

GAHC040004102023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 158/2023

1:M/s Balaji Enterprise
Papu Nallah, Naharlagun, PO/PS Naharlagun, District Papum Pare, Arunachal Pradesh 791110. Represented by its Proprietor Shri Yukar Taw, S/o Shri Yukar Tadu

VERSUS

1:THE STATE OF AP and 8 Ors. to be Represented by the Secretary, Department of PWD, Govt. of Arunachal Pradesh, Itanagar.

2:The Chief Engineer (Western Zone) Public Works Department Itanagar
PO/PS Itanagar Govt. of Arunachal Pradesh

3:The Superintending Engineer Public Works Department Sagalee Circle
Arunachal Pradesh.

4:The Chairman
Technical and Financial Tender Evaluation Committee in tender reference (Turnkey mode) IFB No. SLD/W-22/2022-23/792 dated 02.09.2022

5:The Executive Engineer Public Works Department Sagalee Division
Papum Pare District Arunachal Pradesh.

6:The Assistant Engineer Mengio PWD Sub Division Mengio District Papum Pare
Arunachal Pradesh.

7:M/s Taro Tagia Construction its Office Address at Ganga Village PO RK Mission
PS Chimpu Itanagar District Papum Pare Arunachal Pradesh.

8:M/s Eka Enterprises its office situated at Doimukh PO/PS Doimukh
District Papum Pare Arunachal Pradesh.

9:M/s T.K and Sons Enterprises Office Situated at C Sector Naharlagun
PO/PS Naharlagun District Papum Pare Arunachal Pradesh

Advocates for the Petitioner : Abhai Kumar Singh
Tadup Tana Tara
Duksor Loyi
Jungam Jini
Gamken Bam
Takar Bagang
Tamar Gadi
Terji Kamchi

Advocate for the Respondent : R H Nabam, Addl. AG (AP)
Pubi Pangu, GA(AP)
Taba Tagum
R Koyu
Idak Bam
Marge D.

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 30.03.2023

Heard Mr. Tadup Tana Tara, learned counsel for the petitioner.

Also heard Mr. R. H. Nabam, learned Additional Advocate General, Arunachal Pradesh, assisted by Ms. Pubi Pangu, learned Government Advocate, appearing on behalf of Respondents No. 1 to 6; Mr. Idak Bam, learned counsel, appearing on behalf of Respondent No. 7; Mr. Marge D., learned counsel, appearing on behalf of Respondent No. 8, and Mr. Taba Tagum, learned counsel, appearing on behalf of Respondent No. 9.

2. Though no counter affidavits have been filed by any of the respondents, the learned counsels appearing for the parties, have consented for disposal of this writ petition on the basis of the arguments advanced by them.

In view of the above submissions made by the learned counsels representing the parties; this writ petition is taken-up for final disposal.

3. This writ petition is directed against the Notification, dated 13.03.2023, issued by the Executive Engineer, Public Works Department, Sagalee Division, Public Works Department, Sagalee, vide Memo. No. SLD/W-22/2022-23/792, whereby, the petitioner's bid submitted, pursuant to the Invitation for Bids(IFB), dated 02.09.2022, issued by the Executive Engineer, Sagalee Division, Public Works Department, Sagalee, for the work "Construction of road from Marung Gika to Panior Bridge Point via Sarchgai, Mate, Kujuk and Pan, 21.00 KM under NESIDS", have been found to be technically non-responsive for non fulfillment of the eligibility criteria prescribed as per the Clause 4.2 and Clause 2.0(11)(iii) of the Instruction to Bidder (ITB).

The aforesaid Notification, dated 13.03.2023, has been issued pursuant to an order of this Court, dated 13.02.2022, passed in WP(c)415(AP)2022.

