

Gurbax Singh
2016.11.04 12:37

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.12513 of 2016(O&M)
Date of decision: 06.09.2016**

M/s Jagtar Singh Sadhu Singh

.....Petitioner

Vs.

Food Corporation of India and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Aalok Jagga, Advocate for the petitioner.

Mr. J.S.Puri, Advocate for respondent-Food Corporation of India.

Mr. D.S.Patwalia, Sr Advocate with Mr. Sehajbir Singh, Advocate
for respondent No.2.

Ajay Kumar Mittal,J.

1. The petitioner through the instant petition under Articles 226/227 of the Constitution of India prays for quashing the impugned order dated 9.6.2016, Annexure P.12 passed by respondent No.1 whereby the legal notice dated 11.5.2016, Annexure P.5 sent by it has been rejected contrary to the terms of Notice Inviting Tenders (NIT), Annexure P.5 in purported compliance of the order dated 1.6.2016 passed by this Court in CWP No.11535 of 2016 (M/s Jagtar Singh Sandhu Vs. FCI) which is stated to be pending. Further prayer has been made for restraining respondent No.1 from allotting the tender to respondent No.2 and declaring the tender of respondent No.2 as non responsive being in contravention to the terms of

NIT and the law laid down by this Court in CWP No.23472 of 2015 (*Khem Singh Vs. FCI*) holding that incomplete tenders are liable to be rejected. Direction has also been sought to respondent No.1 to allot the tender to the petitioner being eligible.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. In the month of April 2016, respondent No.1 invited applications from eligible transport contractors for submitting their bids for awarding the tender of transport contractor for a period of two years for transportation of food grains from various points of food storage at Baghapurana station to Rail heads, Moga/Kotkapura/Ajitwal. The petitioner was interested for receiving of contract for the aforesaid assignment. The previous tender was allotted to the petitioner for the same work. The petitioner wanted it for fresh season for a period of two years. The petitioner downloaded the tender notice for E-tender for appointment of Transport Contractor at Baghapurana. The estimated contract value was ₹ 25,39,95,000/-. The manner of submission of tender was online and the requisite documents were required to be uploaded. One of the mandatory terms of the tender was that the tender document was to be submitted online in two parts i.e. technical bid and price bid. Further, all supporting documents were required to be uploaded after properly scanned and encrypted. As per clause 8(d) of the instructions, the tender document which did not comply with these instructions was to be summarily rejected. Clause 8(g) thereof further described that tenders which were incomplete were to be ignored. As per clause 13, it was clearly mentioned that in case the information given by the tenderer was found to be false at any stage, respondent No.1 had the right to disqualify/summarily terminate the contract. The petitioner submitted its tender and quoted the rate of 171%

above the scheduled rates and submitted its technical and financial bid by uploading the same complete in all respects well before the cut off date i.e. 4.5.2016. Only two tenders were submitted in pursuance to the NIT, Annexure P.1. One was of the petitioner and the other was of respondent No.2. On 5.5.2016, technical bids were opened and process of evaluation started. The petitioner immediately downloaded the technical documents/bid of respondent No.2. When the petitioner examined the technical documents of respondent No.2, he found that even his technical bid was liable to be rejected in view of clause 8(c) (ii), (g) and clause 13 of the NIT. According to the petitioner, respondent No.2 did not fill up Annexure X attached with the tender document with regard to the UTR No; transaction reference number pertaining to earnest money deposit. Even date of transaction at Sr.No.12 was also required to be filled in Annexure X separately by giving the details of the Bank transactions through which EMD had been deposited in the account of respondent No.1. As per clause 6(i) of the NIT, the earnest money at the rate of 2% of the contract value was required to be deposited electronically. Annexure X in the case of respondent No.2 was lying blank. Further, even if the receipt of earnest money deposited was attached with the tender document, the details of the same were required to be mentioned in the appendix as well. In Appendix II, a specimen has also been given to assist the tenderer to mention the description. The current business was required to be mentioned. Respondent No.2 had mentioned as transport contractor Baghapurana, FCI Moga which was factually incorrect. Infact, it was the petitioner who was currently the Transport Contractor, Baghapurana, FCI, District Moga and not respondent No.2. Respondent No.2 was transport Contractor for this area from the years 2012-14. His contract with FCI as Transport Contractor had come to an end in the year

