IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17771 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 17780 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 17784 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 17792 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 17794 of 2025

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J.K.RENEWABLE ENERGY THROUGH ITS PARTNER PARESHKUMAR KANTIBHAI PATEL
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR ABHISHEK M MEHTA(3469) for the Petitioner(s) No. 1
MS SHRUTI DHRUVE, AGP for the Respondent(s) No. 1
MR DIPAK R DAVE(1232) for the Respondent(s) No. 2,3
MR MEHUL S SHAH, SENIOR COUNSEL with MR S M KIKANI(7596) for the Respondent(s) No. 4

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CORAM:**HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**
and
HONOURABLE MR.JUSTICE J. L. ODEDRA

Date : 29/04/2026

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. The petitioners call in question the award of tender granted by the respondent No.2 in favour of the respondent No.4.

2. These facts are not in dispute:

(a) A notice inviting tender for supply of Biomass Pellets to Coal based Thermal Power Stations of the respondent No.2 was published. Conditions were prescribed both for the technical requirement as well as for the financial requirement. In respect of the technical qualification criteria, the first condition imposed was that "only pellets manufacturers should be allowed to participate in tender".

(b) The Special Instructions & Special Purchase Conditions appended to Section-C of the tender notification contained a clause, which reads as follows:

> "1.1.9. Bidder to ensure that existing manufacturing Plant is registered with the same Company name through which they have participated in the Bid."

(c) As far as the financial requirement was concerned, the tender notification permitted the bidder to be either a single bidder or a consortium of upto three corporate entities. It is not in dispute that the respondent No.4 bid as a consortium as contemplated under Route-3, which reads as follows:

> "**Route-3 (Consortium)**
>
> i. Bidder may be a Consortium of up to three corporate entities and should collectively meet the requirement of technical and financial criteria as mentioned at clause A & B above."

(d) Apart from the petitioners and the respondent No.4, there were 69 participants and out of them, 36 were qualified. The respondent No.4 submitted the lowest bid.

(e) The corporation, thereafter, called for the meeting of

50 lowest bidders and undertook a reverse auction process. In this reverse auction process, in which 50% of the lowest bidders participated, it turned out that the respondent No.4 was again the lowest bidder and and accordingly, a decision was taken to award the contract to the respondent No.4.

(f) This award of the contract is, therefore, challenged by the petitioners, who are five in numbers and who are also participants both in the auction as well as in the reverse auction.

3. Learned counsel appearing on behalf of the petitioners put forth two major contentions, viz. the tender notification fundamentally meant to ensure that only pellets manufacturers should be allowed to participate in tender and any attempt by a person who was not a manufacturer should have been rejected by the respondent No.2.

4. Learned counsel for the petitioners argued that the respondent No.4 herein did not own any manufacturing plant at all and in order to establish that he was a manufacturer, he only relied upon a lease agreement that he had entered into with Amiben K. Lakhani, under which, the respondent No.4 had purported to have taken on lease the Biomass Pellets plant located at Industrial Plot No.19, GIDC, Dhandhuka, Ahmedabad. It is his contention that the respondent No.4, who is only a lessee of a manufacturing plant, was ineligible to participate in the tender as he did not own the manufacturing plant. According to him to be eligible to bid, the bidder had to

actually own a plant.

5. Learned counsel pointed out that the Clause 1.1.9 of the tender notification mandated that the manufacture ought to be registered in the same company name through which the bid was being made. He submitted that since the plant had been leased, the question of manufacturing plant registered in the name of respondent No.4 would not arise and he would, therefore, be ineligible to participate in the bid.

6. Learned counsel also sought to place reliance on the fact that in respect of this particular plant, there were two GST registrations and this would also indicate that he was not the owner of the plant and, therefore, was ineligible.

7. Learned counsel pointed out that each member of the consortium should have been eligible to participate. He submitted that one of the members of the consortium was only engaged in the business of sale of certain electrical equipments and was not in the business of pellet manufacturing. He, therefore, submitted that the bid of the consortium was incorrect.

8. Learned counsel pointed out that the consortium was not registered under the Factories Act and, therefore, the requirement of having factory licence was not met and this also renders the consortium ineligible for being considered.

