

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 32692 of 2014 (J)

PETITIONER(S)/PETITIONER:

M/S.T.A.XAVIER & SONS AGED 42 YEARS
ENGINEERS & CONTRACTORS, 18/1028, THAREPARAMBIL HOUSE
PALLURUTHY, KOCHI-682006
REPRESENTED BY THE EXECUTIVE PARTNER T.X.AUGUSTINE.

BY ADVS.SRI.K.L.VARGHESE (SR.)
SMT.SANTHA VARGHESE
SRI.RAHUL VARGHESE
SRI.RANJITH VARGHESE

RESPONDENT(S)/RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT (LSGD)
THIRUVANANTHAPURAM-695001.

2. ALUVA MUNICIPALITY
ALUVA, REPRESENTED BY THE SECRETARY-683101.

3. THE CHIEF ENGINEER
LOCAL SELF GOVERNMENT DEPARTMENT (LSGD)
THIRUVANANTHAPURAM-695006.

4. THE EXECUTIVE ENGINEER
LOCAL SELF GOVERNMENT DEPARTMENT, ALUVA MUNICIPALITY
ALUVA-683101.

5. K.J.VARGHESE
XII/225, KOORAN HOUSE, MEKKAD P.O.
AKAPPARAMBU, KARIYAD, ALUVA-683589.

R5 BY ADV. SRI.T.KRISHNAN UNNI (SR.)
R5 BY ADV. SRI.SAJU.S.A
R5 BY ADV. SRI.VINOD RAVINDRANATH
R2,R4 BY ADV. SRI.V.M.KURIAN, SC, ALUVA MUNICIPALITY
RADDL.6 BY ADV. SRI.SAKIR.K.H.
R BY SPL.GOVERNMENT PLEADER SHRI.P.JAYASANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE 'NOTICE INVITING TENDER' DT. 14-08-2014.

EXHIBIT P2- TRUE COPY OF THE 'BID SUBMISSION CONFIRMATION'
DT. 20-10-2014.

EXHIBIT P3- TRUE COPY OF THE INFORMATION FURNISHED ONLINE REJECTING
THE 5TH RESPONDENT'S TENDER

EXHIBIT P4- TRUE COPY OF THE ONLINE NOTIFICATION DT. 29-11-2014.

EXHIBIT P5- TRUE COPY OF THE PRE-QUALIFICATION DOCUMENTS UNDER
ANNEXURE-E CONTAINING CLAUSE 9.5 AND 9.14.

EXHIBIT P6- TRUE COPY OF SCHEDULE A TO F-PAGES 16 TO 27 OF THE BID
DOCUMENTS.

ADDL.EXT.P7: TRUE COPY OF THE 'TENDER DETAILS'

RESPONDENT(S) ' EXHIBITS

EXT.R5A: THE TRUE COPY OF THE CERTIFICATE PRODUCED ALONG WITH THE
BID

EXT.R5B: -DO- CERTIFICATE WHICH OUGHT TO HAVE BEEN PRODUCED
DT.3.10.2008

EXT.R5C: THE CERTIFICATE PRODUCED ALONG WITH THE BID DT.28.10.1980

EXT.R5D: THE TRUE COPY OF THE DECLARATION OF SRI.AZEES

JJ

/TRUE COPY/

P.S.TO JUDGE

'CR'

K. SURENDRA MOHAN, J.

W.P(C) NO: 32692 OF 2014

Dated this the 11th March, 2015.

JUDGMENT

The petitioner is a partnership firm engaged in undertaking works contracts for the various instrumentalities of the State. The firm is represented herein by its Executive Partner. The petitioner has filed this writ petition challenging the action of respondents 2 and 3 in proceeding with the tender proceedings notified as per Ext.P1 treating the fifth respondent also as qualified though he had been initially disqualified.