The Executive Engineer, Sagalee Division, Public Works Department, Sagalee, had issued the Invitation for Bids(IFB), dated 02.09.2022, vide Memo. No. SLD/W-22/2022-23/792, for the work "Construction of road from Marung Gika to Panior Bridge Point via Sarchgai, Mate, Kujuk and Pan, 21.00 KM under NESIDS", pursuant to which as many as 16 (sixteen) bids were submitted by different bidders including the petitioner.

The Invitation for Bids(IFB), dated 02.09.2022 consisted of 2(two) sections of Instruction to Bidder(ITB).

4. What is relevant for adjudication of the instant case is the Clause 4.2 of Section 1 of the Instruction to Bidder(ITB) and Clause 2.0(11)(iii) of the Section 2 of the Instruction to Bidder(ITB).

In Clause 4.2 of Section 1 of the Instruction to Bidder(ITB), what is relevant is only the sub-Clause (j), (l) and (v), which provides, as under:

“4.2(j) affidavit executed before First Class Magistrate/Notary indicating that furnished statements are true and will abide by the terms and conditions of tender.

4.2(i) undertaking regarding litigation history in the form of affidavit executed before the First Class Magistrate/Notary.

4.2(v) details of construction plant and equipment likely to be used in carrying out the work with supporting documents such as Affidavit/Undertaking/ Lease document certifying all the tools and machinery are in possession with bidder. For details refer Annexure-I of Appendix to ITB.”

The aforesaid 3(three) documents were required to be mandatorily scanned and uploaded within the period of bid submission.

5. Likewise, Clause 2.0(11)(iii) of Section 2 of the Instruction to Bidder(ITB) provides for declaration of having not more than two ongoing works in hand. The declaration, as above, has been provided to be made in the form of an affidavit in a non-judicial stamp paper sworn before the First Class Magistrate.

The petitioner, herein, although had submitted each of the affidavits referred to hereinabove but the affidavits were not sworn by the petitioner before the First Class Magistrate but was sworn before the Executive Magistrate.

It is precisely for the aforesaid reason; namely, that the affidavits submitted by the petitioner have not been sworn before the First Class Magistrate but before the Executive Magistrate, the bid of the petitioner has been rejected for non-compliance of Clause 4.2 and Clause 2.0(11)(iii) of the Instruction to Bidder(ITB).

6. Assailing the rejection of the petitioner’s bid by the impugned Notification, dated 13.03.2023; Mr. Tara, learned counsel for the petitioner, submits that the Invitation for

Bids(IFB), dated 02.09.2022, was issued by the Executive Engineer, Sagalee Division, Public Works Department, Sagalee, in terms of the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Act, 2015(for short, 'Act of 2015'), and the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Rules, 2018 (for short, 'Rules of 2018'), which has been framed in exercise of the powers conferred under Section 5 of the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Act, 2015. Rule 4.2(e) of the Rules of 2018, refers to only an affidavit and does not indicate as to before which of the authority, the affidavit has to be sworn.

Mr. Tara, learned counsel, accordingly, submits that prescription of an affidavit to be sworn before the First Class Magistrate in the Invitation for Bids(IFB) by the tender issuing authority is contrary to the Rules of 2018, and therefore, the tender issuing authority could not have added anything which has not been prescribed under the Act of 2015, or, the Rules of 2018.

Mr. Tara, learned counsel for the petitioner, by referring to the Oaths Act, 1969, further submits that the affidavits can be sworn before any Magistrate, if the Magistrate is empowered in this behalf by the State Government. Accordingly, it is the contention of Mr. Tara, learned counsel, that affidavit can be sworn before any Magistrate, if empowered in this behalf by the State Government and therefore, the affidavits sworn before the Executive Magistrate would be a sufficient compliance of the terms and conditions of the Invitation for Bids(IFB) notwithstanding the Invitation for Bids(IFB) prescribes for submission of an affidavit sworn before the First Class Magistrate.

