

THE HIGH COURT OF TRIPURA

A G A R T A L A

W.P(C) No. 11 of 2015

Petitioner :

Md. Selim Miah,

S/o. Late Abdul Hamid, resident of village-
North Charilam, P.O-Charilam, P.S-Bishalgarh,
District-Sepahijala, Tripura.

By Advocates :

Mr. A. K.Bhowmik, Sr. Advocate.

Mr. R. Dutta, Advocate.

Ms. M. Choudhury, Advocate.

Ms. A. Banik, Advocate.

Respondents :

1. The State of Tripura,

Represented by the Secretary to the
Government of Tripura in the Forest
Department, New Secretariat complex,
Agartala, P.O-Kunjaban, P.S-Capital Complex,
District-West Tripura-799006.

**2. The Principal Chief Conservative of
Forest & Chief Wildlife Warder,**

Government of Tripura, Pandit Nehru
Complex, Agartala, P.O- Kunjaban, P.S- East
Agartala, District- West Tripura.

**3. The Conservator of Forest
(Wildlife) Tripura.**

Agartala, Aranya Bhawan, Gurkhabasti, PO-
Kunjaban, P.S-East Agartala, District-West
Tripura-799006.

**4. The Deputy Conservator of Forest
(Wildlife) & Director.**

Clouded Leopard National Park, Gurkhabasti,
P.O-Kunjaban, P.S-East Agartala, Agartala,
District:-West Tripura, 799006.

5. Md. Bahadur Alam,

S/o. Md. Abdul Gafur, resident of village No.
2, Chandranagar, P.S & P.O- Bishalgarh,
District- Sepahijala Tripura-799102.

6. The Chief Secretary

To the Government of Tripura, Agartala
representing the Supply Advisory Board as its
Chairman.

7. District Forest Officer,
West Tripura District, Gandhigram, Agartala,
P.O- Gandhigram, West Tripura.

By Advocates :

Mr. S. Deb, Sr. Advocate.
Mr. S. Chakraborty, Advocate.
Mr. D. Bhatracharji, Advocate.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing : **7th April, 2015.**

Date of Judgment & Order : **7th September, 2015.**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

(Deepak Gupta, C.J.)

This is the fourth round of litigation between the parties with regard to the same dispute.

[2] An NIT was floated on 21.08.2013 by the Deputy Conservator of Forest (Wildlife) & Director, Clouded Leopard National Park for supply of animal food to Sepahijala Zoo for the years 2013-14 and 2014-15. The petitioner, Md. Selim Miah and respondent No.5, Md. Bahadur Alam had submitted their tenders in this regard. The tender submitted by respondent No.5, Md. Bahadur Alam was informal and did not comply with the tender condition. The Forest Department recommended that the tender of the petitioner should be accepted. It was also noted by the Forest Department that the working of respondent No. 5 was not satisfactory. The matter was taken up by the Supply Advisory Board(SAB) which is the final authority in the State of Tripura to award the contract. The said authority directed that

the tender be awarded to respondent No.5 ignoring the recommendation of the Forest Department.

[3] Thereafter the petitioner filed W.P(C) No.85 of 2014 before this Court and this writ petition was disposed of on 27th June, 2014 and this Court held as follows:

"[6] We are also not at all satisfied with the manner in which the decision of the Committee was virtually overturned. The Principal Secretary, Forest in his note dated 04.01.2014 stated that in view of the clarification given in Note No. 192 to 194 the tender be awarded to Md. Bahadur Alam. In case Md. Bahadur Alam had asked the competent authority from Sepahijala Zoological Park to give him the experience certificate, in that certificate the competent authority may or may not have mentioned that the services rendered by Md. Bahadur Alam at the earliest stage were not proper and his behaviour was also not proper. An experience certificate is meant not only to see whether supplies have been made or not but also to see whether the supplier has the capacity to make the supplies and whether on previous occasions he has worked to the satisfaction of the concerned authority. If we make reference to the note which we have quoted hereinabove it is apparent that the Director of the Sepahijala Zoological Park had doubted the integrity of Md. Bahadur Alam. The opinion of the Director could not be brushed aside.

