

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.36/2024

Sri Shibaji Kar Bhowmik

..... Petitioner(s).

V E R S U S

The Union of India & others

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Pranabindu Chakraborty, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy S.G.I.,
Mr. Debalay Bhattacharya, Sr. Advocate,
Mr. Soumyadeep Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

28/02/2024

Heard Mr. Somik Deb, learned senior counsel, assisted by Mr. Pranabindu Chakraborty, learned counsel, appearing for the petitioner, Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for the respondent-Union of India and Mr. Debalay Bhattacharya, learned senior counsel, assisted by Mr. Soumyadeep Saha, learned counsel, appearing for the respondents-University.

2. Petitioner approached this Court for rescinding the note at Annexure-5 as it appeared therefrom that though the petitioner was the lowest bidder in the bidding process for supply and installation of Cordless Collar Microphone, Wireless Handheld Microphone, Transmitter or Receiver, Speaker 50 Watts, Mi but the respondent No.5 who was shown to be the third lowest tenderer has been granted the work order for procurement of those articles. Though the work order was not annexed to the writ petition, but this Court directed the learned counsel representing the respondent No.3 to seek

instructions and file a counter affidavit with supporting documents. The affidavit of the respondents No.3 and 4 in categorical terms states that the supply/contract order has been issued on 01.01.2024 in favour of the private respondent as the GeM portal automatically popped up the bid of private respondent with an MSE preference. Even if a non-MSE bidder is selected as L1 and MSE price quoted is $L1 + X\%$ (X as defined in bid range), the order has to be placed in favour of the bidder having MSE preference at the same rate as L1. Copy of the screen shot and bid document are enclosed as Annexure-B and C, copy of the reference MSE preference screen shot from GeM is annexed as Annexure-D and copy of the reference screen shot regarding MSE not applied by the petitioner is at Annexure-E.

3. Mr. Somik Deb, learned senior counsel assisted by Mr. Pranabindu Chakraborty, learned counsel for the petitioner, has countenanced the stand of the respondents No.3 and 4 by referring to the MSE certificate at Annexure-3 and 4 which refers to one Udyam Registration Number and the name of the petitioner. Petitioner's manufacturer is Ahuja whose products were being quoted in the bid by the petitioner. Learned senior counsel for the petitioner has further referred to Clause-5 of the bid document which, according to him, restricts purchase preference to MSEs who are traders. They are excluded from the purview of Public Procurement Policy for Micro and Small Enterprises in respect of bid for services. Learned senior counsel for the petitioner submits that petitioner as well as the private respondent both are traders and not manufacturers. Therefore, no case of MSE purchase preference could be made out in favour of the private respondent. It is also submitted that all relevant documents relating to MSE registration were duly submitted with the bid

document by the petitioner which have not been duly uploaded by the respondent-employer. Learned counsel has also referred to the provisions of Section 2(e) and (g) and Section 11 of the Micro, Small and Medium Enterprises Development Act, 2006 (*MSME Act, 2006, for short*) in order to submit that the MSE procurement preference policy provides that such preference is to be given for enterprises which not only produce but provide the necessary goods and services sought to be procured. Mere supply or trading of MSE product would not entitle anyone to claim purchase preference as an MSE. It is submitted that petitioner has hugely suffered on account of grant of procurement order in favour of respondent No.5 though he had quoted the highest rate. Therefore, the impugned note reflected in the GeM Portal which qualified respondent No.5 as the successful bidder and in whose favour procurement order has been placed should be set aside.

4. Mr. Debalay Bhattacharya, learned senior counsel assisted by Mr. Soumyadeep Saha, learned counsel, appearing for the respondents No.3 and 4, on the other hand, submits that the evaluation of documents on the GeM Portal is not within the control of the employer. The name of respondent No.5 was popped up as the relevant documents in support of its MSE purchase preference were in his favour. Even though the bid of respondent No.5 was the highest but the procurement order had been placed at the same rate as the L1, i.e. the petitioner. As such, neither is the exercise flawed on account of arbitrariness nor has it resulted in loss to the public exchequer. He submitted that since the procurement has already been made, the issue has become academic. The respondent No.3 cannot be answerable for the bidding process undertaken by the GeM Portal. Petitioner has not been able to establish any non-compliance of

the provisions of the NIT at the behest of the respondents No.3 and 4 for getting the relief.

5. We have considered the submissions of learned counsel for the parties and taken note of the relevant documents placed on record. We have also gone through the relevant provisions of the MSME Act, 2006. Petitioner though has relied upon the conditions of Clause-5 of advertisement which restricts claim of MSE to a service provider but he has approached this Court on the strength of being an MSE service provider and not a manufacturer. On similar lines, he has relied upon the provisions of Section 11 of the MSME Act, 2006. Since the procurement has been done through bidding at the GeM Portal and uploading of documents is done by every interested bidder, the employer i.e. respondents No.3 and 4 cannot be blamed for non-uploading of relevant certificates referred to as MSE registration in favour of the petitioner. Moreover, GeM Portal is not a party before this Court. Whether the documents supplied by the petitioner were uploaded or he failed to upload those documents and whether the respondent No.5 had uploaded those documents which are reflected in the screen shot of GeM Portal qualifying him to be a successful bidder cannot be examined in the absence of the concerned party. It has been further pointed out that even though respondent No.5 has quoted the highest rate but on purchase preference policy as an MSE as shown by the GeM Portal the supply order has been placed at the same lowest rate as quoted by the petitioner. Moreover, the supplies have already been made by 31.01.2024. In such circumstances, we are not inclined to exercise the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

6. For all the above reasons, no case for interference is made out on the part of the petitioner. Writ petition is accordingly dismissed.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J (APARESH KUMAR SINGH), CJ

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