

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Reserved on :19.07.2023**

**Pronounced on:16.12.2023**

Case:- **WP(C) No. 2150/2021  
CM No. 7763/2021**

- 1. M/s SGF-JK JV  
through Arvind Gupta, age 51 years,  
S/o Sh. Satvir Gupta,  
R/o 4, Gurha Bakshi Nagar, Jammu  
Director  
SGF Infra Private Limited  
F-961, Gurah Bakshi Nagar,  
Jammu.**
- 2. SGF Infra Private Limited  
A Company registered under the Companies Act  
through its Director  
Arvind Gupta, age 51 years,  
S/o Sh. Satvir Gupta,  
R/o 4, Gurah Bakshi Nagar, Jammu.**
- 3. M/s JK Electric Engineers Private Limited  
A Company registered under the Companies Act  
through its Director  
Arun Kumar, age 51 years,  
S/o Sh. Hari Krishan,  
R/o Sainik Colony, Jammu.**

.....Petitioners

Through: Mr. Rahul Pant, Sr. Advocate with  
Ms. Arushi Shukla, Advocate

**Vs**

- 1. Union Territory of Jammu and Kashmir  
through  
Commissioner/ Secretary to Government,  
Public Works (R&B) Department,  
Jammu & Kashmir Government,  
Civil Secretariat, Jammu.**

2. **Chief Executive Officer,  
Jammu Smart City Limited,  
Town Hall Building, Jammu.**
3. **Chief Engineer,  
Public Works (R&B) Department,  
Nirman Bhavan  
Rail Head Complex, Jammu.**
4. **Executive Engineer  
Public Works Department (R&B)  
Construction Division-II  
Rail Head Complex, Jammu.**

.....Respondents

Through: Mr. Ravinder Gupta, AAG for R- 1, 3 & 4.  
Mr. Rajnesh Raina, Advocate for R-2.

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT**

**01.** Heard the learned counsel for both sides. Perused the pleadings and the documents on record.

**02.** This writ petition is aimed to seek this Court to interject to carry out judicial review of a decision making and taking at the end of the contract tender issuing authority to go for re-tender, shelving the first tendering process post opening of financial bids without carrying forward the awarding of contract, in exercise of its power reserved in terms of standard bidding document to cancel the contract tendering process and reject all bids at any time prior to the award of the contract without assigning any reason. The writ

petitioner No. 1 is a joint venture of the petitioners Nos. 2 & 3 who reckon their entitlement to earn the award of the contract in favor of the petitioner No.1 on account of its purported claim as being L1 in the shelved tendering process.

**03.** Towards the implementation of the Area Based Development (ABD) and Pan City proposals of the Govt. of India under the Smart City Mission, the Jammu Smart City Proposal (**JSCP**) has been reportedly selected to do the needful implementation for Jammu City in furtherance of which it came to propose smart solutions in ADB and Pan-city providing various smart features and infrastructures. In this regard, Jammu Smart City Limited (**JSCL**) prepared a **“Request for Proposal (RFP) for Engineering, Procurement and Construction Contract for Improvement of Residency Road-High Street”**. The funds for this project are meant to be provided by the Jammu Smart City Limited (JSCL).

**04.** In connection with development of Jammu Smart City, the Residency Road Jammu is scheduled to be given a complete facelift with respect to the land use, foot path, pedestrian facilities, carriageway, car-bay parking/drop-off area, auto-rickshaws stand, waste segregating trio dustbins, bollards, drinking water ATM,

softscape, street & pedestrian lighting, parking, road markings, service corridor for Residency road etc.

**05.** For tendering the said work, the exercise was meant to be further taken up by the respondent No. 3- Chief Engineer, PW(R&B) Department, UT of Jammu& Kashmir, Jammu.

**06.** For and on behalf of the Lieutenant Governor of UT of Jammu & Kashmir, the respondent No. 4- Executive Engineer, PWD (R&B), Construction Division-II, Jammu came to issue a notice inviting tender **e-NIT No. 03/SMARTCITY/2021-22/Div-2 dated 12.07.2021** identifying the name of the work that being **“Request for Proposal (rep) for Engineering, Procurement and Construction (EPC) Contract for upgradation of Residency Road-High Street”** at the estimated cost of rupees 2121.70 lacs with a completion time of 18 months.

