

16.04.2025
Item No.15
gd/ssd

FMA/620/2025

EASTERN ORGANIC FERTILIZER PVT. LTD. AND
ANR.
VS
STATE OF WEST BENGAL AND ORS.
IA NO: CAN/1/2025

Mr. Jayanta Kumar Mitra, ld. Sr. Adv.
Mr. Pradip Kumar Tarafdar, ld. Sr. Adv.
Mr. Sambuddha Datta,
Mr. Ashish Bandopadhyay,
Mr. Aritra Palit
..for the Appellants.

Mr. Ranjit Rajak
..for the State.

Mr. Soumendra Nath Mookherjee, ld. Sr. Adv.
Ms. Sharmistha Ghosh,
Mr. Viraj Gupta,
Mr. Amit Ghosh
..for the Respondent No.5.

Mr. Alak Kr. Ghosh,
Mr. Arijit Dey
..for KMC.

1. This intra court appeal by the writ petitioners is directed against the order dated 11th March, 2025 in WPA 2775 of 2025.

2. The appellants were unsuccessful in challenging the tender which was awarded by the State Urban Development Agency (SUDA) in favour of the private respondent for the purpose of disposal of 20

lakh MT of legacy waste through Bio-mining and Bio-remediation process reclamation of the lands at two different locations.

3. The short issue which falls for consideration is with regard to the eligibility criteria as mentioned in Clause 5 of the instruction to bidders given in the notice inviting e-tender dated 19.1.2024. For better appreciation, the same is quoted hereinbelow:

<p>“5. Eligibility Criteria</p>	<p>Proposal may be submitted by interested bidders as a single entity or a group of entities (“Bidding JV”). In case of JV, the maximum numbers of entities are limited to 2 (two) including the Lead Member. For eligibility, the bidder shall have at least:</p> <p>5.1 The Entity / Bidder must be a company as specified in Companies Act, 1956/2013 OR a Limited Liability Partnership registered under The Limited Liability Partnership Act, 2008 OR a Society registered under The Societies Registration Act, 1860 OR a Proprietorship Firm OR a Partnership Firm etc. registered under relevant laws of India. The time period elapsed from commencement of business should be at least 05 (five) years prior to the date of issue of the tender notice. In case of a JV the number of years from commencement will have to be met by both the members of the JV. If the other Member is Start-</p>
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	<p>ups in the waste management sector registered under the Department for Promotion of Industry and Internal Trade (DPIIT), under the Ministry of Commerce or Industry, Government of India and Micro, Small & Medium Enterprises (MSME) shall be exempted for commencement of business.</p> <p>5.2.”</p>
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4. The private respondent which is a Multi-State Cooperative Society registered under the provisions of the Multi-State Co-operative Societies Act, 2002 along with a joint venture partner has been declared as the successful bidder and the letter of acceptance has been issued in favour of the joint venture and, according to the learned senior advocate appearing for the private respondent, the joint venture has commenced the work.

5. The contention of the appellants before the learned writ court as well as before us is that Clause 5.1 of the eligibility criteria provides for a Society registered under the Societies Registration Act, 1860 and does not provide for any Multi-State Cooperative Society registered under the 2002 Act and, therefore, the bid submitted by the private respondent/JV. ought to have been rejected.

6. The learned senior advocate appearing for the appellants referred to the provisions of Section 4 of the Indian Partnership Act, 1932 which defines the “partnership”, “partner”, “firm” and “firm name” and submitted that a “Partnership” is the relation between persons who have agreed to share the profits of the business carried on by all or any of them acting for all. The reference was also made to Section 44 of the 1932 Act which deals with Dissolution by the Court and the circumstances when the Court may dissolve a firm and the grounds on which such dissolution can take place. The learned senior advocate also referred to Section 9 of the Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as “the 2002 Act”) and submitted that the provision makes it clear that a Multi-State Co-operative Society is a body corporate and akin to a company registered under the Companies Act. Furthermore, Section 86 of the 2002 Act was referred to which deals with winding up of Multi-State Co-operative Societies.

7. Therefore, it is submitted that the private respondent does not qualify to bid in the said e-tender as it is not a Society registered under the Societies Registration Act, 1860 nor it is a proprietorship firm or a partnership firm.

8. Further it is submitted that the word “etc.” used in Clause 5.1 should be read to mean

organizations which are akin to proprietorship firm or partnership firm and, therefore, the Award of the tender in favour of the private respondent is not sustainable in law.

9. In support of his contention reliance was placed on the decision of the Hon'ble Supreme Court in *Vidarbha Irrigation Development Corporation and Others v. Anoj Kumar Agarwala and Others* in (2020) 17 SCC 577. This decision has been referred to for the proposition that the words used in the tender document cannot be ignored or treated as redundant or superfluous and they must be given meaning and their necessary significance.

10. The learned senior advocate appearing for the private respondent submitted that the Clause 5.1 of the tender condition should be read as "its entirety and what is important to note is that words "registered under the relevant laws of India" which clearly shows that the private respondent/lead bidder of the JV is a Society registered under the Societies Act, 2002 and, therefore, would qualify to be a bidder.