By referring to paragraph No. 19 of the counter-affidavit filed by the respondent authorities in WP(c)415(AP)2022, which has been reproduced by this Court in the

order, dated 13.02.2023, passed in WP(c)415(AP)2022, Mr. Tara, learned counsel, contends that the State respondents in the counter-affidavit filed in the aforesaid writ petition, had stated that insertion of First Class Magistrate in the Standard Bidding Document(SBD) was an inadvertent mistake and it was in contravention of the statutory provisions of the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Act, 2015, and the Rules framed thereunder, and he, accordingly, contends that since the respondent authorities themselves had admitted in the affidavit filed in the earlier writ petition that the insertion of the First Class Magistrate in the Standard Bidding Document(SBD) was an inadvertent mistake; the respondent authorities cannot, now, insist on submitting an affidavit sworn before the First Class Magistrate by the bidders.

In support of his contention, Mr. Tara, learned counsel for the petitioner, has relied on the decision of the Hon'ble Supreme Court in the case of **Sankar Ram & co. v. Kasi Naicker & ors.**, reported in **(2003) 11 SCC 699** for the proposition that the employer cannot dilute the provisions of the statute.

Mr. Tara, learned counsel, also refers to a decision of this Court in the case of **Bhagya Kalita v. State of Assam & ors.**, reported in **2005 (2) GLT 53**, for the proposition that the Government cannot go against their own documents, inasmuch as in the counter-affidavit filed in the earlier writ petition, referred to above; the Government had admitted that the insertion of the First Class Magistrate in the Standard Bidding Document(SBD) was an inadvertent mistake, which was in contravention of the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Rules, 2018.

7. Mr. Nabam, learned Additional Advocate General, Arunachal Pradesh, on the other hand, submits that the terms of the Invitation for Bids(IFB) has to be strictly

followed and the terms of the Invitation for Bids(IFB) is not open to a judicial scrutiny unless it is found that the same has been tailor-made to benefit any particular tenderer or class of tenderers. He further submits that in the instant case, the terms of the Invitation for Bids(IFB) have been uniformly applied to all the 16(sixteen) bidders and therefore, there has been no arbitrary exercise of power by the tender issuing authority and the tender issuing authority has acted in a fair manner. He also submits that in a case of this nature; even when some defects are found in the decision making process, the Court must exercise its discretionary power under Article 226 of the Constitution of India with great caution and should exercise in public interest and should not act on merely making out of a legal point.

The rejection of the petitioner's bid have been done for non-submission of an affidavit sworn before the First Class Magistrate as provided in the terms of the Invitation for Bids(IFB) and the same was applied uniformly to all the 16(sixteen) bidders and therefore, the respondent authorities have acted in a fair manner, for which, no interference is called for.

In support of his contentions, Mr. Nabam, learned Additional Advocate General, Arunachal Pradesh, refers to 2(two) decisions of the Hon'ble Supreme Court, rendered in the case of ***Maa Binda Express Carrier & anr. v. North-East Frontier Railway & ors.***, reported in **(2014) 3 SCC 760** and ***Air India Ltd. v. Cochin International Airport Ltd. & ors.***, reported in **(2000) 2 SCC 617**.

8. Mr. Tagum, learned counsel for Respondent No. 9, submits that as per Rule 173(xii) of the General Financial Rules, 2017, bids received should be evaluated in terms of the conditions already incorporated in the bid documents and determination of a bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic measures. He, therefore, contends that the bids submitted by the

bidders, have been evaluated by the tender issuing authority on the basis of the terms incorporated in the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) which provided for submission of an affidavit sworn before the First Class Magistrate and the petitioner having not submitted the affidavit sworn before the First Class Magistrate, the tender issuing authority was justified in rejecting the bid of the petitioner for non-fulfillment of the terms of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB).