We had thereafter remitted the matter to SAB which was directed to re-decide the matter.

[4] The SAB instead of deciding the matter again decided to float fresh tenders and though that was not in consonance with the direction of the Court, this Court had permitted the department to do so. Thereafter, an application was filed for extension of time by the State of Tripura on behalf of the SAB and a writ petition being W. P(C) No.366 of 2014 was filed by the petitioner challenging the floating of tender. We had dismissed the writ petition but had noticed as follows:

"[5] We had accepted the request of the State and extended the time upto 30th September, 2014. The time was extended at the request of the State. The State had requested time upto 30th September, 2014 and we had been assured that the fresh tender process would be completed by this date. We are totally unhappy with the manner in which the orders of this Court are being flouted. The officials of the State cannot have expected that any request made by them has to be accepted. The senior most officials of the State had made a solemn promise to this Court to ensure that a fresh tender process is completed by 30th September, 2014."

[5] Thereafter fresh tenders were invited for supply of the animal food to the Zoo. One of the main tender conditions was as follows:

"1. Earnest money for an amount of ₹ 30,000/- (Rupees thirty thousand) only for Group- 'A', ₹ 40,000/- (Rupees forty thousand) only for Group- 'B', ₹ 10,000/- (Rupees ten thousand) only for Group – 'C' & ₹ 70,000/- (Rupees seventy thousand) only for Group – 'D' should be deposited in the Treasury/Sub-Treasury through Challan under the Head 8443- Civil Deposit-Earnest money deposit or by "D" Call, drawn on Nationalized Bank and pledged in favour of the Director, Sepahijala Zoological Park must accompany the tender without which no tender will be entertained."

A bare reading of this condition would show that the bid was to be submitted in two parts but the earnest money was required to be deposited with the technical bid. When the technical bids were opened it was found that none of the tenderers had submitted declaration as per NIT Clause-8 which reads as follows:

"***Declaration as follows:-**

I, the undersigned certify that I have gone through all the terms and conditions mentioned in the tender notice and undertake to comply with the same.

The rates quoted by me are valid and binding upon me for the entire period of contract.

The earnest money of Rs..... has been enclosed herewith vide No..... dated.....

There is no Police case, other criminal case pending against me.

I hereby undertake to supply the items as per directions given in the tender documents/supply order within stipulated period."

It was also found that the petitioner Md. Selim Miah had submitted all other documents except for the declaration mentioned herein above. As far as Md. Bahadur Alam (respondent No.5) was concerned he had not even submitted the earnest money deposit with his technical bid. It appears that respondent No.5 stated that he had enclosed the earnest money deposit with the financial bid instead of the technical bid. Therefore, the committee unanimously recommended the name of Md. Selim Miah (petitioner) but put a condition that if the tender of Md. Bahadur Alam is treated to be technically qualified subject to confirmation of his reported submission of EMD with financial bid the matter was left open to the Higher Authorities.

[6] The petitioner raised an objection to the bid of respondent no.5 in which it was stated that a criminal case was pending against the Md. Bahadur Alam before the SDJM, Bishalgarh at the time of submission of the bid. Similar complaint was also made by one other bidder. The Director of the Zoo also informed vide his letter dated 10.09.2014 that such case is under investigation of the police. The matter was placed before the authority. The tender committee took a decision that in case the tender of both the petitioner or respondent No.5 are approved they would be given five days time for submission of declaration.

[7] The tender monitoring committee further recommended that both the petitioner and respondent no.5 may be given five days time for submission of declaration and thereafter the Tender Opening Committee

would be authorized to open the financial bid of the qualified bidders but surprisingly nothing was said with regard to the technical bid of respondent no.5 being incomplete as it was not accompanied by the earnest money deposit. It is not disputed that thereafter financial bids were opened and in the financial bid the earnest money deposit of respondent no.5 was found to be there. Thereafter the matter was sent to the Law Department for its opinion. It appears that with regard to the police case a report was received that final report had been filed by the police that there is no evidence against respondent No.5. The law department found that respondent No.5 had submitted a false declaration in both the tenders that no police case was pending against him. The opinion of the Additional Secretary, Law reads as follows:

“This is regarding the question of false declaration by Bahadur Alam in NIT document pertaining to supply of animal feeds.

