

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Extra Ordinary Jurisdiction)

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**S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.**  
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**W.P. (C) No. 46 of 2017**

M/s. Kamakya Trading,  
represented by and through its  
proprietor, Tara Devi Sharma,  
having address at 6<sup>th</sup> Mile,  
Tadong, 13, Tadong Ward,  
P.O. Samdur, East Sikkim.

... **Petitioner.**

*versus*

1. State of Sikkim  
represented by and through  
the Secretary,  
Social Justice, Empowerment  
and Welfare Department,  
Government of Sikkim,  
Lumsay, 5<sup>th</sup> Mile, Tadong,  
East Sikkim.
2. The Managing Director,  
M/s. Extruder Food Processing Plant,  
Sikkim Flour Mill Ltd.,  
5<sup>th</sup> Mile, Tadong,  
East Sikkim.
3. Tender Evaluation Committee,  
Through its Chairman,  
Social Justice, Empowerment  
and Welfare Department,  
Government of Sikkim,  
Lumsay, 5<sup>th</sup> Mile, Tadong,  
East Sikkim.

4. M/s. Asian Enterprises,  
having address at Chandmari,  
Gangtok, East Sikkim,  
represented by its proprietor,  
Mr. Tshering Dorjee Bhutia,  
S/o Late Tshering Wangdi Bhutia,  
R/o Chandmari, P.O. & P.S. Gangtok,  
East Sikkim.

... **Respondents.**

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Appearance:

Mr. A. Moulik, Sr. Advocate with Ms. Kessang Diki Bhutia and Mr. Ranjit Prasad Sharma, Advocates for the Petitioner.

Mr. J.B. Pradhan, Addl. Advocate General with Mr. Santosh Kr. Chettri and Ms. Pollin Rai, Assistant Government Advocates for Respondents No. 1, 2 and 3.

Mr. A. K. Upadhyaya, Sr. Advocate with Ms. Hemlata Sharma, Advocate for Respondent No. 4.

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**ORDER (ORAL)**

(30.08.2017)

**Satish K. Agnihotri, CJ**

1. Assailing the action of the second and third respondents in opening the financial bid of the fourth respondent, pursuant to the invitation of online tender on 08<sup>th</sup> June, 2017, the petitioner, who claimed to be the only qualified bidder, has come up with this petition, alleging that the fourth respondent did not qualify the pre-condition for opening the financial bid.

Nonetheless, the bid of fourth respondent was opened and necessary steps for further order were taken by the second and third respondents. Thus, the petitioner seeks a direction to second and third respondents to cancel the offer made by the fourth respondent and direct them to allow offer of the petitioner.

2. Mr. A. Moulik, learned Senior Counsel appearing for the petitioner, referring to the conditions to enable the bidders to participate and further relying on clause 8 of the tender, wherein it is contemplated that the eligible bidders must produce past three years experience upto 2016 in supply of similar food grains, submits that the fourth respondent does not have the requisite three years experience upto 2016, as is manifest from the trade licence issued to him on 02<sup>nd</sup> December, 2014.

3. Mr. J.B. Pradhan, learned Additional Advocate General has passed on a letter dated 29<sup>th</sup> August, 2017, addressed to him, to bring into notice of the Court that the official respondents have taken a decision to cancel the e-tender held on 18<sup>th</sup> July, 2017 and to re-tender the entire process.

4. At this stage, Mr. A. Moulik, learned Senior Counsel submits that re-tendering may be only to accommodate the fourth respondent.

5. In response, Mr. A.K. Upadhyaya, learned Senior Counsel appearing for the fourth respondent submits that the fourth respondent is equally competent to take participation in the tender process.

6. Be that as it may, since the official respondents have decided to re-tender the entire process, the petition has become infructuous at this stage.

7. Accordingly, the petition is disposed of, reserving liberty to the petitioner as well as the fourth respondent to take recourse to the appropriate forum if and when a grievance arises or survives.

8. No order as to costs.

**Chief Justice**  
**30.08.2017**

pm/jk      Approved for Reporting      : Yes/No.  
Internet      : Yes/No.