**07.** This e-NIT was accompanied by a Standard Bidding Document (SBD) containing all the dos and don'ts with respect to bidding process including eligibility of all interested and prospective bidders. The bid submission date was 13.07.2021 and last date for bid submission was 30.07.2021 to be followed by an opening of technical bids Online on 31.07.2021 and opening of the financial bids Online to be notified after technical bid evaluation completion.

**08.** In response to this notice inviting tender, five bidders are said to have come forward with their respective bids. The names of the said five bidders are as under: -

| Sr. No. | Name of the Concern/Company                                |   | Bid Number |
|---------|------------------------------------------------------------|---|------------|
| 1       | M/s Harcharan Dass Gupta                                   | - | 928575     |
| 2       | M/s RSB Project Limited                                    | - | 929652     |
| 3       | M/s SGF Infra Pvt. Ltd.<br><b>(Petitioner no.1 herein)</b> | - | 923879     |
| 4       | M/s TAB Infrastructure Pvt. Ltd.                           | - | 924426     |
| 5       | M/s The 21 <sup>st</sup> Century Builders and Engineers    | - | 930126     |

**09.** Upon receipt of the technical and financial bids from the afore-named five bidders, the Technical Evaluation Committee, constituted for the purpose of evaluation of bids, in its meeting on 20.08.2021 came to detect deficiencies with respect to the technical bids received for which Seven days' time came to be made available to the bidders with respect to whose bids the deficiencies were so reported. It seems that bids of all the bidders were found to be lacking compliance as directed and mandated.

**10.** On 28.08.2021, the Technical Evaluation Committee carried out the technical evaluation and uploaded the status with respect to the technical bids' evaluation obtaining on 31.08.2021

purportedly declaring all of them responsive. The financial bids came to be opened on 31.08.2021 and upon opening of the financial bids, the comparative financial bids submitted on behalf of the aforementioned five bidders were as under:-

| Sr. No. | Name of the Concern/Company                                 | Financial Bid (In rupees) |
|---------|-------------------------------------------------------------|---------------------------|
| 1       | M/s Harcharan Dass Gupta                                    | - Rs. 22,85,40,500/-      |
| 2       | M/s RSB Project Limited                                     | - Rs. 22,50,00,000/-      |
| 3       | M/s SGF Infra Pvt. Ltd.<br><b>(Petitioner no. 1 herein)</b> | - Rs. 20,24,10,180/-      |
| 4       | M/s TAB Infrastructure Pvt. Ltd.                            | - Rs. 20,28,34,520/-      |
| 5       | M/s The 21 <sup>st</sup> Century Builders and Engineers     | - Rs. 2,068/-             |

11. Thus, by the financial bids so submitted, it is M/s The 21<sup>st</sup> Century Builders and Engineers whose bid at Rs. 2,068/- reckoned itself to be lowest one (L1) creating a conundrum before the respondent No. 3-Chief Engineer, Public Works (R&B) Department, Jammu and the respondent No. 4-Executive Engineer, Public Works Department (R&B), Construction Division-II, Jammu as being tender relating and issuing authority about the course of action to be adopted in the face of the financial bid of M/s The 21<sup>st</sup> Century Builders & Engineers to be Rs. 2,068 meaning to be L1.

**12.** Caught in this dilemma the respondent No. 3-Chief Engineer, Public Works (R&B) Department, Jammu came to address a communication No.CEJ/TS/10698-99 dated 16.09.2021 to the respondent No. 4-Executive Engineer, Public Works Department (R&B), Construction Division-II, Jammu thereby directing issuance of a fresh tender for the work due to abnormally low bid of the lowest bidder(L1) and, thus, cancelled the tendering process undertaken pursuant to e-NIT No. 03/SMARTCITY/2021-22/Div-2 dated 12.07.2021.