Mr. Tagum, learned counsel, further contends that the petitioner has not put to challenge the terms of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) which prescribes for submission of an affidavit sworn before the First Class Magistrate and the petitioner having failed to submit the affidavit, in the manner it was sought for and which was one of the conditions prescribed under the Invitation for Bids(IFB); the petitioner, now, at this stage, cannot agitate the terms of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) prescribing submission of an affidavit sworn before the First Class Magistrate after having participated in the bidding process pursuant to the Invitation for Bids(IFB), dated 02.09.2022. He further contends that the terms and conditions of the Invitation for Bids(IFB) cannot be relaxed merely on the asking of the bidders and the relaxation of the terms and conditions of the Invitation for Bids(IFB) can be done only by the tender issuing authority.

In the instant case, the tender issuing authority having not relaxed any of the terms and conditions of the Invitation for Bids(IFB), the terms and conditions provided under the Invitation for Bids(IFB), has to be rigorously enforced, which the tender issuing authority did and therefore, there is no illegality in rejection of the petitioner's bid by the tender issuing authority for non-compliance of the terms of the Invitation for Bids(IFB), namely, submission of the affidavit sworn before the First Class Magistrate.

Mr. Tagum, learned counsel for Respondent No. 9, finally argues that even if

there are some lapses on the part of the tender issuing authority, this Court, in exercise of the powers conferred under Article 226 of the Constitution of India, may not interfere in a tender process unless such interference is called for in public interest.

In support of his aforesaid contentions, Mr. Tagum, learned counsel for private respondent No. 9, relies upon the following decisions of the Hon'ble Supreme Court:

- (1). ***Central Coalfields Ltd. & anr. v. SLL-SML (Joint Venture Consortium) & ors.***, reported in ***(2016) 8 SCC 622***,
- (2). ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. & anr.***, reported in ***(2016) 16 SCC 818***, and
- (3). ***Siemens Public Communication Networks Pvt. Ltd. & anr. v. Union of India & ors.*** reported in ***(2008) 16 SCC 215***.

9. Mr. Bam, learned counsel representing respondent no. 7 and Mr. Marge, learned counsel representing respondent no. 8 have endorsed the contentions advanced by Mr. Nabam, learned Additional Advocate General, Arunachal Pradesh, and Mr. Tagum, learned counsel, representing respondent no. 9.

10. In reply, Mr. Tara, learned counsel for the petitioner, submits that the affidavits submitted by the private respondents are sworn before the Judicial Magistrate, First Class, and according to him, there is no prescription of Judicial Magistrate, First Class, in the terms of the Instruction to Bidder(ITB) of the Invitation for Bids (IFB) but what has been prescribed in the Instruction to Bidder(ITB) being the Magistrate First Class alone; the private respondents have also not adhered to the terms of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) by submitting the affidavits sworn before the Judicial Magistrate, First Class. He further submits that the Technical Evaluation Board has not assigned any specific reason for rejection of the petitioner's bid.

11. Rival contentions advanced by the learned counsels appearing for the parties have received due consideration of this Court.

12. Upon hearing the learned counsels for the parties and on perusal of the materials placed on record; it is noticed that the Invitation for Bids(IFB), dated 02.09.2022, was issued by the Executive Engineer, Sagalee Division, Public Works Department, vide Memo. No. SLD/W-22/2022-23/792, for the work "Construction of road from Marung Gika to Panior Bridge Point via Sarchgai, Mate, Kusak and Pan, 21.00 KM under NESIDS."

Pursuant thereto, as many as 16(sixteen) bidders including the petitioner, had submitted their bids. When the tender issuing authority without finalizing the Invitation for Bids(IFB), dated 02.09.2022, had issued another Invitation for Bids(IFB), dated 29.10.2022, for the same work; one of the bidders of the Invitation for Bids(IFB), dated 02.09.2022, namely, M/s. Don Enterprises, Office at Zoo Road, Gohpur, PO: R.K. Mission, PS: Itanagar, District: Papum Pare, Arunachal Pradesh, had approached this Court by filing WP(c)415(AP)2022 which was disposed of by the Court, vide order, dated 13.02.2023, whereby, the Invitation for Bids(IFB), dated 29.10.2022, was set aside and quashed with a further direction to the respondent authorities to take a decision on the bids submitted, pursuant to the Invitation for Bids(IFB), dated 02.09.2022, and inform the decision so taken to the bidders.