2. The second respondent had invited tenders, on-line for the work of “construction of general market complex, Aluva” by issuing Ext.P1 notice. The estimated amount of the work is Rs.927 lakhs. The period of completion is 15 months. The proceedings were to be completed by e-tender. As per

the tender notification, bids had to be submitted on or before 21.10.2014, by 5 p.m. The petitioner submitted his tender on 20.10.2014. The 'bid submission confirmation' has been produced as Ext.P2. The petitioner had submitted his tender with all supporting documents. The bidders have to submit a technical bid as well as a financial bid, separately. The technical bid had to be considered first, by a technical evaluation to be conducted by a duly constituted committee. Thereafter, the financial bid was to be opened. The date of opening the financial bid was 1.12.2014, 11 a.m. The petitioner's tender was accepted after the technical evaluation, as evidenced by Ext.P4. However, the fifth respondent's tender was rejected as evidenced by Ext.P3. While so, the petitioner was informed that the date of opening the financial bid was postponed from 1.12.2014 to 3.12.2014. The petitioner also learnt that the date had been postponed since the fifth respondent was also treated as qualified.

3. Further enquiries of the petitioner revealed that

though the fifth respondent had not submitted all the necessary documents in support of his technical competence along with his on-line tender, he had supplied necessary documents subsequently and that on an evaluation of the documents subsequently produced, his disqualification was set aside and he was also treated as qualified. According to the petitioner, the above action is in contravention of the professed terms of the e-tender notified by the authorities in advance. It is also contended that, the manipulation has been done by exerting political influence on respondents 2 and 3. Therefore, if the tender proceedings are proceeded with, the same would only end in favour of the said respondent, it is contended. The petitioner has therefore filed this writ petition seeking the intervention of this Court.

4. This writ petition was admitted on 4.2.2014 and an interim direction was issued to respondents 2 to 4 not to consider the fifth respondent's tender for a period of one week. The said interim order is continuing. On receipt of

notice, Adv.V.M.Kurian entered appearance for respondents 2 and 4. A statement has been filed on behalf of the said respondents producing Ext.R2(a) document. A separate counter affidavit has been filed by the fifth respondent. The petitioner has filed separate reply affidavits to the statement as well as the counter affidavit. The Govt. Pleader was heard on the basis of instructions obtained from respondents 1 and 3. The concerned files have been made available by the Govt. Pleader for perusal of the Court. The writ petition was heard at length. Both sides have placed reliance on various decisions on the point in support of their contentions.

5. According to the learned Senior Counsel Shri. K.L.Varghese, as per the tender notification, all the necessary supporting documents are to be submitted on-line. Off-line submissions are not permitted. It has been notified that the tender would be opened on 27.10.2014 at 11 a.m. The last date for submission of the bids was 21.10.2014, 5 p.m. In accordance with the terms notified, the petitioner had

submitted his tender. The technical bids of two bidders viz., the petitioner and Messrs. Royal Constructions were accepted after evaluation. The tender submitted by the fifth respondent was rejected. The rejection was as early as on 21.10.2014, as evident from Ext.P3. Thereafter, what remained was only opening of the financial bid on 1.12.2014. However, the said date was postponed to 3.12.2014 and in the meantime the third respondent issued proceedings treating the fifth respondent also as qualified. The said action according to the learned Senior Counsel is in contravention of the notified terms subject to which tenders were invited. Ext.P5 the pre-qualification document specifically states that incomplete tenders were liable to be rejected. There was absolutely no justification for permitting the fifth respondent to rectify the defects on the basis of which he was disqualified. The authorities have gone to the extent of permitting him to supply additional documents off-line and to furnish fresh earnest money deposit since the earlier amount

deposited by him had been refunded. The conduct clearly demonstrates the extent to which the authorities have gone to accommodate the fifth respondent. According to the learned Senior Counsel the entire action is motivated by extraneous consideration and is liable to be set aside.