**13.** The petitioners came rushing to this Court with the present writ petition assailing this communication of the respondent No. 3-Chief Engineer, Public Works (R&B) Department, Jammu to the respondent No. 4-Executive Engineer, Public Works Department (R&B), Construction Division-II, Jammu and the decision entailed therein to shelve the tendering process so as to go for a fresh tendering. Writ petition came to be filed on 28/09/2021.

**14.** Before this Court proceeds in the adjudication of the writ petition, it is relevant to observe herein that a copy of the impugned communication No.CEJ/TS/10698-99 dated 16.09.2021 is not addressed to any of the bidders and therefore how come the present petitioners have laid their hands on this communication is nowhere

pleaded in the writ petition for the purpose of lending a satisfaction to this Court about the *bonafide* of the petitioners as well.

**15.** The petitioners have come with the present writ petition bearing a cry that the purported cancellation of the tendering process in furtherance of e-NIT No. 03/SMARTCITY/2021-22/Div-2 dated 12.07.2021 is an unfair and foul act on the part of the respondent No. 3-Chief Engineer, Public Works (R&B) Department, Jammu and the respondent No. 4-Executive Engineer, Public Works Department (R&B), Construction Division-II, Jammu and that it is the petitioners who ought to have been reckoned and called upon as L1 bidder in furtherance of its financial bid of Rs. 20.24,10,180/- being the lowest of three other competing bidders and that the bid of fifth bidder i.e. M/s The 21<sup>st</sup> Century Builders & Engineers ought to have been sidestepped by the respondent No. 3-Chief Engineer, Public Works (R&B) Department, Jammu and the respondent No. 4 - Executive Engineer, Public Works Department (R&B), Construction Division-II, Jammu counting the bid as being a frivolous bid. Thus, it is with this core plea that the petitioners have built up the grounds of challenge in paragraph 14 (a) to (h) of the writ petition.

**16.** In ground (a), the petitioners assert that tender process afresh by inviting of fresh bids is illegal and arbitrary on the part of the respondents because the bid submitted by M/s The 21<sup>st</sup> Century

Builders & Engineers was totally unrealistic, irrational and impracticable one which was nothing but an attempt to subvert, with a preconceived tactics, the tendering process and, as such, the respondent No. 3-Chief Engineer, Public Works (R&B) Department, Jammu and the respondent No. 4 - Executive Engineer, Public Works Department (R&B), Construction Division-II, Jammu, in particular, were under a legal obligation to ignore the bid of M/s The 21<sup>st</sup> Century Builders & Engineers and deal with other bids in which the petitioner no/1's bid qualified to be L1.

**17.** In ground (b), the petitioners are meaning to assert that the bid submitted by M/s The 21<sup>st</sup> Century Builders & Engineers was a deliberate attempt to give a handle to the respondent No. 2-Chief Executive Officer, Jammu Smart City Limited, Jammu and the respondent No. 3- Chief Engineer, Public Works (R&B) Department, Jammu to subvert the bidding process and for that the bid submitted by M/s The 21<sup>st</sup> Century Builders & Engineers was in connivance with the officials so as to ensure that in case the L1 bidder turns out to be not of the choice and pick of the employer, then under the guise of defaulting bid of the 21<sup>st</sup> Century Builders and Engineers the bidding process can be subverted and fresh bids invited.

**18.** The petitioners are meaning to plead that in case if instead of the petitioner no. 1 qualifying as L1, targeted of the three other competing bidders would have been L1, then the respondent No. 2- Chief Executive Officer, Jammu Smart City Limited, Jammu and the respondent No. 3- Chief Engineer, Public Works (R&B) Department, Jammu would have ignored and disqualified the official bid of M/s The 21<sup>st</sup> Century Builders & Engineers to favor the targeted L1 bidder, but since the L1 happened to be the petitioner, as such, the decision to cancel the bidding process was pressed to action.

**19.** In ground (c), it is being stressed by the petitioners that decision making process in reference to the issuance of the impugned communication of the respondent No. 3- Chief Engineer, Public Works (R&B) Department, Jammu is meant to unfairly deny the petitioner no. 1 its legitimate claim to earn the contract in question. In grounds (d), (e), (f) & (g), the petitioners are invoking the doctrine of fairness and requirement of exercise of judicial review for engaging the intervention of the Court in favor of the petitioners.