It is in pursuance thereof; that the impugned Notification, dated 13.03.2023, have been issued by the Executive Engineer, Sagalee Division, Public Works Department, whereby, the petitioner's bid have been found to be technically non-responsive for non-compliance of Clause 4.2 of Section 1, and Clause 2.0(11)(iii) of Section 2, of the Instruction to Bidder(ITB) of the Invitation for Bids (IFB).

On perusal of Clause 4.2 of Section 1 of the Instruction to Bidder(ITB) and Clause 2.0(11)(iii) of Section 2 of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB), which has already been quoted hereinabove; it is noticed that various affidavits sworn before the First Class Magistrate, is required to be submitted by the bidders, namely, (i). 4.2(j) affidavit executed before First Class Magistrate/ Notary indicating that furnished statements are true and will abide by the terms and conditions of tender; (ii). 4.2(i) undertaking regarding litigation history in the form of affidavit executed before the First Class Magistrate/Notary; (iii) 4.2(v) details of construction plant and equipment likely to be used in carrying out the work with supporting documents such as Affidavit/Undertaking/Lease document certifying all the tools and machinery are in possession with bidder. For details refer Annexure-I of Appendix to ITB; and (iv) 2.0(1)(iii) declaration of having not more than two ongoing works in hand.

All the affidavits referred to hereinabove, are to be sworn before the First Class Magistrate.

13. There is no dispute that the petitioner had submitted each of the affidavits that have been referred to above but all such affidavits were sworn before the Executive Magistrate, Capital Naharlagun, Arunachal Pradesh, and not before the First Class Magistrate as provided in the Instruction to Bidder(ITB) of the Invitation for Bids(IFB).

14. What, therefore, calls for determination by this Court is whether rejection of the petitioner's bid as technically not responsive for want of submission of an affidavit sworn before the First Class Magistrate by the tender issuing authority, was a justified act on the part of the respondent authorities or not.

The affidavits submitted by the petitioner having not been sworn before the First Class Magistrate but before the Executive Magistrate, Capital Naharlagun, Arunachal

Pradesh, is apparently not in conformity with the terms of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB).

15. Section 3(2) of the Oaths Act, 1969, reads as under:

[illegible][illegible]

(b) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(2). Without prejudice to the powers conferred by sub-section (1) or by or under any other law for the time being in force, any court, Judge, Magistrate, or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf –

(a) *by the High Court, in respect of affidavits for the purpose of judicial proceedings, or*

(b) *by the State Government, in respect of other affidavits.*"

On perusal of Section 3(2)(b) of the Oaths Act, 1969, it appears that the Magistrate empowered in this behalf by the State Government in respect of the affidavits, other than for the purpose of the judicial proceedings, is competent to administer the oath. Thus, there is no distinction made of the Magistrate before whom the affidavit is to be sworn so long such a Magistrate is empowered to administer the oath by the Government.

Therefore, in the absence of any classification of Magistrate before whom an affidavit can be sworn; I find that if the Executive Magistrate before whom the affidavit by the petitioner was sworn, was empowered in this behalf, the affidavit submitted by the petitioner though it may have been sworn before the Executive Magistrate, that would be in a substantial compliance of the terms of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) insofar as the submission of the affidavit by the bidders, are

concerned.

That apart, the Invitation for Bids(IFB) having been called for, in terms of the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Act, 2015, and the Rules of 2018, framed pursuant to the Act, also, does not prescribe an affidavit to be sworn before a particular Magistrate. What the Rules of 2018 refers to is that an affidavit that the bidder does not have more than the specified number of ongoing works in hand is to be submitted. The prescription of an affidavit sworn before the First Class Magistrate, to be submitted by the bidder in the Instruction to Bidder(ITB) of the Invitation for Bids(IFB), therefore, is found to be beyond the requirement under the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Act, 2015, and the Rules framed thereunder, as well.

