

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 2914 of 2025

M/s. G.S. Enterprises, a proprietorship concern, through its proprietor Manish Kumar Jain, Aged-47 years, son of Shri Gyan Chand Jain, Resident of- Shree Radhey Krishna Garden, Rameshwaram Colony, Military Camp, Bariatu, P.O. and P.S.-Bariatu, District-Ranchi, Jharkhand, 834009 Petitioner

Versus

1. The State of Jharkhand, through its Secretary, Agriculture, Animal Husbandry and Cooperative Department, having its office at Nepal House, P.O. and P.S. Doranda, District - Ranchi, Jharkhand, 834002.
2. Directorate of Dairy Development, through its Director, Dairy, having its office at Training and Extension Institute Campus, Sector-II, Dhurwa, P.O.-Dhurwa, P.S.-Jagannathpur, District -Ranchi, Jharkhand.
3. M/s. Mingle Impex Pvt. Ltd., having its office at Sai Complex, Dr. Usha Rani Lane, Lalpur, P.O. an P.S.-Lalpur, District-Ranchi, Jharkhand 834001, through its Director. Respondents

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr Salona Mittal, Advocate
Mr Yashdeep Kanhai, Advocate
Mr Sourav K. Jha, Advocate
Mr Arya Vardhan Singh, Advocate
Ms Divya Chaudhary, Advocate
For the Resp. Nos. 1 & 2 : Mr. Piyush Chitresh, AC to AG

07 /Dated: 06.04.2026

1. Heard the learned counsel for the parties.
2. Mr Salona Mittal, learned counsel for the petitioner, states that in terms of this Court's order dated 17.11.2025, the 3rd respondent has been duly served. An affidavit of service has also been filed. Despite service, however, the 3rd respondent has not chosen to appear in this matter.
3. I.A. No. 14673 of 2025, seeking leave to amend the petition to challenge the e-mail communication dated 10.10.2025 issued by the 1st and 2nd respondents during the pendency of this petition, purporting to reject the petitioner's bid, is allowed.
4. Necessary amendments to be carried out forthwith.
5. Admit.

6. At the request of and with the consent of the learned counsel for the parties, this petition is taken up for final disposal. Even otherwise, by order dated 17.11.2025, the rule was made returnable in this matter on 25.11.2025.

7. The petitioner, in the original petition, had applied for a writ of mandamus to direct the 1st and 2nd respondents to accept the petitioner's bid for supply of Paneer and Khowa making units in different districts of Jharkhand State and place proportionate orders for supply especially considering the fact that the petitioner had matched the price bid of the 3rd respondent, who was adjudged as L-I bidder in terms of Clauses 5.8 and 5.9 of the Notice Inviting Tender (NIT).

8. The above relief was claimed by the petitioner, *inter alia*, based upon e-mail communication dated 20.06.2025 issued on behalf of the 1st and 2nd respondents to the petitioner, intimating that its bid had been accepted during the financial evaluation by the duly constituted Committee. After the institution of this petition, however, on behalf of the 1st and 2nd respondents, yet another e-mail dated 10.10.2025 was issued to the petitioner informing that its bid had not been selected for the award of the contract. Therefore, the petitioner was permitted to amend the petition to challenge the e-mail communication dated 10.10.2025.

9. In the present case, admittedly, the 3rd respondent was adjudged the lowest bidder, or the L-I bidder, by the Tender Evaluation Committee, which met on 27.03.2025. The 3rd respondent had quoted Rs. 94,500/- per unit, and the petitioner had quoted Rs. 95,000/- per unit. There was a 3rd bidder who failed to attend on the appointed date and offer a demonstration of its product. Thus, only the financial bids of the petitioner and the 3rd respondent were opened and evaluated by the Tender Evaluation Committee on 27.03.2025.

10. In support of the relief claimed in this petition, the petitioner relies on Clauses 5.8 and 5.9 of the NIT, which read as follows:-

“5.8 The purchase committee at its sole discretion has the right to empanel one or more technically qualified bidder(s) who agree to supply on the Li rate, to enable the Dairy Directorate to ensure the supply of the required quantity of the said items on time.

