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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1352/2016**

M/S SHANKAR CONDUCTORS(P) LTD. Petitioner
Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Anuj Kumar Sharma and
Mr. Sidharth Chopra, Advocates.

versus

UNION OF INDIA & ANR Respondents
Through: Mr. Prasanta Varma, Senior CGSC with
Mr. Reshesh Mani Tripathi, CGSC for
respondent No.1.
Mr. Parag P. Tripathi, Senior Advocate
with Mr. Srinivasan Ramaswamy and
Mr. P.K. Mishra, Advocates for
respondent No.2.

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Date of Decision: 23rd February, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 5872/2016

Exemption allowed, subject to just exceptions.

W.P.(C) 1352/2016 & CM APPL. 5871/2016

1. The present writ petition has been filed seeking quashing of the marking criteria of respondent No.2 as arbitrary and discriminatory.

Petitioner further seeks quashing of respondent No.2's letter dated 25th January, 2016 whereby the petitioner's application for empanelment has been rejected on the ground that the marks scored by the petitioner are less than the specified threshold of 60 marks.

2. Mr. Kirti Uppal, learned senior counsel for the petitioner states that the impugned rejection letter dated 25th January, 2016 is non-reasoned. He submits that non-reasoned orders have been 'frowned upon' by the courts. In support of his submission, he relies upon a judgment of the Apex Court in ***Kranti Associates Private Limited v. Masood Ahmed Khan and Others, (2010) 9 SCC 496*** wherein it has been held as under:-

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing

principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

3. Mr. Uppal also emphasizes that the impugned criteria is rather flexible and open to abuse.

4. On the other hand, Mr. Tripathi, learned senior counsel for respondent No. 2 contends that the impugned order is a reasoned order. He also submits that a criteria for empanelment should normally not be interfered with by a Court of Law. He further states that as the petitioner participated in the empanelment after knowing the criteria, he is estopped from challenging the same. In support of his submission, he relies upon a judgment of the Supreme Court in **Michigan Rubber (India) Limited v. State of Karnataka and Others, (2012) 8 SCC 216** wherein it has been held as under:-

*“23. From the above decisions, the following principles emerge:
(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a*

discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and

(ii) *Whether the public interest is affected?*

If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

5. Mr. Tripathi also states that the petitioner failed to furnish the technical experience certificate from the Kerala State Electricity Board.

6. Mr. Tripathi lastly states that as the petitioner has scored less than the threshold of 60 marks, it, in any event, cannot be empanelled.

7. In the opinion of this Court, the terms of invitation to tender or empanelment are normally not open to the judicial scrutiny because the same are in the realm of contract. Further, the Government has freedom to contract. [See: ***Tata Cellular vs. Union of India, (1994) 6 SCC 651 Para 94***]. Moreover, in the present case, the petitioner has not been able to satisfy this Court that the eligibility conditions laid down by the respondents are *per se* arbitrary or unreasonable.

8. This Court is also of the opinion that the impugned order dated 25th January, 2016 is a reasoned order. In fact, the relevant portion of the impugned order is reproduced hereinbelow:-

“2.0 Pursuant to the above, you have not been considered for empanelment under the subject process as the marks scored by you is less than the specified threshold of 60 marks.”

Consequently, judgment in ***Kranti Associates Private Limited*** (supra) offers no assistance to the petitioner.

9. This Court is further of the opinion that as the petitioner has participated in the empanelment process despite knowing the eligibility criteria, it is estopped from challenging the same.

10. However, this Court is of the view that as the petitioner has not been intimated its marks in the empanelment process, respondent No. 2 is directed to intimate the petitioner's marks within a period of two weeks to the petitioner. With the aforesaid observations and directions, the present writ petition and pending application stand disposed of.

Order dasti.

FEBRUARY 23, 2016
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MANMOHAN, J