6. A statement has been filed by the counsel for respondents 2 and 4. It is admitted that, as per notice dated 25.11.2014, only the petitioner and Messrs. Royal Constructions were declared as pre-qualified for the tender. The above is evident from Ext.R2(a) produced along with the statement. After Ext.R2(a), though the second respondent had decided to conduct the financial evaluation on-line on 1.12.2014, the third respondent directed to postpone the opening of the financial bids to 3.12.2014 due to certain "technical problems" in the evaluation of the pre-qualification bids. Accordingly the evaluation was postponed to 3.12.2014. Meanwhile, by notice dated 2.12.2014 the third respondent informed the second respondent that the fifth

respondent was also pre-qualified. He was further directed that the bid of the fifth respondent also be included for the purpose of financial evaluation. On the said date, since the interim order of this Court was received, further action was not pursued. According to the statement, the Chief Engineer on an examination of the pre-qualification documents and the documents submitted by the fifth respondent had found that the said person also possessed necessary expertise and equipments for pre-qualification. It was in view of the above that, he was also directed to be included. He has been included in public interest and there is no illegality in the said action. Therefore it is contended that the petitioner is not entitled to any relief in this writ petition.

7. The learned counsel for respondents 2 and 4 Shri.V.M.Kurian contended that, Clause 9.20 of Ext.P5 confers sufficient powers on the technical committee to accept or reject the technical bid of a tenderer. It was in exercise of the said power the fifth respondent was also treated as qualified.

Permitting the fifth respondent also to participate in the tender would only be in public interest, since the proceedings would be more competitive. Clause 9.4 of Ext.P5 is also relied upon to point out that, the aspects on which reliance has been placed by the respondents to qualify the fifth respondent are relevant and therefore, cannot be found fault with.

8. According to the learned Special Govt. Pleader who represents respondents 1 and 3 the fifth respondent had submitted a representation to the concerned Minister. The said representation was forwarded to the third respondent for necessary action. It was on an evaluation of the supporting documents produced by the fifth respondent that a decision to treat him also as qualified was taken. The said decision was not prompted by either political influence or extraneous consideration, as alleged. He had similarly submitted a representation to the second respondent, which was also considered, according to the learned Special Govt. Pleader. Therefore, according to the learned Special Govt. Pleader the

writ petition is only to be dismissed.

9. Senior Counsel Shri. T.Krishnan Unni appears for the fifth respondent. A separate counter affidavit has been filed by the said respondent producing Exts.R5(a) to R5(d) documents. According to the counsel, while submitting the pre-qualification bid, an accidental slip had occurred, as a result of which, the certificate with respect to road construction work and the equipments for such work were submitted. The omission according to the said respondent was not a serious one and would not affect the validity of the bid. Since the mistake was not a serious one, rejection of his tender on the said basis was bad. It was for the said reason that, his bid was also accepted. Reliance is placed on Exts.R5 (b), R5(c) and R5(d) documents to contend that he is possessed of the necessary qualification, expertise and equipments to undertake the work that has been tendered. It is contended by the learned Senior Counsel Shri. T.Krishnan Unni that the aspect with respect to which the mistake had

occurred was not a serious one. The term was only a collateral term. Therefore, the authorities had corrected the mistake. The petitioner has no right to question the said act since he is only one of the bidders, who has acquired no right in respect of the work. It is therefore contended that the writ petition is only to be dismissed.

10. Heard. The method of e-tendering has been introduced to bring in transparency to the tender proceedings. The transparency is provided by stipulating that all stages of the tender proceedings be conducted on-line, without giving any scope for manipulation by the authorities, at the instance of devious contractors or politicians. The insistence on submission of all the documents on-line without permitting submission of any document off-line is intended to put the entire proceedings beyond the scope of manipulation. The method of e-tendering would render the process accessible to on-line scrutiny by the public at all its stages. Only such a method would be able to ensure that the

proceedings are conducted properly and objectively.

11. In the above case, it is not in dispute that the tenders were invited as per Ext.P1. A perusal of Ext.P7 tender details shows that the following is a specific stipulation therein.