5.9 The technically qualified bidder(s) quoting the lowest i.e. Li rate shall be finally selected at the financial bid stage and this Li bidder shall be termed as "Li selected bidder". Other technically qualified bidder(s) shall be given the opportunity to match with L₁ rate. In case other technically qualified bidder(s) give consent to supply the item at the Li rate then priority for supplying the item will be given to the Li selected bidder (preferably 60% of the total supply order), and the rest quantity may get split among all other technically successful bidder(s).”

11. Consistent with the provisions of the above-referred Clauses 5.8 and 5.9 of the NIT, the petitioner, within just two days of opening the financial bids on 27.03.2025, sent a communication dated 29.03.2025 to the 2nd respondent confirming its willingness to match the bid submitted by the 3rd respondent, which is the L-I price of Rs. 94500/-. The receipt of this communication by the 2nd respondent is not contested.

12. Since the petitioner received no response to his communication dated 29.03.2025, the petitioner addressed representations/reminders dated 30.04.2025, 09.05.2025, 29.05.2025 to the 2nd respondent, urging compliance with Clauses 5.8 and 5.9 of the NIT. The supplementary affidavit filed on behalf of the petitioner on 23.06.2025 discloses that the Tender Evaluation Committee met on 30.5.2025, and the minutes indicate that the representatives of the Cabinet Secretary and Vigilance Department opined that Clauses 5.8 and 5.9 of the NIT should be complied with. The Chairperson of the Committee directed the Department to take appropriate action in the matter.

13. On 26.06.2025, the petitioner was issued an email communication stating that its bid had been accepted during the financial evaluation by the duly constituted Tender Evaluation Committee.

14. Based, inter alia, on all the above aspects, the Co-ordinate Bench of this Court made an order dated 26.06.2025 directing the 1st and 2nd respondents to comply with Clauses 5.8 and 5.9 of the NIT. This order dated 26.06.2025 reads as follows: -

“1. Notice to the respondent-State.

2. Mr. Rajiv Ranjan, Advocate General accepts notice for the respondent-State.

3. Admittedly, the third respondent has been declared as L1 selected bidder by the Committee of the Directorate of Dairy Development on 20th June, 2025 and the said minutes indicate that the representative of the Department of the Cabinet Secretariat and Vigilance, State of Jharkhand, Ranchi expressed the view that the condition under Clauses 5.8 and 5.9 of the Notice Inviting Tender (NIT) ought to be complied with.

4. Having regard to the same, the respondent-State is directed to comply with the said Clauses 5.8 and 5.9 with regard to the subject tender.

5. Advocate General seeks time to file a counter affidavit.

6. List this case on 7th August, 2025.”

15. Despite the above order dated 26.06.2025, 1st and 2nd respondents declined to follow the conditions of Clauses 5.8 and 5.9 of the NIT. In the counter affidavit filed on behalf of the 2nd respondent on 14.8.2025, it was submitted that the Tender Inviting Authority is the best judge to decide whether a tender condition is essential or not. Further, the affidavit claimed that the respondents had acted reasonably and fairly, and hence “no person can claim fundamental rights to carry on business”. The counter affidavit also referred to Clause 5.8 of the NIT

to submit that the Tender Committee has a discretion to reject bids that do not match the L-I rates.

16. The petitioner contested the contentions in the counter affidavit by filing a rejoinder on 10.09.2025.

17. On 10.10.2025, the 2nd respondent emailed the petitioner to inform the petitioner that the petitioner's bid had not been selected for the award of the contract. On 17.10.2025, the petitioner protested the e-mail communication dated 10.10.2025, contending that it was contrary to the tender conditions and this Court's order dated 26.06.2025, which had directed the 2nd respondent to comply with Clauses 5.8 and 5.9 of the NIT.

18. On 25.03.2026, after noting that work order for the supply of only 48 machines had been issued to the 3rd respondent and further, out of these, only 17 units had been supplied by the 3rd respondent, the court restrained the 3rd respondent from supplying and the 1st and 2nd respondents from accepting the supply of a further 31 units, until further orders.