11. In this regard, reference was made to Section 7 of 2002 Act which deals with the registration of a Multi-State Co-operative Society.

12. Furthermore, it is submitted that in the portal maintained by the West Bengal Government dealing with e-procurement system it is clear one of the

important documents which are required to be furnished is the Co-operative Society Bye-Law.

13. This is very relevant to be taken note of while ascertaining the true meaning of Clause 5.1 of the tender conditions.

14. Furthermore, it is submitted that the private respondent is a Multi-State Co-operative Society and its bye-laws are to provide for social and economic betterment of its members through health and the object of a Multi-State Co-operative Society should be appreciated as the work done by them is public interest.

15. Further it is submitted that the work order has been issued and the work has already been commenced.

16. In support of his contention the learned senior advocate placed reliance on the decision of the Hon'ble Supreme Court in *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and Another* in (2016) 16 SCC 818 and *N.G. Projects Limited v. Vinod Kumar Jain and Others* in (2022) 6 SCC 127.

17. We have heard the learned advocate appearing for the State on the above submissions.

18. The legal position is not in dispute, namely, that the words used to the tender document cannot be ignored or treated as redundant or

superfluous and they must be given meaning and they may give meaning and their necessary significance.

19. Bearing in mind, this basic principle of law as laid down by the Hon'ble Supreme Court in *Vidarbha Irrigation Development Corporation* if we examine Clause 5.1 what they require to do is Clause 5.1 reads entirety with specific Clause 5.1. Clause 5 deals with eligibility criteria. It states that proposal may be submitted by interested bidders as a single entity or a group of entities ("Bidding JV"). In case of JV, the maximum numbers of entities are limited to 2 (two) including the Lead Member.

20. As could be seen from the letter of acceptance issued by the State Urban Development Agency dated 29.11.2024 is a joint venture and the lead bidder is a Society registered under the 2002 Act and the JV partner is a Private Limited Company registered under the Companies Act. If that is so, the private respondent would qualify to be eligible to bid in terms of Clause 5.

21. What is now sought to be challenged by the appellants is with regard to how Clause 5.1 should be interpreted and it is the case of the appellants that the word "etc." should be read in conjunction with the earlier words, namely, "partnership firm" and if the same is done, then the private respondent/lead bidder would not be eligible to bid in the said e-tender.

22. As pointed out by the Hon'ble Supreme Court in *Vidarbha Irrigation Development Corporation*, words used in the tender document cannot be ignored or treated as redundant or superfluous and they must be given meaning and their necessary significance.

23. If that is done, it is necessary to take note of the words "registered under the relevant laws of India" occurring in Clause 5.1.

24. Thus, if the interpretation found by the appellants is to be accepted, the words "registered under the relevant laws of India" would become redundant, which is impermissible under law.

25. Therefore, we are unable to accept the contention raised by the appellants.

26. The Hon'ble Supreme Court in *Afcons Infrastructure Limited* has pointed out that the best person to understand and appreciate its requirements and to interpret the documents is the author of the tender documents and that the constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is malafide or perversity in the understanding or appreciation or in the application of the terms of the tender condition.

27. Admittedly, there is no case of malafide or perversity pleaded by the appellants at any stage of the matter.

28. Apart from that, the best person to interpret the tender documents is the tender inviting authority themselves. In *N.G. Projects Limited* the Hon'ble Supreme Court has cautioned the constitutional courts as to the scope of interference in contract of public service and that it should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good.

29. If we see the Preamble of the Multi-State Co-operative Societies Act, 2002, it is seen that it is an Act to consolidate and amend law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto. Section 5 of the Act deals with the registration of Multi-State Co-operative Societies Act. Sub-section (1) states that no Multi-State Co-operative Society shall be registered under the 2002 Act unless (a) its main objects are to serve the interests of members in more than one State; and (b) its bye-laws provide for social and economic betterment of its members through self-

help and mutual aid in accordance with the co-operative principles.

30. Furthermore, in terms of Section 7 a Multi-State Co-operative Society can be registered upon satisfaction of the Central Registrar and the conditions to be fulfilled have been mentioned therein.

31. Thus, it can be seen that a Multi-State Co-operative Society is undoubtedly a Society registered under the relevant law of India which is provided for in Clause 5.1 of the tender conditions.

32. That apart, the tender which has been awarded in favour of the private respondent is of utmost public importance as it is for removal of 20 lakh MT of legacy waster through Bio-mining and Bio-remediation process reclamation of the lands at two different locations at Pramodnagar and Kamarhati dump site for Cluster-I Project under Swachch Bharat Mission/Mission Nirmal Bangla in West Bengal. The project is of utmost importance and the work has also commenced.

33. Thus, the interpretation given by the appellants does not merit consideration and the proper manner of interpretation of Clause 5.1 is to bear in mind that the crucial words “registered under the relevant laws of India”.

34. Thus, we find no grounds have been made out to interfere with the impugned order.

35. Accordingly the appeal fails and the same is dismissed.

(T. S. SIVAGNAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)