

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

06.12.2017

(Ajit Singh, CJ)

Mr. D Das, learned senior counsel assisted by Mr. A Sarma and Mr. H Nath, learned counsel for the appellants.

Mr. D Saikia, learned senior Additional Advocate General, Assam assisted by Mr. B Gogoi, learned Standing Counsel, Health Department, Government of Assam for respondent Nos. 1 and 2 and Mr. TJ Mahanta, learned senior counsel, assisted by Mr. A Bhattacharyya, learned counsel for respondent No.4.

This appeal is directed against the order dated 27.11.2017 passed by the learned Single Judge of this High Court in WP(C) No. 7185/2017, whereby he has directed the authorities to issue work orders to the selected L1 tenderers, which include respondent No.4.

On 26.9.2017, respondent Nos. 1 to 3 issued e-Tender notice for supplying dietary articles (for patients) in the Government hospitals. In response to the notice, as many as 20 tenderers, including appellants and respondent No.4, submitted their tenders.

The eligibility criteria for the technical bid stipulated in the tender notice is that tenderer must have a valid licence to commence or carry on food business. And, despite the fact that respondent No.4 has no such licence to commence or carry on any food business, he was not only allowed to submit his tender, but was also found to be L1 in 8 out of 21 districts. The appellants made a representation against the participation of respondent No.4, but the authorities did not respond. They, therefore, filed WP(C) No. 7185/2017, where it was informed that respondent No.4 has applied for registration to carry on food business and relying on this

information, the learned Single Judge has directed that if he happens to be L1 tenderer, the district authorities shall be at liberty to issue work order to him also. It is in this backdrop, the appellants have filed the present appeal.

Sub-section (1) of Section 31 of the Food Safety and Standards Act, 2006 clearly provides that no person shall commence or carry on any food business except under a licence. According to sub-section (2), for petty manufacturer or seller of food articles or a petty retailer, hawker etc., licence is not required, but the person shall have to register himself with the specified authority. However, under sub-section (3) a person who is desirous to commence or carry on any food business, shall have to make an application for grant of licence to the designated officer in a prescribed manner and the designated officer is under a statutory obligation to decide the application within two months from the date of its receipt.

Admittedly, respondent No.4 has made an application only for his registration as a petty businessman of food and not for grant of licence to commence or carry on food business. And in the absence of licence, Respondent No.4 is prohibited under sub-section (1) of Section 31, either to commence or to carry on any food business. This being the situation, respondent No.4 was wholly ineligible to submit his tender in response to e-Tender notice dated 26.9.2017. Therefore, even if he is found to be L1, no work order can be issued in his favour by the authorities. In the result, we direct that except for Respondent No.4, the authorities will be at liberty to issue work orders to other selected L1 tenderers.

To this extent, we modify the order of the learned Single Judge and allow the writ appeal.

JUDGE

CHIEF JUSTICE

skd