19. The contents of the order dated 25.03.2026 are transcribed below for the convenience of reference:-

1. *Learned counsel for the petitioner states that the third respondent has been duly served.*
2. *However, since there was no notice for 'Final Disposal', we post this petition on 06th April 2026 at 2:15 P.M. for 'Final Disposal'.*
3. *By order dated 26.06.2025, a coordinate Bench of this Court, had directed the respondent-State to comply with clauses 5.8 and 5.9 regarding the subject tender. This was incidentally also the opinion expressed in the meeting of the Tender Evaluation Committee held on 30.05.2025 regarding this very tender.*
4. *After complaints were made about non-compliance with our direction, by order dated 17.11.2025, we had directed the Respondent State to*

produce the records pertaining to compliance with our order dated 26.06.2025.

5. *Mr Piyush Chitresh, learned A.C. to A.G., appearing for the Respondent-State, has produced the files, which suggest that our order has not been complied with, because, according to the State, clauses 5.8 and 5.9 are only discretionary or give the State discretion regarding compliance.*
 6. *This, prima facie, is entirely misconceived. Firstly, it is fortunately not contended before us that our order of 26.06.2025, by which we had directed the respondent-State to comply with clauses 5.8 and 5.9, was also discretionary and the State, without challenging our order for seeking its variation, had an option to comply with the same.*
 7. *Secondly, even assuming the clauses are discretionary, the discretion cannot be construed as unfettered, untrammelled, or absolute.*
 8. *The files do not disclose any reason why discretion has not been exercised or why the methodology set out in clauses 5.8 and 5.9 is being deviated.*
 9. *Yesterday, it was suggested that the supplies have been concluded or substantially concluded. Therefore, we posted the matter today so that the learned A.C. to A.G.-II could provide us with the correct information. Today, Mr Piyush Chitresh has, on written instructions, submitted that a work order was issued only for the supply of 48 machines, and out of these, only 17 units have been supplied. This means that 31 units are yet to be supplied.*
 10. *Now that we have posted this matter for 'Final Disposal' on 06th April 2026 at 2:15 P.M., we restrain the respondents from supplying or accepting the supply of these further 31 units until further orders.*
 11. *List this matter for 'Final Disposal' on 06th April 2026 at 2:15 P.M.*
 12. *All concerned must act on an authenticated copy of this order.*
 13. *I.A. No. 16292 of 2025 for early hearing of this petition is disposed of."*
20. As noted, and quoted above, Clause 5.8 of the NIT provides that the Purchase Committee, at its sole discretion, has the right to empanel one or more

technically qualified bidders who agree to supply on the L-1 rate, to enable the Dairy Directorate to ensure the supply of the required quantity of the said items on time. This clause is interpreted by the respondents as conferring unfettered discretion upon them to proceed with the lowest bidder or to empanel other technically qualified bidders who agree to supply at the L-1 rate.

21. However, upon examination of Clause 5.8, we note that the same applies to one or more technically qualified bidders who agree to supply on the L-1 rate. Clause 5.8, therefore, is directed towards the technically qualified bidders who have agreed to supply on the L-1 rate and not the bidder who was adjudged the lowest based on the L-1 rate. The discretion, if at all, would extend to empanelling one or more of the technically qualified bidders, so that the required quantity of the said items is supplied on time.

22. That apart, Clauses 5.8 and 5.9 must be construed harmoniously. Clause 5.9, in terms, provides that other technically qualified bidders shall be given an opportunity to match the L-1 rate. The expression “other technically qualified bidders” would obviously exclude the lowest bidder or the L-1 selected bidder, as termed under Clause 5.9 of the NIT.

23. This clause, therefore, requires extending the opportunity to other technically qualified bidders to match the L-1 rate. Further, if the other technically qualified bidders consent to supply items at the L-1 rate, priority for supplying the items will be given to the L-1 selected bidder (preferably 60% of the total supply order), and the remaining quantity may be split among all other technically successful bidders.