9. Learned counsel appearing for respondent No.2, on the other hand, contended that the tender notice only required the bidder to be a manufacturer in order to participate in the

tender. He stated that there was no clause which mandated that the bidders should be the absolute owners of the manufacturing plant and that the respondent No.2 was only interested in ensuring that the person who was bidding was an actual manufacturer who could supply them with the pellets. He submitted that in order to satisfy this condition, so long as the plant was registered before the appropriate authority in the name of the company, through which the bid was made, the same satisfied the tender conditions.

10. Learned counsel pointed out that there was no requirement in the case of a consortium, for each of the members of the consortium to be eligible. He submitted that the use of the term “collectively” to satisfy both the technical and financial criteria by itself indicated that the sum total of qualifications of all the members of the consortium should satisfy the criteria. He submitted that one member of the consortium could satisfy one criterion while the other member could satisfy the other criterion. He submitted that as long as the members of the consortium together satisfied the criteria, that would satisfy the terms of the tender.

11. Learned counsel pointed out that in order to satisfy themselves about the existence of a manufacturing plant in the light of the assertions made in these proceedings, an inspection was made and it was found that the respondent No.4 did in fact possess the manufacturing plant.

12. He also pointed out that in order to ensure that there was complete transparency, the authorities had also

undertaken a reverse auction process to facilitate each of the participants to be successful in the tender. He submitted this adoption of reverse auction process by itself proved the fairness that was exhibited by the respondent No.2 in the conduct of the tender and therefore, there was no justification for the attack made by the petitioners on the respondent No.2.

13. Learned Senior counsel Mr. Mehul S. Shah appearing for the respondent No.4 supported the case put forth by the respondent No.2 and asserted that the respondent No.4 satisfied all the criteria stipulated in the tender notifications and therefore, there was no merit in the writ petitions.

14. It is a settled law that that in the matters relating to a challenge to a tender process, the courts are only expected to examine the tendering process and satisfy itself that there was no arbitrariness in the manner in which the tender was conducted. The courts while exercising the powers under Article 226 of the Constitution cannot and should not sit in appeal over the tender conditions stipulated or the manner in which the suitability of a particular tender is assessed. So long as the tender inviting authority has acted fairly and has satisfied itself about the credibility of the purchaser, the scope of interference would be minimal.

15. In this legal background, we only have to consider as to whether the arguments advanced that the respondent No.4 did not satisfy the terms of the tender are justified or not.

16. The primary contention advanced by the learned counsel

for the petitioners is that the tender notification stipulated that only pellet manufacturers should be allowed to participate in the tender and since admittedly the respondent No.4 had obtained a pellet manufacturing plant on lease and that too in the month of February 2025, it was obvious that he was not a pellet manufacturer.

17. It must be stated here that there was no clause in the tender which mandated that the bidder should own the pellet manufacturing plant. It is not inconceivable that a bidder may take an existing pellet manufacturing plant on lease so as to be competitive and therefore, make himself eligible for participation in the bid.

18. If the argument of the learned counsel for the petitioners is to be accepted, he would be basically modifying the terms of the tender and would be construing it as only a person who owns a pellet manufacturing plant, would be eligible. Obviously, such a course of action is impermissible in a proceeding under Article 226 of the Constitution of India. If the tender inviting authority is satisfied that the bidder does possess a manufacturing plant, the interference of this Court to examine whether he owned it or not or what were the terms of the ownership cannot be gone into.

19. So far as the argument that the ownership was mandatorily required on a conjoint reading of the Clause regarding the bidder being a pellet manufacturer and Clause 1.1.9, which requires that the manufacturing plant was to be registered in the name of the company, is concerned, it is to

be stated here that the respondent No.4 firm is registered as an MSME and he had obtained Udyam Registration Certificate. A copy of Udyam Registration Certificate has been produced, which indicates that the respondent No.4 has registered with the Ministry of Micro Small and Medium Enterprises and it is noted therein that it is a manufacturing unit and the relevant code is in respect of materials recovery. This would therefore, indicate that the company, which made the bid i.e. respondent No.4, was registered with the Ministry of MSME.

20. The argument that the plant was to be registered would also therefore indicate that the manufacturing plant should be owned, cannot be accepted.