“Is off-line submission allowed: No”

The payment mode has been specified as : “on-line”

Ext.P7 also specifies the cover details and the number of covers has been stipulated to be:2. One cover containing pre-qualification documents and the second cover containing details regarding finance. Clause 9 of Ext.P5 stipulates that, the bids shall be submitted by the tenderers in two separate parts. Part I is the technical bid, which has to be supported by qualification information and supporting documents showing financial stability and experience in works of similar magnitude within the last five years. Part II financial bid consists of financial bid form and the quoted tender schedule. Clause 9 of Ext.P5 is extracted hereunder for

convenience of reference:–

“9.0 Instruction to Applicants

9.1 A tenderer may be pre-qualified up to the limit of his pre-qualified capacity.

9.2 Pre-qualification questionnaire complete in all respect should be submitted in Triplicate (original + 2 copies) on or before 3 pm on 5.9.2014 to the Municipal Secretary, Aluva Municipality.

9.3(a) The bids shall be submitted by the tenders in two separate parts.

Part I – Technical bid comprising

- a) Bid Security
- b) Preliminary agreeent duly filled up
- c) Qualification information & supporting documents showing financial stability & experience in works of similar magnitude within last 5 years

Part II – Financial bid comprising

- a) Financial bid form
- b) The quoted tender schedule

9.4 No costs incurred by contractors in attending this office in providing clarification, attending discussions, conferences or site visits will be reimbursed by the employer/Engineer.

9.5 Incomplete offers are liable to be rejected

9.6 The Language for submission of bid should be English/Malayalam.

9.7 In the event of firm wishing to withdraw from pre-qualification, the firm must return the document with an explanatory letter to the Secretary.”

It is clear from the above clause that, qualification information along with supporting documents showing financial stability and experience in works of similar magnitude within the past five years are necessary to be supplied along with the technical bid. The above clause also stipulates at 9.5 that, incomplete offers were liable to be rejected. Clause 9.14 that contains the criteria for eligibility is also relevant and is extracted hereunder:–

“9.14. To be eligible for award of contract, bidders shall provide evidence satisfactory to the employer, not withstanding any previously conducted pre-qualification of potential bidders of their capability and adequacy of resources effectively carried out the subject contract. To this all bids submitted shall include the following

information:–

a) Copies of original documents defining the construction of legal status, place of the registration and principal place of business of the company or firm or partnership or, if a joint venture of each party thereto constructed the tenderer.

b) Where the tenderer is a joint venture of two or more firms, and statement signed by all parties to the joint venture of the proposed administrative arrangements for the management and execution of the contract, the duties, responsibilities and scope of work to be undertaken by each party, the authorized representative of the joint venture and an undertaking that the several parties are jointly and severally liable to the employer for the performance of the contract.

c. Details fo the experience and past performance of the tenderer (or of each party to a joint venture) on works of similar nature (multi storied building of the value of not less than 40% of this bid) within the past five years, and details of current work in hand and other contractual

commitments.

d. Major items of construction equipment proposed for use in carrying out the contract in the form as prescribed in Schedule D.

e. The name, qualification and experience of key personnel proposed for administration and execution of the contract, in the format prescribed in Schedule C. (Consent letter of the key personnel should be attached)

f. Proposals for sub-contracting elements of the works amounting to more than 10% of the tender amount for each element and as listed in Schedule E.

g. Reports on the financial standing of the tenderer (or of such party to a joint venture) including profit and loss statement, balance sheet and auditor's reports for the past five years, an estimated financial projection for the next two years and an authority from the tenderer (or authorized representative of a joint venture) to seek references for the tender's and

h. Information regarding, any current litigation in which the tenderer is involved."

The above clauses underscore the necessity for each tenderer

to support his eligibility with proper documents for the purpose of satisfying the technical committee of the technical competence of the tenderer. The documents were to be produced for proving the eligibility of the contractor, as the opening words of clause 9.14 indicate. Admittedly, the fifth respondent had not supported his bid with such documents. The above clauses clearly state that the question of eligibility of the tenderer shall be evaluated taking into account the aspects itemised in the said clauses. This is in view of the fact that, technical evaluation of the competence of a tenderer cannot be made without the aid of the supporting documents. Therefore, the contention that an omission to produce such supporting documents was not a serious omission, cannot be accepted. The third respondent as well as the Technical Committee also had proceeded on the basis that the omission to produce supporting documents was serious and fatal. It was for the said reason that the fifth respondent's tender was rejected as evident from Ext.P3. Ext.R2(a) shows that, as on

25.11.2014, only the petitioner as well as Messrs. Royal Constructions had been treated as qualified. Therefore, proceedings were being initiated for opening the financial bid on 1.12.2014. The proceedings up to the above stage had progressed correctly and in accordance with the stipulations already notified.