24. The Tender Evaluation Committee, upon interpreting Clauses 5.8 and 5.9 of the NIT, quite correctly, we should say, decided that the regime required compliance with these two clauses. Based on the same, the second respondent,

by e-mail dated 20.06.2025, even informed the petitioner that its bid had been accepted during the financial evaluation by the duly constituted Committee. Despite this communication, since no supply orders were being placed upon the petitioner, the petitioner was constrained to approach this Court and seek a writ of mandamus.

25. After this petition was instituted, the second respondent made a volte face and issued an e-mail dated 10.10.2025, this time informing the petitioner that its bid had not been selected for the award of the contract. This communication contains no reasons whatsoever for the apparent change in the stance.

26. The contention that the 1st and 2nd respondents have unfettered discretion in empanelling other technically qualified bidders who agree to supply at the L-1 rate is quite misconceived. In a setup like ours, where the rule of law is supreme, there is no question of vesting any unfettered, untrammelled, or unchanneled discretion in the governmental authority. The discretion must be exercised judiciously, after a due application of mind and for the public good.

27. In **Sterling Computers Limited versus M/s M&N Publications Limited & Ors. [(1993) 1 SCC 445]**, the Hon'ble Supreme Court explained that there was nothing paradoxical in imposing legal limits on governmental authorities by the courts even in contractual matters because the whole conception of unfettered discretion is inappropriate to public authority, which is expected to exercise such powers only for the public good.

28. In any event, even assuming the argument of discretion has some merit, the records show that the Tender Evaluation Committee members had fairly opined on compliance with Clauses 5.8 and 5.9 of the NIT. Based upon such opinion, the petitioner was also informed that its bid had been accepted during the financial evaluation by the duly constituted committee. Having exercised its

discretion in a particular way, the 1st and 2nd respondents could not have made a U-turn or volte face and informed the petitioner that its bid had not been selected for the award of the contract. Arbitrariness is writ large in such an unreasoned U-turn or volte-face. This is more so because by then, this Court, by its order dated 26.06.2025, had already issued directions to the 1st and 2nd respondents to comply with Clauses 5.8 and 5.9 of the NIT. This order was never challenged by the State, yet it was disobeyed with impunity.

29. At one stage, it was suggested that the supply of the Units might have concluded. Therefore, we had adjourned the matter to enable Mr Piyush Chitresh, learned A.C. to A.G., to obtain instructions on the status of the supply. He reported that, though the tender was in respect to 261 Units, only 48 work orders had been issued on the 3rd respondent, and further, the 3rd respondent has supplied only 17 Units. He submitted that the 31 Units were being supplied. Therefore, by our order dated 25.03.2026, we restrained further supplies, finding prima facie merits in the petitioner's case.

30. Considering the provisions of Clauses 5.8 and 5.9 of the NIT and holding that there is nothing like unfettered discretion vested by these clauses in the 1st and 2nd respondents, we are satisfied that this petitioner deserves to succeed. Still, since no reasons were forthcoming either in the communication dated 10.10.2025 addressed to the petitioner or in the counter-affidavits filed on behalf of the respondents, we also perused the files/records to see whether any reasons were discernible from the notings therein. However, no reasons were discernible from the record or the file notations. Thus, merely on the basis of some presumed unfettered discretion, the 1st and 2nd respondents appear to have chosen to bypass or deviate from Clauses 5.8 and 5.9 of its own NIT.

(2026:JHHC:9658-DB)

31. For all the above reasons, we allow this petition, quash the e-mail communication dated 10.10.2025, and reiterate our directive that the 1st and 2nd respondents comply with the regime outlined in Clauses 5.8 and 5.9 of the NIT. This requires that 40% of the work orders for the supply of Paneer and Khowa-making Units be placed with the petitioner, who has now been recognised as the sole other technically successful bidder. Up to 60% of the total supply may still be obtained from the 3rd respondent, in accordance with the provisions of Clauses 5.8 and 5.9 of the NIT. Mandamus is issued to this end, and the necessary work orders should be issued to the petitioner immediately. No costs.

32. All concerned must act on an authenticated copy of this order.

(M.S. Sonak, C.J.)

(Rajesh Shankar, J.)

April 06, 2026
Ranjeet / R.Kr.
AFR
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