**20.** The petitioners are referring to clause 3.29.2 of the Standard Bidding Document to plead that the respondent Nos. 2 to 4 ought to have exercised the discretion to reject the bid so submitted by M/s The 21<sup>st</sup> Century Builders & Engineers and then pursue the tender bidding process with respect to other four competing bidders.

**21.** Clause 3.29 of the Standing Bidding Document in its relevant reference reads as under: -

**“Clause 3.29 - Award of Contract**

**3.29.1.1 Award Criteria.**

- a) Subject to this Clause, the Employer will award the Contract to the Bidder whose bid has been determined to be responsive and who has offered the lowest bid price.
- b) In the eventuality of failure on the part of the successful bidder to submit the performance security within the stipulated time, the Bidder shall be debarred in future from participating in all the Bids from any Government owned agency/corporation/Employer/special purpose vehicle, for three years and will be recommended for blacklisting by the competent Employer, in such a situation, the next successful bidder will be required to produce his Performance Security for consideration of his bid at the negotiated rate equal to lowest bidder, otherwise the tender will be cancelled.

**3.29.2 Employer's Right to Accept any Bid and to Reject any or all Bids.**

Notwithstanding Clause 3.29.1 the Employer reserves the right to accept or reject any Bid and to cancel the Bidding process and reject all Bids at any time prior to the award of Contract, without assigning any reason thereof and without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employers' action.”

**22.** In its response from the end of the respondent Nos. 1, 3 & 4, the reason for cancellation of the tendering process is being ascribed to abnormally low bid of M/s The 21<sup>st</sup> Century Builders & Engineers thereby prompting the respondent No. 3-Chief Engineer, Public Works (R&B) Department, Jammu to undertake tendering process afresh.

**23.** To defend the decision so taken at their end the respondent Nos. 1, 3 & 4, a reference and reliance is being made to **“Manual for Procurement of Works 2019, GOI, Ministry of Finance Department of Expenditure”** and the clauses relevant thereof read with **“Jammu & Kashmir PWD Engineering Manual, 2020”** and **“Circular No. 01/01/10 dated 20.01.2010 issued by the Govt. of India, Central Vigilance Commission, New Delhi”**.

**24.** It is further stated in the reply that the respondents even intend to initiate action against M/s The 21<sup>st</sup> Century Builders & Engineers, as is envisaged to be taken under Request for Proposal (RFP)/Standard Bidding Document, so as to penalize M/s The 21<sup>st</sup> Century Builders & Engineers in fouling and frustrating the tendering process.

**25.** Now coming to the adjudication of the matter, upon scanning of the record accompanying the writ petition as well as the reply submitted on behalf of the respondent Nos. 1, 3 & 4, this Court is led to notice, observe and decipher with certainty that the tendering process in reference was compromised right from the inception and, therefore, was fated to suffer shelving, otherwise all the stakeholders including the respondents would have been in a serious soup to account for carrying out a tendering process compromised through and through.

**26.** In this regard, this Court refers to deliberations of the Technical Evaluation Committee held on 20.08.2021 in respect of bids received. As per the tender notice, the last date for submission of bids was 30.07.2021. All the five bidders supposedly submitted their bids by the end date of 30.07.2021. As per the Technical Evaluation Committee, the purported shortfalls were found in the documents submitted by the bidders without bearing any pointed reference as to which particular bidder or all the bidders as a result whereof the bidders were intimated to make good the deficiencies within seven days as per clause 3.27.2. For the facility of its understanding, clause 3.27.2 is reproduced hereunder:-

**“3.27.2 The bidder may be asked by e-mail to clarify the uploaded documents provided in the Technical Bid, if necessary, with respect to any doubts or illegible documents. The Bid Committee may ask for any other document during Technical evaluation of the bid; provided, in all such cases, furnishing of any document in no way alters the Bidder's price bid. Such clarifications shall not be asked more than once. The bidder shall respond in seven days of issue of the clarification letter failing which the bid of the bidder will be evaluated on its own merit. Any clarifications given about the submission documents/ certificates, by the issuing authority to the bidder, should have been issued before the last date of bid submission.”**

**27.** Clause 3.27.2 is, therefore, very clearly meant for clarification seeking and not for bid-related deficiencies' rectification. Thus, if the bids so received for evaluation by the Technical Evaluation Committee were deficiencies prone, be it of one bidder or more than one bidder or for that matter all bidders as seems to be the case, then the Technical Evaluation was nobody to extend opportunity to the defaulting bidders to make good the deficiencies pertaining and with respect to their respective bids. Thus, from this moment onwards, the bidding process seems to have become compromised and tainted.