16. Having discussed the legal position as regards the submission of a sworn affidavit by the bidders, as above, what is required to be further determined by this Court, in the instant case, is that should this Court interfere with the impugned decision of the tender issuing authority rejecting the petitioner's bid for non-submission of affidavits sworn before the First Class Magistrate.

17. The parameters for interference in a tender matter by the High Court in exercise of the power conferred under Article 226 of the Constitution of India, has been specified by the Hon'ble Supreme Court in the case of **Jagdish Mandal v. State of Orissa & ors.**, reported in **(2007) 14 SCC 517**, wherein, in paragraph No. 22 thereof, it has been held as under:

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders

and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under [Article 226](#). Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

18. The ratio laid down by the Hon'ble Supreme Court in **Jagdish Mandal** (supra), for interference in the tender or contractual matter is, as under:- before interfering any tender or contractual matter, in exercise of the power of judicial review by this Court, the Court has to pose to itself the following questions:- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or, whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and (ii) whether public interest is affected.

If the answers to the above questions are in negative, there should be no interference by the High Court in exercise of the powers conferred under Article 226 of the Constitution of India.

19. From perusal of the impugned Notification, dated 13.03.2023, the tender issuing authority had evaluated all the 16(sixteen) bids submitted by the bidders whereupon the bids submitted by 3(three) bidders were found to be technically responsive for opening of the financial bids.

By the impugned Notification, dated 13.03.2023, as many as 13(thirteen) bids submitted by the bidders have been rejected for non-fulfillment of the terms and conditions of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB).

The ground for rejection of the bids of each of the 13(thirteen) bidders including the petitioner, herein, have been found to be technically not responsive on the same ground as that of the petitioner.

20. What is, therefore, found from the impugned Notification, dated 13.03.2023, is that the terms and conditions prescribed in the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) have been rigorously applied by the tender issuing authority to all the bidders alike and accordingly, in the process adopted by the tender issuing authority, neither, any mala fide exercise of power is discernible, nor, the evaluation done by the tender evaluation board is found to have been done in a manner intended to favour any of the bidders.

21. Since the terms and conditions of the Instruction to Bidder (ITB) of the Invitation for Bids(IFB) have been uniformly applied to all the bidders; the process adopted by the tender issuing authority is also neither found to be arbitrary, discriminatory, or irrational, so that the Court can say the decision is such that no responsible authority acting responsibly and in accordance with the relevant law, could have reached.

In the facts and circumstances of the case, since the terms and conditions of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) have been applied uniformly to all the 16(sixteen) bidders; pursuant to which 3(three) of the bidders have been found to be technically responsive for opening of the financial bids, it cannot also be said that any public interest is affected by the decision taken by the tender issuing authority vide the impugned Notification, dated 13.03.2023.

22. Accordingly, for the reasons and discussions made herein above; I am of the considered view that though the petitioner may have substantially complied with the terms and conditions of the Instruction to Bidder(ITB) of the Invitation for Bids(IFB) by submitting the affidavits sworn before the Executive Magistrate, Capital Naharlagun, Arunachal Pradesh, when the action of the respondent authorities in issuing the impugned Notification, dated 13.03.2023, is tested in the light of the parameters laid down by the Hon'ble Supreme Court in the case of **Jagdish Mandal** (supra), for interference by this Court, in a tender or contractual matter, in exercise of power under judicial review; I am not inclined to interfere with the impugned Notification, dated 13.03.2023, issued by the Executive Engineer, Public Works Department, Sagalee Division, Public Works Department, Sagalee, vide Memo. No. SLD/W-22/2022-23/792.

23. In that view of the matter, the writ petition stands dismissed being found to be devoid of merit.

JUDGE

Comparing Assistant