated 26-05-2020 is being challenged by the petitioner



mainly on the ground that it is contrary to its earlier order dated 21-11-2019 issued by the Grievance Redressal Committee, FCI itself. The relevant paragraph of the observation of the Grievance Redressal Committee, FCI as contained in its order dated 21-11-2019 reads as under:

*“6.7. GRC during the proceedings observed that the tender “Tender Submission Undertaking” (refer page No.56 of Part-A (Technical bid) to be submitted by M/S K. C Group Technical bid was left blank for the details viz. Website page No. etc and simply signed by the proprietor. The reply by the petitioner submitted before GRC does not satisfy the requirement the terms and conditions of MTF. A bank undertaking without dully filled up the website particulars cannot be said to be complete in all aspect and is therefore considered in sufficient to technically qualify a bidder in terms of provisions stipulated in NIT (point 5(ii) on page 5 of NIT and the MTF (clause 8(g) on page 9 of Part-A technical bid).”*

Accordingly, the contentions of the M/S K.C Group were rejected by the Grievance Redressal Committee, FCI with the result that the representation dated 19-08-2019 submitted by it stood disposed of. In its order dated 26-05-2020, the Grievance Redressal Committee, FCI gave its observations and findings which read as under:

*“5.1. In the case of the applicant, his technical bid has been accepted and vide letter of award dated 29.10.2019, the contract was awarded to the applicant by the DGM(R), FCI, Manipur. The ground on which the letter of award has been cancelled is that in a particular page, i.e., the Tender Submission Undertaking, the applicant had left the page numbers in clause 2 of the particular page blank. Th said clause 2 states that “I/ we hereby certify that I/ We have read the entire terms and conditions of the tender documents form page*

No.....to ....(including all documents like annexure(s), schedule(s), etc.) which form part of the agreement and I/ we shall abide hereby the terms/ conditions/ clauses contained therein.

**5.2.** *It is here pointed that the entire page of "Tender Submission Undertaking" is not left blank and the particulars like tender reference No., name of tender/ work source of website from which the tender documents were downloaded/ obtained are duly filled up along with the signature of the tenderer at the designated place which indicates that the contractor undertakes to abide by all the terms and conditions of the tender. The GRC holds that had the said undertaking been completely blank, then the question of its disqualification in the technical bid would have arisen which is not there in the instant case. However, GRC observe that the bidders are supposed to fill up all the portion as required in the MTF to avoid any kind of disqualification on technical ground. Hence, DGM(R) may be advised to hold pre-bid meeting and make the bidders conversant with the guidelines and requirement.*

**5.3.** *Further, the deficiency, if any, in the form of non-submission of any document or undertaking is required to be taken into account while carrying out evaluation of technical bids. It makes no sense to terminate an already awarded contract to the party after completion of requirements like deposition of Security Deposits and Performance Guarantee as all these involve huge costs for the party. Deposition of ED and PG do not leave any scope for the party to contend that it would not abide by the terms and conditions of the tender when the party had signed on each and every page of the tender document. So, the non-mentioning of the page numbers in the said undertaking is of absolutely inconsequential at this stage. Therefore, the non-filling up of the page nos, in the technical submission of undertaking cannot be a tenable ground to terminate the contract by scrapping the NIT at this stage, after having found the technical bid of the applicant to be valid and awarding the contract in favour of the applicant being L 1 among the*

*technically qualified tenderers. Once the tender is awarded to a party, question of scrapping the tender does not arise.*

**5.4.** *The Committee also holds that the pretext of corrective action for scrapping/ termination the contract does not hold adequate and convincing footing as the corrective measures could not have been applied retrospectively to all contracts already awarded and the corrective action can only be taken in future tendering process.”*

On perusal of the order dated 26-05-2020 and in particular, the observations and findings of the Grievance Redressal Committee, it is seen that it has not taken a view contrary to that of its earlier order dated 21-11-2019. It is nowhere stated therein that even if the undertaking is completely blank, the technical bid can still be said to be technically qualified, rather it has been observed by it that the deficiency, if any, in the form of non-submission of any document or undertaking is required to be taken into account while carrying out evaluation of technical bids. But all that the Grievance Redressal Committee, FCI has observed, is that the non-filling up of the page nos., in the technical submission of undertaking cannot be a tenable ground to terminate the contract by scrapping the NIT at that stage, after having found the technical bid of the applicant to be valid and awarding the contract in favour of the applicant being L1 among the technically qualified bidders. It has further been observed that once the tender is awarded to a party, the question of scrapping the NIT does not arise. The observations appear to have been made by the Grievance Redressal Committee, FCI confining to the facts and circumstances of the present case. It may be noted that since the petitioner has failed to question the validity and correctness of its

disqualification as well as the acceptance of the technical bid of the private respondent as technically qualified before the appropriate forum, the letter of acceptance dated 29-10-2019 was issued by the FCI, Regional Office, Manipur in favour of the private respondent. This letter of acceptance dated 29-10-2019 has not been challenged by the petitioner and therefore, it has become a valid document which remained valid till 24-12-2019 when the NIT was scrapped by the FCI, Regional Office, Manipur as a corrective measure. This letter dated 24-12-2019 by which the NIT dated 19-11-2018 was scrapped by the FCI, Regional Office, Manipur came to be challenged by the private respondent. This Court as required by the terms and conditions contained in the MTF, granted it liberty to approach the Grievance Redressal Committee, FCI for redressal of its grievance by way of a representation. When the representation dated 05-02-2020 was submitted by the private respondent, the Grievance Redressal Committee, FCI examined the facts and circumstances of the present case and held that the scrapping of the NIT was incorrect for the reason that the award had already been given in favour of the private respondent. After having perused the order dated 26-05-2020 issued by the Grievance Redressal Committee, FCI, this Court is of the view that the Grievance Redressal Committee, FCI has not issued the order contrary to its earlier order dated 21-11-2019. In other words, there is nothing wrong in the order dated 26-05-2020 issued by the Grievance Redressal Committee, FCI. At this juncture, one aspect which needs to be kept always in mind by the FCI is that there is hardly

any NIT, the validity and correctness of its process is not challenged in the Court. In order to obviate such litigation, the officials of the FCI need to follow strictly the rules and regulations or for that matter, the terms and conditions as contained in the MTF, NIT etc. In other words, there shall be no compromise at all as regards the implementation of the terms and conditions as laid down by the FCI. The relaxation of the terms and conditions in one way or the other or the carelessness by some of the officials in some of the NITs has led to a number of litigations resulting in the loss to public exchequer. Not a single case has been brought to the notice of this Court where the official of the FCI has been penalized for his lapse while conducting the tender process. It is high time for the FCI to conduct a survey over its performance in the conduct of tenders and take a policy decision thereon for the future course of action so as to avoid any loss being incurred in the public exchequer. It is also to be kept in view by the FCI that it being an institution, ought to act fairly and reasonably for the reason that Article 14 of the Constitution of India strikes at the root of unreasonableness and arbitrariness.

[10] In view of the above and for the reasons stated hereinabove, the writ petition fails and is accordingly dismissed with no order as to costs.

**JUDGE**

**FR / NFR**

*Devaranda*

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