**28.** This Court is surprised to find read from an uploaded summary report which is accompanying the writ petition as annexure-IX in which the date of submission of five bidders is being referred to 05.08.2021 as against the last date for submission of bids to be 30.07.2021. If the respondents or for that matter the Technical Evaluation Committee were so generous to entertain the deficient bids of the bidders than it should have pronounced beforehand in the tender notice itself for the notice of all the interested and prospective bidders that even the deficient bids would earn a consideration and accommodation by the Technical Evaluation Committee and that perhaps would have resulted in

getting bids in good bulk than just five bids in response to the tender notice.

**29.** Even with respect to the petitioners, the states of things is not as clean as is made to be seen. The bidder in the present case is petitioner No. 1, which is a joint venture of the petitioner Nos. 2 & 3. As per the tender notice read with tender bidding documents, a joint venture entity was entitled to come forward and bid subject to the terms and conditions as set out in the tender document. The petitioners have annexed annexure-II with their writ petition as a Memorandum of Understanding for Joint Venture between the petitioner Nos. 2 & 3 resulting in formation of the petitioner No.1. A perusal of the said Memorandum of Understanding for joint venture has an opening line which speaks that the article of understanding between the petitioner Nos. 2 & 3 for constituting the petitioner No. 1 as a joint venture made on **20.07.2018** for the sake of name of work **“Engineering, Procurement and Construction (EPC) Contract for Upgradation of Residency Road High Street”**.

**30.** Neither in the writ petition nor in the reply submitted by the respondents, this has been made clear for the comprehension and understanding of this Court as to how come for the work which was being tendered through e-NIT No. 03/SMARTCITY/2021-22/Div-2 dated 12.07.2021, the Memorandum of Understanding

between the petitioners 2 & 3 for creation of a joint venture in the form of petitioner No. 1 was taking place as early as on 20.07.2018. This Court is not meant to carry out any guess work for the sake of favor to the petitioners to figure out as to how come the predated Memorandum of Understanding of 2018 was getting used with respect to a tendered work which was coming into scenario in July, 2021.

**31.** In paragraph 2 of the writ petition, it is pleaded that the petitioner No. 1 is a joint venture of petitioner Nos. 2 & 3 for executing various projects including executing the work 'Engineering, Procurement and Construction (EPC) Contract for Upgradation of Residency Road High Street', thus meaning that the petitioners are not being candid in their pleadings to be clear and transparent in their credentials. The Memorandum of Understanding does not refer to various projects but only to the one tendered in July 2021 that is Engineering, Procurement and Construction (EPC) Contract for Upgradation of Residency Road High Street. There is more than what meets the eye with respect to the very credentials of the petitioner No. 1 as an entity.

**32.** Insofar as shelving of the bidding process undertaken pursuant to tender notice e-NIT No. 03/SMARTCITY/2021-22/Div-2 dated 12.07.2021 on account of the flimsy financial bid submitted

by M/s the 21<sup>st</sup> Century Builders and Engineers at Rs.2,068/- is concerned, it is a puzzle matter that while M/s The 21<sup>st</sup> Century Builders and Engineers is found to have qualified for technical evaluation meaning thereby it is a concern which reportedly was found to have executed works of equivalent nature and extent and also of work profile prescribed thereby qualifying it to be a bidder to filter through technical evaluation test but for inexplicable reasons its financial bid comes to be Rs. 2,068. It is a matter which is nothing but fishy & intriguing which was not meant for the respondents to decode and solve for the satisfaction of the other bidders in the race as bidder M/s The 21<sup>st</sup> Century Builders and Engineer could be anybody's set up including that of any of the other bidders in race to earn the contract allotment or to sabotage the exercise.