Perused the note 36/ante. Pending of criminal case against him does not seem to be the issue. The issue is whether he has suppressed this fact in the NIT form.

It appears that he has suppressed this fact and given declaration that no such case is pending.

Hence on this ground of false declaration about pending of the criminal case, the tender of Bahadur Alam may be rejected.

May kindly see.

**Sd/-
(A.K. Nath)
Addl. Secretary, Law,
Government of Tripura”**

This note appears to have been approved by the Secretary, Law. The matter was again taken up by the SAB. Before the SAB not only the financial bids of the petitioner and respondent No.5 but also the advice view of the Law Department with regard to acceptability of the tender was

considered. The SAB recommended that the tender be awarded in favour of respondent No.5. Thereafter the present writ petition was filed.

[8] In this writ petition we had issued notice on 14.1.2015 and we had asked the State to produce the entire records especially the record of the record of the Supply Advisory Board. We had also directed the State to clearly submit whether Bahadur Alam, respondent no.5 had submitted the earnest money deposit with his financial bid.

[9] This case has a chequered history. Number of petitions and counter petitions were filed by the petitioner and the private respondent. Finally, we had disposed of the writ petition being W.P.(C) No.85 of 2014 vide judgment and order dated 27th June, 2014. In that case we had found that the tender evaluation committee and the official of the Forest Department had recommended that the tender be awarded in favour of Md. Selim Miah, the present petitioner. However, when the matter was put up before the SAB it decided that the tender should be awarded in favour of the lowest tenderer i.e. Md. Bahadur Alam. We may only refer to some more portions of the judgment delivered by us, which read as under:

[7] We are dealing herewith supply of animal feed to the premier wild life park of the State. The Sepahijala Wildlife Sanctuary also houses the Clouded Leopard National Park. It is the conservation breeding centre for as many as five animals. It is not the only rate which matters but also the quality of the goods and if previous experience with the supplier has not been good that can always be taken into consideration by the authorities. This aspect of the matter has not at all been looked into by the SAB. We cannot ignore the fact that five of the senior most forest officers of the State had unanimously recommended that the supply order should be placed on Selim Miah. The decision of these senior most five forest officers of the State who are directly connected with the work could not be overturned in such a casual manner without addressing their reservations about Md. Bahadur Alam.

[8] Accepting for the sake of deciding the matter the submission of the State that the experience certificate is not an essential document then also at best Md. Bahadur Alam was the lowest tenderer. This automatically did not mean that his tender have to be accepted. Nobody cared to examine earlier notes with regard to the conduct of Bahadur Alam and also with regard to the note made by the person in-charge of the Zoo that at the rates quoted by Bahadur Alam it would virtually not be possible to supply feed of good quality.

[9] We could have decided the matter on our own, but this Court normally refrains from substituting its opinion for the opinion of the executive. Therefore, we remit the matter to the SAB who shall take into consideration the observation made by us above. They shall specifically consider the objection of Md. Selim Miah that the tender of Bahadur Alam is not a valid tender. The SAB may also keep in mind that if the State takes the stand in a particular case that non production of such documents does not make the tender invalid this could have a cascading effect on many other tenders. The SAB must also take into consideration the notings made by the Officers of the Forest Department who are running the Sepahijala Zoological Park as to the requirement of animal feed and the quality thereof. Their experience with respondent, Md. Bahadur Alam should also be kept in mind before a final decision is taken. The decision should be a reasoned decision and communicated to both the parties. The decision be taken by 31st August, 2014. The feed shall continue to be supplied by Md. Bahadur Alam till 31st August, 2014 and from 1st September, 2014 the same be supplied by the tenderer found suitable for this purpose by the SAB.