2014. It was also provided that the tenderer must fill up and sign Appendix I and II by furnishing full, precise and accurate details in respect of information as asked for in Appendix II. Respondent No.2 gave inaccurate details. On 11.5.2016, the petitioner issued a legal notice through its counsel and requested the respondents to declare the technical bid of respondent No.2 as non responsive. On 26.5.2016, the petitioner received an e-mail from respondent No.1 stating that its technical bid had been accepted by the duly constituted committee and financial bid shall be opened on 27.5.2016 at 11.30 AM. Immediately thereafter, the petitioner checked up online status of the technical bid of respondent No.2. The petitioner was shocked to learn that technical bid of respondent No.2 had also been accepted. According to the petitioner, no result had been communicated to it before taking a decision to open the technical bid of respondent No.2. Without considering the objections, the bid of respondent No.2 had been accepted which was otherwise non responsive. Although the date intimated for opening financial bid was 27.5.2016 but on the same day in the morning at 4.23 AM, the petitioner wrote a detailed e-mail to respondent No.1 highlighting that he had earlier issued legal notice and opposed consideration of the bid of respondent No.2 which was non responsive. This e-mail was written well before the date prescribed for opening of bid. On 27.5.2016, when the petitioner went to the office of respondent No.1, he came to know that there was mass strike of the workers of FCI on account of which nobody was allowed to enter the building at Chandigarh and consequently, the financial bid could not be opened and the petitioner came back. On the same day i.e. 27.5.2016 at 3.55 PM, despite there being a strike, the financial bid had been opened. The petitioner filed CWP No.3540 of 2016 in this court challenging the action of respondent No.1 in considering non responsive bid of

respondent No.2 as valid. On 23.2.2016, the said writ petition came up for preliminary hearing and this Court passed interim stay order restraining respondent No.1 from allotting the work to respondent No.2 vide Annexure P.8. Ultimately, the writ petition was disposed of on 29.3.2016, Annexure P.9 by granting liberty to respondent No.1 to proceed in accordance with law for allotment of tender. Thereafter, the petitioner again approached this Court through CWP No.11535 of 2016 which came up for hearing on 1.6.2016 on which date this Court noticed that the petitioner had raised several contentions to show that respondent No.2's bid was non responsive for the reason that Annexure X was not complete. This Court stayed allotting of the work contract to respondent No.2 till the representation of the petitioner was decided and for a period of three days after the decision was served on the petitioner. The matter was adjourned to 9.8.2016. In purported compliance of the aforesaid order, respondent No.1 passed the impugned order dated 9.6.2016, Annexure P.12 rejecting the contentions raised by the petitioner in the legal notice on the ground that even if Annexure X had remained unfilled, it would not render the bid of respondent No.2 to be non responsive as it was only to facilitate the confirmation of earnest money deposit from accounts branch of the Corporation. Hence the instant writ petition by the petitioner.

3. A written statement has been filed by respondent No.2 by way of a short affidavit wherein it has been inter alia stated that e-tender for the Transport Contractor was submitted in two parts, the first being technical bid and the other being financial bid. On 5.5.2016, the technical bids of all the participants were opened and respondent No.2 having fulfilled all the requisite requirements as per the terms and conditions of the NIT was found eligible by the respondent Corporation. On 27.5.2016, the respondent