**33.** There are a good number of inferences which can be safely drawn from the so-called financial bid of M/s The 21<sup>st</sup> Century Builders and Engineers. One of the inferences is that while the petitioners herein are alleging, by sheer speculation, a connivance of the respondent Nos. 2 & 3 with the M/s The 21<sup>st</sup> Century Builders and Engineers so as to deprive the petitioner No.1 the benefit of being declared L1 and consequent allottee of the contract, the petitioners themselves might have prompted M/s The 21<sup>st</sup> Century Builders and Engineers to play spoilsport otherwise if M/s The 21<sup>st</sup>

Century Builders and Engineers is such a bad entrant in the exercise to prejudice the petitioners' entitlement then why the petitioners still chose to keep M/s The 21<sup>st</sup> Century Builders and Engineers un-impleaded and be out of array of parties in the present writ petition for the reason which this Court is not able to fathom. Is this a connivance between the petitioners and M/s The 21<sup>st</sup> Century Builders and Engineers in operation or not is again a matter which this Court would not tax itself to speculate or ponder upon but pointed out as an aspect just as a matter of demonstration that many possible inferences are with respect to the financial bid so submitted by M/s The 21<sup>st</sup> Century Builders and Engineers.

**34.** In the present case, the petitioner is meaning to attribute active connivance and contrivance at play *inter se* the respondent No. 2 and 3 and the M/s The 21<sup>st</sup> Century Builders and Engineers to the prejudice of the petitioner No.1's entitlement to be held as L1 and on that claim to earn the award of the contract. Even if this plea of the petitioners were to be extended some credence for the sake of examining the alleged connivance and contrivance, still this court would be handicapped to extend any indulgence to serve the satisfaction of the petitioners as the petitioners themselves have omitted at their own risk and self-prejudice first to implead the 21<sup>st</sup> Century Builders and Engineers as party respondent and secondly

the officials in charge as the respondent No. 2 & 3 whose personal interest is supposed to engineer and execute the frustration of the tendering exercise to the prejudice of the petitioner No. 1's purported entitlement to earn the award of contract.

**35.** The petitioners themselves have not fully equipped and ammunitioned their writ petition and the writ cause to launch and maintain a potent challenge to the purported act and decision at the end of the respondents so as to earn a realistic indulgence of judicial review jurisdiction of this court, so the inevitable is failure of the writ cause and writ petition.

**36.** In the light of the aforesaid facts and circumstances with and in which the petitioners have come forward to assail the communication No.CEJ/TS/10698-99 dated 16.09.2021 of the respondent No. 3 -Chief Engineer, Public Works (R&B) Department, Jammu to the respondent No. 4-Executive Engineer, Public Works Department (R&B), Construction Division-II, Jammu, a copy of which was not even addressed to the petitioner or for that matter to all other bidders, is again a matter of concern as to whether the internal communication of the respondents is also open to a catch of the petitioners for enabling them to rush to this Court with the present writ petition and get the fresh tendering process stalled/aborted by virtue of an interim direction passed in the

Court reckoning from 05.10.2021, when this Court came to stay the operation of impugned communication No.CEJ/TS/10698-99 dated 16.09.2021. The loss of time in the pendency of this writ petition surely has caused prejudice to the public purpose relatable to betterment of Residency Road as desired under the Smart City Mission, but perhaps the stretching of the stay direction has taken place on the part of this Court by its failure to meet the present frivolous writ petition of the petitioners at its very initial stage by seeing through the design of the petitioners as being not bonafide. In fact, this Court would spare no hesitation to observe that even the conduct on the part of the respondent Nos. 3 & 4 also seems not above board. Thus, the writ petition along with its purported cause is found to be frivolous.