[10] It is clear that while disposing of the said writ petition, we had clearly indicated that we could have decided the case on own merits but we had refrained from doing so and remitted the matter to the SAB which was directed to reconsider the matter in the light of the observations made by the SAB.

[11] The SAB then met and took a decision that fresh tenders be invited latest by 30th June, 2014. Fresh tenders were invited. An application was moved before this Court, seeking extension of time where this decision was also placed on record. Though strictly speaking this decision was directly

against the judgment of this Court, keeping in view the fact that this matter was a contractual matter, this Court granted extension of time and directed that the fresh tender be finalized by 31st December, 2014.

[12] From the perusal of the record we find that none of the tenderers had submitted declarations in terms of Clause-8 of the tender notice. Further according to the Forest Department, the financial bid of the respondent No.5, Md. Bahadur Alam was not accompanied by earnest money deposit. It however appears that at the time when the tenders were opened Md. Bahadur Alam had stated that he had placed the earnest money deposit in the financial bid.

[13] Md. Bahadur Alam was the lowest tenderer. However, the Forest Department on the complaint of the petitioner found that the respondent No.5 had made some mis-declaration and had not correctly stated facts with regard to pendency of criminal cases against him and opinion of the Law Department was sought for and the Law Department clearly opined that the tender of Bahadur Alam could not be considered in view of the mis-declaration made by him. Thereafter, a memorandum was prepared by the tender evaluation committee of the Forest Department and sent to the SAB and the last portion of the memorandum reads as follows:

10.2. In view of the above submissions, the proposal is placed before the SAB for considering:

a. the bid of Md. Salim Miah, since the Law Department has opined that the tender of Md. Bahadur Alam (though tender price offered is lower than Md. Salim Miah) may be rejected on the ground of false declaration, and

b. Change of supply period of animal food as proposed at Para 10.1.

Therefore, the proposal of the tender evaluation committee and the Department which had invited tenders was that the bid of the petitioner be accepted since the Law Department had opined that the bid of Md. Bahadur Alam should be rejected. The decision of the SAB with regard to this item is as follows:

Sl. No	Name of Department	Subject	Decision of SAB/WAB
1	2	3	4
5	Forest	Supply of Animal food of Group-A,B,C & D to Sepahijala Zoological park for the year 2015 9w.e.f. 01-01-2015 to 31-06-2015	Approved for L1+ VAT.

[14] In the minutes of the memorandum of the SAB, there is no other discussion, except for approving the rate of the lowest tenderer. No reason has been given why the recommendation of the tender evaluation committee and the recommendation of the Law Department have been discarded. It appears that the officials who comprise of the SAB had not cared to read our earlier judgment passed in W.P.(C) No.85 of 2014, wherein we had clearly stated that though the SAB may have a right to disagree with the recommendations of the tender evaluation committee or the department concerned, it must give reasons for disagreeing with the same. On 20th January, 2015 we stayed the tender awarded in favour of the respondent No.5 and had thereafter heard arguments in the matter.

[15] We would also like to mention that after we had passed the stay order on 20th January, 2015, thereafter the SAB took another decision justifying its earlier action. We are clearly of the view that the members of the SAB virtually committed contempt of the Court by holding a meeting on 19th March, 2015 and reconsidering the matter after the stay order had been

passed by this Court. Once the Court had passed a stay order and had clearly held that the SAB was wrong in not giving its reasons at the time of award of tender in favour of the respondent No.5, the SAB had no right or authority to reconsider the matter without permission of this Court and give its reasons after the stay order had been passed by this Court. Officials of the State Government should realise that if an order is passed by this Court they must obey the order. If they are aggrieved by the order they can either file an appeal against the said order or they may even approach the Court for clarification of the order. But sitting in the Secretariat, the senior officials including the Chief Secretary of the State cannot attempt to nullify the orders of this Court.