Corporation declared the financial bids in which respondent No.2 had quoted the bid at 139% ASOR whereas the petitioner had quoted the bid at 171% ASOR. Respondent No.2 being the L-1 was awarded the tender and vide order dated 8.6.2016, respondent No.2 was appointed as regular Transport Contractor by the respondent Corporation. Respondent No.2 also deposited ₹ 1,27,00,000/- as security amount and furnished an irrevocable and unconditional bank guarantee for ₹ 2,54,00,000/- in favour of the respondent Corporation. The petitioner after having been declared unsuccessful in the financial bid approached this Court through CWP No.11535 of 2016 with a prayer for deciding the legal notice served by the petitioner on respondent No.1. The said writ petition came up for hearing on 1.6.2016 on which date notice of motion was issued. In pursuance to the order dated 1.6.2016, respondent No.1 passed a speaking order wherein each and every allegation of the petitioner against the technical bid submitted by the respondent No.2 was dealt with and it was found that the bid of respondent No.2 was valid. The first objection by the petitioner against the technical bid of the respondent No.2 was that in Appendix II of the tender document, respondent No. 2 had provided the details of previous employment instead of the present employment. It was stated that Appendix II required mere details of tenders in which the applicant had been employed and as respondent No.2 was not employed against any tender at the time of submission of the technical bid, he simply mentioned his previous employment. The details of the employment as required in the Appendix II of the documents were not for the purpose of calculating the experience of the applicants but were merely for the supply of general information about the applicants to respondent No.1 as is apparent from the heading of the Appendix itself. The second objection raised by the petitioner was that in

Annexure X of the tender document, respondent No.2 had not filled in the entire details regarding submission of earnest money deposit. Clause 16 of the Tender notice required the bidder to submit the EMD/tender fee by way of RTGS/NEFT/Fund Transfer. Respondent No.2 had made a bank transfer from his account to the account of the Corporation and as the transfer had been made from within the same bank, the transaction number/UTR number was not required. As respondent No.2 had made a fund transfer, he submitted the receipt of fund transfer as well as a certification letter from the Bank that the EMD amount had been duly deposited in the account of the respondent Corporation from the account of respondent No.2 which was duly traced by the respondent Corporation as the entire documentation regarding the EMD amount was attached alongwith the bidding documents submitted by respondent No.2. It was further stated that respondent No.2 had correctly submitted the entire details including the tender number wherever it was required. On these premises, prayer for dismissal of the petition was made.

4. Replication was filed by the petitioner controverting the averments made in the written statement filed by respondent No.2.

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioner submitted that in the financial bid, respondent No.2 had quoted the bid at 139% ASOR whereas the petitioner had quoted the bid at 171% ASOR. The tender of respondent No.2 was non-responsive. Appendix II had not been filled in by respondent No.2. In Clause 3 thereof, the current employment should have been mentioned and not the past. As per specimen copy of Annexure II, current business was required to be mentioned. According to clause 8(d) of general instructions to the bidders, the tender which did not comply with the

instructions was to be summarily rejected whereas as per clause 8(g), the tenders not accompanied by all the schedules/annexures intact and duly filled in and signed were to be ignored. Clause 2(5) of list of documents to be uploaded in Financial bid folder/cover also prescribed that the tenders which were not accompanied by all the schedules/annexures intact and duly filled in and signed were liable to be rejected. Learned counsel further submitted that in Annexure X, Clauses 11 and 12 had not been filled. Clause 16 of the instructions provided that bidder should submit the tender fee/EMD as specified in the tender in the form of RTGS/NEFT/Fund transfer in FCI Account. On the basis of these discrepancies, tender of respondent No.2 was liable to be rejected being non responsive. Reliance was placed on judgments in *W.B.Electricity Board vs. Patel Engineering Co. Limited and others*, (2001) 2 SCC 451, *Raj Singh vs. State of Haryana and others*, 2006(1) PLR 739 (P&H), *Agni Aero Sports Adventure Academy Pvt. Limited and another vs. Indian Institute of Tropical Meteorology and others*, 2010(4) ALL MR 506 (Bom.), *P.K.Delicacies Pvt. Limited vs. Union of India (Delhi)*, 2005(122) DLT 685 (Delhi) and *B.B.Q Construction vs. State of Bihar (Patna)*, 2014(23) RCR (Civil) 260 (Patna).