21. As noticed above, it is perfectly open for a person to secure an entire manufacturing plant on lease and get the same registered with the appropriate authority. Since, the respondent No.4 has satisfied this particular criterion, the argument of the learned counsel for the petitioners cannot be accepted.

22. As regards the satisfaction of the financial criteria by the respondent No.4 by recourse to Route- 3, the relevant clause reads as under:

> **“Route-3 (Consortium)**
>
> i. Bidder may be a Consortium of up to three corporate entities and should collectively meet the requirement of technical and financial criteria as mentioned at clause A & B above.

ii. All the Consortium members shall select one of the members as the "leader" who should meet on its own financial criteria mentioned at clause B above.

Or

All the Consortium members shall select one of the members as the "leader" who should meet on its own at least 51% of the absolute value(s) of the Financial Criteria mentioned at clause B.

iii. Net worth of all the consortium members in combined manner, as on the last date of the last financial year out of the three consecutive Financial Years, proposed by Bidder for meeting Financial Criteria, should be equal to or more than 100% of their total paid up share capital. However, net worth of each member of the consortium, as on the last date of the last financial year out of the three consecutive Financial Years, considered by Bidder for meeting Financial Criteria, should not be less than 75% of their respective paid up share capital individually.

iv. Each member of the consortium should meet at least 20% of the absolute value(s) of the Financial Criteria mentioned at clause B above.

v. In this route, none of the consortium members will be allowed to draw any technical or financial strength from its Subsidiary (ies) and/or Holding Company.

vi. Each of the Consortium members will be required to furnish a legally enforceable Consortium Operating Agreement (COA) along with Techno-commercial Bid holding themselves jointly & severally responsible and liable to GSECL to perform all contractual obligations, valid for the entire period of contract, as per the format enclosed in the bidding documents. The number of executants of the COA should not exceed three.

Note: Meeting 51% and 20% of absolute value(s) of the financial criteria mentioned at Route 3.(ii) and Route 3(iv) respectively means meeting the 51% and 20% value(s) respectively of each of the criteria i.e. average annual turnover & net worth of bidder as per clause B above.”

23. As could be seen from the above, the bidder could be a consortium upto three corporate entities. These three corporate entities should collectively meet the requirement of technical and financial criteria as mentioned in Clause- A and B, i.e. the technical qualification criteria and the financial qualification criteria. The use of the term “collectively” would mean that all three entities together should satisfy the technical and financial criteria. From this, it would follow that one of them could satisfy the technical criteria and the other two could satisfy the financial criteria. The reading of this clause does not indicate that each of the members of the consortium should satisfy the prescribed technical and financial criteria individually.

24. The use of the term “collectively” would itself defeat the argument of the learned counsel that each of the entities who formed a part of the consortium should be eligible. We are, therefore, of the view that this argument of the learned counsel is also unacceptable.

25. Learned counsel for the petitioners sought to raise various issues as regards the capability of the respondent No.4 to manufacture the required quantity, the capacity of the manufacturing plant and the non-existence of the requisite amount of electrical power to satisfy the quantity criteria prescribed.

26. On a pointed question as to whether there was any clause which prescribed that the bidder should have proven capacity to manufacture the prescribed amount of pellets,

learned counsel candidly admitted that there was no such clause. If the tender notification did not indicate any clause which related or specified the proven capacity of a bidder to manufacture, such an argument cannot be put forth to non-suit the respondent No.4.

27. If the tender inviting authority did not want any such criteria to be imposed regarding proven capacity to manufacture, in a proceeding under Article 226 of the Constitution of India, this Court cannot insert that particular clause. To reiterate, the role of the Courts while examining tender matters, is rather limited and the Courts do not sit in appeal over the requirement of the tender inviting authority or the specifications imposed by them while calling for tenders.

28. Since in the instant case, the main argument advanced was the ineligibility of the respondent No.4 and that is found to be incorrect, no interference is called for in the writ petitions. The writ petitions are, therefore, DISMISSED. Notice is discharged.

Sd/-
(N.S.SANJAY GOWDA,J)

Sd/-
(J. L. ODEDRA, J)

OMKAR