[16] We are saying this because in our order dated 20th January, 2015 we had clearly held that the order of the SAB was without reasons and was not justified. On 19th March, 2015 the SAB held a meeting and *ex-post facto* started giving reasons in defence of its decision which should not have been done. We are not saying anything further in the matter this time but in future if the officials of the State Government do not strictly comply with the direction of the Court then the Court may be forced to take much more serious action.

[17] There are three issues before us. The first is that admittedly tenders of both the petitioners and the respondent No.5 are informal because the declaration as contemplated in the conditions was not furnished by these tenderers. This declaration reads as follows:

Declaration as follows:-

I, the undersigned certify that I have gone through all the terms and conditions mentioned in the tender notice and undertake to comply with the same.

The rates quoted by me are valid and binding upon me for the entire period of contract.

The earnest money of ₹ has been enclosed herewith vide No..... dated.....

There is no Police case, other criminal case pending against me.

I hereby undertake to supply the items as per directions given in the tender documents/supply order within stipulated period."

This is a very important declaration and goes to the root of the contract. If such a declaration is not given the contractor cannot be bound by the contract. We are of the view that if such a condition or stipulation of the tender is not complied with then this is not a condition which can be waived by the department.

[18] The second issue is that the technical bid of respondent No. 5 was not accompanied by the earnest money deposit. According to us when the technical bid is not accompanied by the earnest money deposit, there is no question of the bid being valid. This is not a minor error. This was a major error and the technical bid of Md. Bahadur Alam should have been rejected at the outset and there was no question of his financial bid being opened. If the tenderer submits the earnest money deposit not with his technical bid but with his financial bid then he must suffer.

[19] Lastly, from the material on record, it is obvious that the investigation in the case against the respondent No.5, Md. Bahadur Alam was going on when he submitted his tender on 04.01.2014. His declaration to the effect that no police case is pending against him was incorrect. The complaint in question was registered on the basis of a complaint petition filed by one Najrul Islam. Notice was issued to the accused Md. Bahadur Alam and he knew about the pendency of this case. The last date for submission of bid

was 11th September, 2014. The respondent No.5 has filed reply and now the order which has been relied upon is the order dated 22.10.2014 whereby the FR(T) report submitted by the police on 07.09.2014 has been accepted. Therefore, till 22.10.2014 the case was pending in respect of Md. Bahadur Alam is concerned and his declaration was a false declaration.

[20] The Apex Court in ***Ramana Dayaram Shetty Vrs. The International Airport Authority of India and Others : AIR 1979 SC 1628*** was dealing with a case wherein the condition of the tender notice was that tenders were invited from registered second class hoteliers having at least five years experience for putting up and running a 2nd Class restaurant and two Snack Bars at the airport for a period of three years. The Apex Court held that this was a condition which was very germane to the issue to the contract and this condition could not be waived. The Apex Court in para-10 observed as follows:

"10. Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. ***"**

[21] In ***M/s. Kasturi Lal Lakshmi Reddy, etc. Vrs. The State of Jammu & Kashmir and another : AIR 1980 SC 1992*** the Apex Court held as follows:

"11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a

democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

15. *** Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance.*****"**

[22] In *Tata Cellular Vrs. Union of India : (1994) 6 SCC 651*

the Apex Court with regard to tenders held as follows:

"69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender :

- 1. It must be unconditional.**
- 2. Must be made at the proper place.**
- 3. Must conform to the terms of obligation.**
- 4. Must be made at the proper time.**
- 5. Must be made in the proper form.**
- 6. The person by whom the tender is made must be able and willing to perform his obligations.**
- 7. There must be reasonable opportunity for inspection.**
- 8. Tender must be made to the proper person.**
- 9. It must be of full amount."**

It is clear that the Apex Court held that a tender to be valid must be made in the proper form. Tenders of both the petitioner and

respondent No.5 were not in proper form because there was no declaration. Furthermore, the tender of respondent No.5 was not in proper form because the technical bid was not accompanied by the earnest money deposit. These are the conditions which go to the root of the contract.

[23] In *Kanhaiya Lal Agarwal Vrs. Union of India and Others : (2002) 6 SCC 315*, the case before the apex Court was that along with the tender, the tenderer had sent a letter that in case the tender is finalised in his favour within 45 days there would be 5% deduction in rate, if it was finalised in 60 days there would be 3% deduction in rate, if it is finalised in 75 days there would be 2% deduction in rate. The Court held that such a tender could not be rejected. This judgment has been relied upon by Sri A. K. Bhowmik, learned senior counsel for the petitioner. We are of the view that this judgment does not in any way help the petitioner.

[24] In *B.S.N. Joshi & Sons Ltd. Vrs. Nair Coal Services Ltd. and Others : (2006) 11 SCC 548* the Apex Court specifically dealt with the question as to in what circumstances the tender condition may be waived. The Apex Court held as follows:

"We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :

i) If there are essential conditions, the same must be adhered to;

ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing

iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction..

v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.

(vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint."

A bare reading of this paragraph shows that if the conditions are essential, the same must be adhered to. Furthermore, the Apex Court held that if there are no powers of relaxation then no relaxation can be granted.

[25] We have perused the notice inviting tender and in that there is no power to relax the tender conditions. In rare cases if deviation is made in favour of one tenderers with regard to something which is not very serious, such deviation may be permitted but if the condition is an essential condition then such condition cannot be waived.

[26] As far as the present case is concerned, we see no pressing reason why the condition regarding declaration should have been waived in regard to any of the tenderers. Assuming that this condition could be waived, we fail to understand how the condition of earnest money deposit being part of the technical bid could be waived. In the tender notice, it clearly stated

that against each group of animal feed the bid should be two separate sealed envelopes. The relevant portion of the condition is as follows:

******* The interested tenderers have to submit tender against each group in two separate sealed envelopes, one containing Technical Bid and the other containing Financial Bid.**

Details to be furnished in the Technical Bids are indicated in Annexure-I(A,B, C,D).

TECHNICAL BID

FOR SUPPLY OF ANIMAL FOOD AT SEPAHIJALA ZOO DURING THE YEAR 2014-15 (GROUP-A, B, C & D)

1. Earnest money for an amount of ₹ 30,000/- (Rupees thirty thousand) only for Group- 'A', ₹ 40,000/- (Rupees forty thousand) only for Group- 'B', ₹ 10,000/- (Rupees ten thousand) only for Group – 'C' & ₹ 70,000/- (Rupees seventy thousand) only for Group – 'D' should be deposited in the Treasury/Sub-Treasury through Challan under the Head 8443-Civil Deposit-Earnest money deposit or by "D" Call, drawn on Nationalized Bank and pledged in favour of the Director, Sepahijala Zoological Park must accompany the tender without which no tender will be entertained. ***"**

It is thus clear that the earnest money deposit was to be part of the technical bid. The financial bid of respondent no.5 could never have been permitted to be opened because his technical bid was totally inconsistent with the notice.

[27] Furthermore, though the Tender Opening Committee and the Tender Evaluation Committee had made certain recommendations, they had also obtained opinion of the Law Department which has been quoted hereinabove, the SAB which was the final authority did not take any of these matters into consideration. It did not take a conscious decision whether the condition of non-furnishing of declaration should have been waived. It took

no decision at all on the very material defect in the tender of respondent no.5 in as much as it was not accompanied by the earnest money deposit. The SAB did not even care to consider the legal advice given by the Law Department with regard to the false declaration made by the respondent no.5.

[28] In this view of the matter, we allow the writ petition and hold that the award of the tender in favour of the respondent No.5 is totally illegal. However, we cannot award the contract in favour of the petitioner since his tender was also informal. We permit the State to float fresh tenders for supply of animal feed and till such time i.e. the tenders are finalised, the interim orders dated 20.01.2015 will continue to remain in force.

[29] Petition is disposed of in the aforesaid terms. No order as to costs.

JUDGE

CHIEF JUSTICE