7. On the other hand, learned counsel for the respondents submitted that essential qualifications were fulfilled. The experience as required was fulfilled by respondent No.2. With regard to the UTR number, it was transfer from the same branch from the account of respondent No.2 to respondent No.1. The information with regard to clause 3 regarding the employment did not relate to eligibility. Reliance was placed on judgments of the Apex Court in *B.S.N.Joshi and Sons Limited vs. Nair Coal Services Limited and others*, (2006) 11 SCC 548 and *Jagdish Mandal vs. State of Orissa and others*, (2007) 14 SCC 517.

8. The short issue that arises for consideration in this petition is whether the action of the respondent Corporation in accepting the technical bid of respondent No.2 in pursuance of the tender notice is legal and valid.

9. Before adjudicating the controversy involved, it would be advantageous to reproduce the relevant clauses of the tender notice which read thus:-

Instructions to the Bidders to submit the bids online through the Central Public Procurement Portal for e-Procurement at <https://eprocure.gov.in/eprocure/app>

“16. Bidder should submit the Tender fee/EMD as specified in the tender in the form of RTGS/NEFT/Fund Transfer in FCI Account No.10848032058 IFSC Code:SBIN0011705 Account Name: FCI RO Punjab, Name of Branch SBI (State Bank of India) SME Branch: Sector-17, Chandigarh. The said transaction should be done from the bidders own account only otherwise the tender will be summarily rejected. Scanned copy of the proof of payment i.e. UTR number/Fund transfer challan should be uploaded as part of the proof of payment and the same information should be uploaded by filing details in Annexure ‘X’ as well.

2. List of documents to be uploaded in Financial bid folder/cover

5. The tender which are not accompanied by all the schedules annexures intact and duly filled in and signed shall be liable to be rejected.

11. The experience certificate should be signed by the authorized officer indicating the name and designation of the officer signing the experience certificate.

It should be further noted that the bidder should have executed in any one (single Financial year) of the immediate preceding five years the work of value.

a) At least 25% of the estimated value of the contract to be awarded, in one single contract.

Or

b) 50% of the estimated value for the contract to be awarded, in different contracts.

Note: The year for the purpose of experience will be taken as Financial year (1st April to 31st March) excluding the financial year in which tender enquiry is floated. Thus the experience certificate should mention the experience in financial year format.

21. The specimen copy of the Appendix I, Appendix II, Tender Submission Undertaking have been included in the NIT for facilitation of the bidders. The same may please be referred to while filing the above said documents.

Important note:

It is to be noted that only the experience of the contracts which have been successfully concluded/completed before the date of opening of Tender Enquiry(s) will only be considered. The bids submitted on the basis of Experience of the contract(s) which have not yet been concluded will be summarily rejected.
The tender shall be submitted through online only.

Specimen copy of Appendix II

3. Business in which the tenderer is employed together with particulars of the head office and branches, if any, are located.	Place/business where the contractor is currently working alongwith the address of the place/business and its head office.
---	---

General Information to Tenderers

8. **Submission of tender**

- a) The tender shall be submitted online in two parts, viz. technical bid and price bid.
- b) all supporting documents except tender document have to be scanned and uploaded in Technical bid. Price bid as per Appendix VII provided in Part B, has to be scanned, encrypted and uploaded at the requisite places in the e-Procurement

system.

c) The envelope/packet in online containing the Technical Bid shall include the following:

i) All the Annexures and Appendices of MTF duly signed on each page by the tenderer should be scanned and uploaded in e-procurement portal.

ii) Earnest money deposit details alongwith receipt if any.

iii) List of scanned copy of the documents attached as per the format in Appendix II, duly signed by the Tenderer.

* The tenderer shall quote one uniform percentage below or above the schedule of rates as per Appendix VII (Price Bid). In case separate rates are quoted for handling and transport operation, total estimated cost of both the operations for the contractual period taking into account the volume of operation is to be worked out on the basis of the tendered rates to arrive at the lowest rate.

(d) Tenders which do not comply with these instructions shall be summarily rejected.