**37.** A judicial review jurisdiction under article 226 of the Constitution of India is not meant to lend crutches to a limping case/cause presented in a writ petition by a petitioner. If given to be done so, then in every writ case/cause, deficient/bad, a petitioner would take it as a matter of right expecting a constitutional court to launder a deficient/bad writ case/cause and then fetch the final relief asked for in the petitioner's favor. A constitutional court, in its judicial review jurisdiction exercise under article 226 of the Constitution of India, is meant to see a case/cause

as presented before it by a petitioner and deal with it for adjudication on its merit but is, surely, not to be expected to oversee a case/cause of a petitioner for fetching/fishing the relief desired. A case/cause is supposed to come in a court of law fully prepared presented with all its constituent facts and features for the purpose of its adjudication to earn justice to an aggrieved party. If presented not so prepared, a court is under no obligation to mend and tend it except to end a petitioner's misplaced expectation out of said case/cause.

**38.** In the case of **MAA Binda Express Courier Vs North East Frontier Railways and others (2014) 3 SCC 760** it has been held by the Hon'ble Supreme Court of India as under:

"8. The scope of judicial review in matters relating to award of contract by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognize that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well-settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor made to benefit any particular tenderer or class of tenderers. So also the authority

inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the Court who is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See: Meerut Development Authority v. Association of Management Studies and Anr. etc., 2009 6 SCC 171 and Air India Ltd. v. Cochin International Airport Ltd., 2000 1 SCR 505 ).”

20. 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"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226.”

**39.** The Hon’ble Supreme Court of India in the case of **State of Uttar Pradesh & Anr V/s Al Faheem Meetex Private Ltd & Anr, 2016 4 SCC 716** has come to observe as under:-

“13. We find force in the aforesaid argument of the learned counsel for the appellants. In the first instance, it is to be noted that BEC is only a recommendatory authority. It is the Competent Authority which is to ultimately decide as to whether the recommendation of BEC is to be accepted or not. We are not entering into the discussion as to whether this Competent Authority is the State Government or the Municipal Corporation. Fact remains that there is no approval by either of them. Matter has not even reached the Competent Authority and no final decision was taken to accept the bid of respondent No.1 herein. Much before that, when the BEC was informed that there were only two valid bids before it when it made its recommendation on September 08, 2010 and as per the Financial Rules there must be three or more bids to ensure that bidding process

becomes competitive, the BEC realized its mistake and recalled its recommendation dated September 08, 2010. It cannot be said that such a decision was unfair, mala fide or based on irrelevant considerations. This, coupled with the fact that the authority has right to accept or reject any bid and even to annul the whole bidding process, the High Court was not justified in interfering with such a decision of the BEC.

14. The High Court has also gone wrong in finding fault with the decision of the BEC by holding that such a subsequent decision could not have been taken by the BEC without notice to or in the absence of the appellant. When the decision-making process had not reached any finality and was still in embryo and there was no acceptance of the bid of respondent No.1 by the Competent Authority, no right (much less enforceable right) accrued to respondent No.1. In such a situation, there was no question of giving any notice or hearing to respondent No.1.”

**40.** In the case of **State Of Jharkhand &Ors V/sCwe-Soma Consortium, 2016 14 SCC 172**, the Hon’ble Supreme Court of India has held as under:

“12. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well-settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide *Laxmikant and Ors. v. Satyawani and Ors.*, 1996 4 SCC 208 ; *Rajasthan Housing Board and Anr. v. G. S. Investments and Anr.*, 2007 1 SCC 477 and *Uttar Pradesh Awas Evam Vikash Parishad and Ors. v. Om Prakash Sharma*, 2013 5 SCC 182 ).

13. The appellant-state was well within its rights to reject the bid without assigning any reason thereof. This is apparent from clause 24 of NIT and clause 32.1 of SBD which reads as under:-

20. The government must have freedom of contract. In *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. and Anr.*, 2005 6 SCC 138 , in para (12) this Court held as under:-  
12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a

court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere.

However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

**41.** Keeping in consideration the aforesaid facts and circumstances of the present case and the case law above referred, this writ petition is held to be misconceived and unwarranted having no merit, be it on facts or law. Hence the writ petition is ***dismissed.***

Original record produced by Mr. Ravinder Gupta, learned AAG is returned back.

**(RAHUL BHARTI)**  
**JUDGE**

**JAMMU**  
**16.12.2023**  
Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**