12. It is admitted that, the financial bid was not opened on 1.12.2014 for the reason that the third respondent had directed to postpone the opening of the financial bid to 3.12.2014. Accordingly, opening of the financial bid was postponed to 3.12.2014. On 2.12.2014 the third respondent issued proceedings informing the second respondent that the fifth respondent was also pre qualified and that he should also be considered. Therefore, the financial evaluation was postponed to 5.12.2014. It is necessary to ascertain, under what circumstances the fifth respondent was treated as pre qualified by the third respondent. It is worth noticing that, according to the second respondent the Chief Engineer had

directed to postpone the opening of the financial bids to 3.12.2014 “due to certain technical problems in the evaluation of pre qualification bids”.

13. It is interesting to note that, there was in fact, “no technical problems in the evaluation of pre qualification bids” as sought to be made out by the third respondent. A perusal of the files made available to me by the Special Govt. Pleader shows that, the fifth respondent had submitted a representation to the Minister for Urban Affairs and Welfare of Minorities, Thiruvananthapuram on 29.11.2014. The endorsement on the said representation of the Minister reads as follows:-

“CE LSGD – for necessary action

Sd/-

1.12.2014

Manjalamkuzhi Ali
Minister for Urban Affairs &
Welfare of Minorities”

Thus, the representation of the petitioner was marked for

necessary action to the Chief Engineer, the third respondent herein. The documents produced by the fifth respondent along with his counter affidavit are appended to the said representation also. The endorsement of the Minister is dated 1.12.2014, the date on which the financial bid ought to have been opened. Both the third respondent and the Minister are at Thiruvananthapuram. Therefore, it appears that, the fourth respondent had been instructed over telephone to postpone the financial evaluation. The said instruction given over telephone has been referred to in the letter dated 1.12.2014 addressed by the fourth respondent to the third respondent which forms part of the file. Therefore, it is clear that the authorities had initiated immediate action to carry out the direction of the Minister and to accommodate the fifth respondent. Another aspect that is revealed by the files is that, the petitioner had on 1.12.2014 itself submitted a similar representation to the Municipal Chairman of the second respondent also. The said representation is seen to

have been forwarded by the Municipal Chairman to the third respondent directing reconsideration of the action disqualifying the fifth respondent. There cannot be any doubt that matters would not have moved so fast without sufficient influence being exerted, at the instance of the fifth respondent. Thus, the fifth respondent who had not supported his bid with proper documents, was permitted to cure the defects by supplying necessary documents, his disqualification was set aside and he has been treated as qualified. If such exercise is permitted in e-tender proceedings, that would enable contractors with sufficient influence to rectify all the defects in their tender documents and to acquire qualification, even after they are disqualified initially. Any such procedure would be against the very objective of the system of e-tendering. Therefore, the said action can only be described as arbitrary and vitiated by extraneous considerations. It is held so.

14. The learned Senior Counsel has contended on behalf

of the fifth respondent that, the omission committed by his client was not of a serious nature and that he was treated as qualified for the reason that he in fact had sufficient competence. According to him, while submitting his bid, by mistake the certificate with respect to road construction work was attached. Reliance is placed on the decision in *Rashmi Metaliks Ltd. & Anr. v. Kolkata Metropolitan Development Authority* [2013(10)SCC 95]. In the said case, the document that was omitted to be submitted was only the latest income tax returns. The same is not the situation in the present case where the basic documents proving the eligibility of the fifth respondent were not produced. Even the documents produced now do not prove his competence. Ext.R5(a) does not bear any date. Ext.R5(b) is dated 3.10.2008 whereas supporting documents necessary to be produced are to relate to the past five years. Adv.V.M.Kurian on behalf of respondents 2 and 4 has placed reliance on the decision in *Glodyne Technoserve Ltd. v. State of Madhya Pradesh* [(2011) 5 SCC 103]. That

was a case in which, the latest valid and active ISO 9001:2000 certification was not produced. What is held in the said decision is only that it was for the technical evaluation committee to take a final decision on the said aspect. The said decisions cannot help the respondents in the present case for the reason that, the technical evaluation committee had in this case already taken a decision and rejected the tender of the fifth respondent. In the absence of any provision empowering the authorities to reconsider the said decision, in the absence of any provision enabling them to permit the fifth respondent to produce additional documents, in the absence of any provision authorising them to permit the fifth respondent to make good the earnest money deposit already refunded to him by furnishing the same off-line, the impugned action of the third respondent is unsustainable.

15. In law also, the impugned action of the respondent is unsustainable, for more reasons than one. In the first place, it is settled law that an executive authority must be rigorously

held to the standards by which it professes its action to be judged. The dictum in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] is axiomatic on the above principle of law. The Hon'ble Supreme Court has in paragraph 10 thereof, held as follows:–

“It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr.Justice Frankfurter in *Viteralli v. Saton* [1975 SCC (L & S) 27] where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged....Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword

shall perish with the sword.

This Court accepted the rule as valid and applicable in India in *A.S.Ahluvalia v. Punjab* [(1975) 3 SCC 503] and in subsequent decision given in *Sukhdev v. Bhagatram* [(1975) 1 SCC 421], Mathew, J, quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority”

16. With respect to the question as to whether every term of a tender notification would bind the authorities the Supreme Court has held in *Poddar Steel Corporation v. Ganesh Engineering Works* [(1991) 3 SCC 273] at para 6.

“As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in

the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories--- those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.”

The Supreme Court has held in *Kanhaiya Lal Agarwal v. Union of India* [(2002) 6 SCC 315] that any condition, the non-fulfilment of which results in rejection of the tender, would be an essential condition. Para 6 of the judgment is to the following effect:–

“6. It is settled law that when an essential condition of tender is not complied with, it is open to the person inviting tender to reject the same. Whether a condition is essential or

collateral could be ascertained by reference to the consequence of non-compliance thereto. If non-fulfilment of the requirement results in rejection of the tender, then it would be an essential part of the tender otherwise it is only a collateral term. This legal position has been well explained in *G.J.Fernandez v. State of Karnataka* [(1990) 2 SCC 488].”

17. The legal position that emerges from the above is that, when an authority holds out that it would be bound by a particular set of rules of procedure in the processing of a tender, the said authority would be held bound by such rules of procedure under pain of invalidation of any deviation. The limited leeway permissible, is with respect to the non-essential terms. The test to determine whether a term is essential or non-essential is to examine whether the tender would have been rejected for the violation thereof. A clause, the violation of which entails rejection of a tender, is an essential clause. In the present case, as already noticed above, the fifth respondent's tender was rejected since he had

not produced documents in proof of his eligibility. The alleged “technical problem” is only a term invented by the third respondent to effectuate the bidding of the Minister. There was no such “technical problem” actually in existence. In the present case, the requirements of Clause 9.14 of Ext.P5 necessary to prove the eligibility of the tenderer was an essential condition that had to be fulfilled. As per Clause 9.5 incomplete tenders were liable to be rejected. It was in accordance with the above clauses that the fifth respondent's tender was rejected. Therefore, the authorities had also proceeded on the basis that they were essential conditions. The subsequent action of accepting the fifth respondent's tender through the back door was uncalled for.

18. In view of the above the action of the third respondent in reconsidering the disqualification of the fifth respondent and treating him as qualified is set aside. The respondents are directed to proceed with the financial

evaluation, treating the fifth respondent as disqualified. The writ petition is allowed as above.

Sd/-
K. SURENDRA MOHAN
Judge

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