(e) Tenders should be uploaded/submitted through e-procurement at <https://eprocure.gov.in/eprocure/app>. Manual bids/Hard copy of the tender documents will not be accepted. However, the successful tenderer will have to submit the original hard copy of MTF duly signed on each page of MTF alongwith annexures/appendices duly attested on or before the date and time stipulated by FCI, failing which the EMD furnished by the Bidder is liable to be forfeited and further that the award of contract through the letter of acceptance will be issued to the successful tenderer only after he fulfills this requirement.

XXXXXXXXXXXX

g) Tenders not accompanied by all the Schedules/Annexures intact and duly filled in and signed may be ignored.”

10. The grievance of the petitioner is against the acceptance of bid of respondent No.2 inspite of the objections raised by it. Admittedly, in the month of April 2016, the respondent Corporation invited applications from eligible transport contractors for submitting their bids for a period of two years for transportation of food grains from various points of food storage at Baghapurana Station to Rail heads Moga/Kotkapura/Ajitwal. Only two tenders were submitted in pursuance to the notice inviting tender i.e. the petitioner and respondent No.2. On 5.5.2016, technical bids of all the participants were opened. Respondent No.2 was found eligible by the respondent Corporation. On 27.5.2016, the respondent Corporation declared the financial bid in which respondent No.2 had quoted the bid at 139% ASOR whereas the petitioner had quoted the bid at 171% ASOR. Respondent No.2 was awarded the tender and vide order dated 8.6.2016, respondent No.2 was appointed as regular transport contractor who deposited ₹ 1,27,00,000/- as security amount and furnished an irrevocable and unconditional bank guarantee of ₹ 2,54,00,000/- in favour of the respondent Corporation. The first objection raised by the petitioner against the technical bid of respondent No.2 was that in the Appendix II of the tender document, respondent No.2 had provided the details of previous employment instead of the present employment. We find substance in the stand taken by respondent No.2 in the short reply that appendix II required mere details of tenders in which the applicant had been employed and as respondent No.2 was not employed against any tender at the time of submission of the technical bid, he simply mentioned his previous employment. Further, the details were not for the purpose of calculating the experience of the applicants but were for the supply of general information about the applicants to the respondent Corporation. The second objection

was that in the Annexure X of the tender document, respondent No.2 had not filled in the entire details regarding submission of earnest money deposit. Clause 16 of the Tender notice issued by the respondent Corporation required the bidder to submit the EMD/tender fee by way of RTGS/NEFT/Fund transfer. Respondent No.2 had made a bank transfer from his account to the account of the corporation and as the transfer had been made from within the same Bank, the transaction number/UTR number was not required. Respondent No.2 made a fund transfer and thus submitted the receipt of fund transfer as well as certification letter from the Bank that the EMD amount had been duly deposited in the account of the respondent Corporation from his account. The other objection was that respondent No.2 had filled in wrong tender number or had not mentioned the tender number in the tender documents. Equally, the said objection being without any substance does not make the technical bid of respondent No.2 as non-responsive. In any case, the rate quoted by respondent No.2 was lower than the petitioner. The bid of respondent No.2 was accepted by the respondent Corporation after examining his overall position and in the best interest of the Corporation. Learned counsel for the petitioner has not been able to produce any material on record to show that the action taken by the respondent Corporation in accepting the bid of respondent No.2 was illegal or erroneous, warranting interference by this court in writ jurisdiction under Articles 226/227 of the Constitution of India.

11. In all fairness, we now proceed to examine the plethora of judgments relied upon by learned counsel for the petitioner. In ***W.B.Electricity Board's*** case (supra), it was held by the Apex Court that instructions given to the bidders have to be complied with scrupulously. Relaxation or waiver of rule unless so provided would impair the fairness.

There is no quarrel with the proposition. However, in the present case, the factual position being different, the petitioner cannot take any advantage from the said decision. In ***Raj Singh's*** case, it was held by this Court that since as per latest instructions tender committee could negotiate only with lowest tenderer and not all the bidders which was admittedly done, hence the impugned decision was in violation of the tender conditions and instructions issued by the Government. Such is not the position in the present case. In ***Mukesh Kumar's*** case (supra), it was held by this court that public interest is the paramount consideration. The authority accepted the blank tender forms of one while rejecting duly filled in tenders of others. Such an action was held to be unsustainable. The situation in the present case is different. In ***Gajendra's*** case (supra), the petitioner mistakenly did not place the eligibility documents i.e. part I of tender documents in a separate envelope but placed them in the envelope of financial bid i.e. part II of the tender documents. Thus, the tender of the petitioner therein was rightly rejected. In the present case, the tender bid of respondent No.2 was accepted by the respondent Corporation. The technical objections raised by the petitioner were not held to be valid. In ***Agni Aero Sports Adventure Academy Pvt. Limited's*** case (supra), the Bombay High Court held that adherence to instructions/conditions of tender cannot be given a go by to avoid vice to discrimination/arbitrariness and favouritism. It was further held that principles applied and criteria adopted while evaluating all the bids must be one and the same. The authority cannot apply different yardstick and principles while evaluating different bids submitted by bidders. In ***P.K.Delicacies Pvt. Limited's*** case (supra), it was held by the Delhi High Court that as a general rule, tender conditions have to be strictly adhered to and authorities concerned have power to reject and not consider a tender

which is incomplete and lacking any particulars. In **B.B.Q Construction's** case (supra), it was held by the Patna High Court that the question as to whether any condition or part thereof is an essential condition or not shall have to be examined bearing in mind the object which is sought to be achieved by condition so imposed and consequences flowing from non compliance of such condition of NIT. Suffice it to notice that it is well settled that each case has to be decided on its own facts. The factual position in all these cases being different, the petitioner cannot derive any advantage from the said decisions.

12. Coming to the judgments relied upon by learned counsel for respondent No.2, it may be noticed that in **B.S.N.Joshi & Sons Limited's** case (supra), it was held by the Apex court that the legal principles operating in this field are no longer res integra but their application would depend upon facts and circumstances of each case. Tender conditions may have to be construed differently having regard to the fact situation operating in each case. No hard and fast rule can be laid down therefore. The relevant observations recorded by the Apex Court read thus:-

“66.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 with 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 the 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.

67. Law operating in the field is no longer *res integra*. The application of law, however, would depend upon the facts and circumstances of each case. It is not in dispute before us that there are only a few concerns in India who can handle such a large quantity of coal. Transportation of coal from various collieries to the thermal power stations is essential. For the said purpose, apart from transportation job, the contractor is required to see that coal of appropriate grade is supplied. The appellant herein is in business for the last 52 years. It had been taking part in contracts involving similar jobs in various parts of India. It had all along been quoting a low rate. According to it, despite the same it has been generating profits.

68. The employer concededly is not bound to accept a bid only because it is the lowest. It must take into consideration not only the viability but also the fact that the contractor would be able to discharge its contractual obligations. It must not forget the ground realities. MAHAGENCO considered all aspects of the matter while accepting the appellant's offer. In its counter affidavit, it categorically stated that the appellant would be able to perform the contractual undertaking even at such a low rate."

13. In *Jagdish Mandal's* case (supra), the Supreme Court held that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluation of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bonafide and is in public interest, courts will not interfere by exercising power of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest or to decide contractual disputes. Interference is permissible if the process adopted or decision made is malafide or intended to favour someone or the same is so arbitrary and irrational that no responsible authority acting under law could have arrived at it or it affected the public interest. The relevant observations recorded by the Supreme Court read thus:-

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features

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

- i) Whether the process adopted or decision made by the authority is malafide or intended to favour someone;

Or

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

- ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of state largesse

(allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

14. In the present case, the bid of respondent No.2 has been accepted by the respondent Corporation taking into consideration his overall position. Learned counsel for the petitioner has not been able to show that the action taken by the respondent Corporation is illegal or arbitrary warranting interference by this Court. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 06, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes