

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 34549 of 2016

ORDER:

1) The present writ petition came to be filed questioning the action of respondent Nos.1 and 2 in declaring the consortium of respondent Nos.3 and 4, lead by respondent No.4 as successful bidders, though they failed to fulfil the eligibility criteria, as illegal, arbitrary and violative of Article 14 of the Constitution of India.

2) The petitioner claims to be a non-profit organization registered under Andhra Pradesh Societies Registration Act, 2001 and a pioneer in the filed of Emergency Medical Responses Services. At present, the petitioner is providing 108 Emergency Ambulance Services in 14 States and 2 Union Territories on non-profit basis. Respondent Nos.3 and 4, comprising the consortium, lead by respondent No.4, also claim to have par-excellence service in the said field. Respondent No.3 was established in the year 1997 and claims to be one of the largest companies in India providing indigenous integrated services with manpower of morethan 50,000, having offices in morethan 50 cities and serving morethan 600 clients, nation-wide. Respondent No.4 which is the lead member of the consortium, registered under the Companies Act in England and Wales, also claims to be the largest ambulance service provider in the private sector, providing emergency, non-emergency and specialized ambulance services like bariatric,

organ transport, secure patient transport etc. since last 8 to 9 years. It is averred that the company owns and operates more than 500 ambulances and specialized patient transport vehicles in the United Kingdom and Wales. It is further averred that respondent No.4 is associated with NHS Ambulance Trusts to provide ambulance services to NHS trusts. It is stated that respondent Nos.3 and 4 have been operating as a consortium providing services in the field of Emergency Medical/ Ambulance Services in India from the year 2003 and are operating 108 emergency medical services for the Government of Maharashtra.

3) On 27.06.2016, the Commissioner of Health and Family Welfare, Government of Andhra Pradesh, floated "Request For Proposal" (for short "RFP"), inviting the proposals/bids from eligible bidders for operation and maintenance of Emergency Response Services, for a period of three years. The scope of services under RFP would be mainly operation and maintenance of ambulance services through 108 toll free number, to identify and respond to medical emergencies through an existing fleet of 439 ambulances and to establish and operate an exclusive 24 x 7 call centre for managing and coordinating the ambulance services. The eligibility criteria, as per Section 5 of RFP, is that "the bidder should have at least 3 years of experience in operation of Pre-hospital "Emergency Response Services" with a minimum fleet supported by a control room, with a call centre set up by the entity/ bidder/ applicant. The minimum fleet should be 33% of the total fleet, required to be operationalized. The RFP further

prescribes that the bidder can be a foreign company but before signing the agreement it will have to form an Indian company registered under the Indian Companies Act, 1956. In case of consortium, the lead bidder is required to fulfill the technical eligibility criteria. The petitioner as well as the un-official respondents submitted their technical and financial bids. On 20.08.2016, the Commissioner of Health and Family Welfare, Government of Andhra Pradesh, completed the evaluation process of technical bid in the presence of all the bidders and declared both parties as technically qualified. On 22.08.2016, the financial bid evaluation was done in the presence of technically qualified bidders, wherein the un-official respondent was declared as L1. On 24.08.2016 the petitioner addressed a letter to respondent No.2, raising various issues regarding the eligibility of the un-official respondents. On 16.09.2016, the Government, after due verification, issued the letter of intent to the un-official respondents. On 28.09.2016, the writ petitioner addressed another letter to respondent No.2, informing that the lead member of consortium is not technically qualified, as it does not have enough experience, in operation of emergency response services with a call centre. The said letters refer to an e-mail dated 27.09.2016 received from the Information Governance Officer, South Central Ambulance Service (SCAS), NHS Foundation Trust, U.K., who, while replying to the query, stated that it does not operate any call centre. On 07.10.2016, an agreement was

entered into between respondent No.2 and respondent Nos.3 and 4, which lead to filing of the present writ petition.

4) By an order dated 13.10.2016, this Court passed the following interim order:

“Until further orders, there shall be interim stay of all further proceedings in pursuance of the impugned Tender vide RFP No.3463/ PPP/ 2009 including awarding of tender/ execution of the agreement with the respondent Nos.3 and 4 and their consortium by respondent Nos.1 and 2.”

5) Subsequently, vacate stay petitions came to be filed by the un-official respondents as well as the Government. With the consent of all the parties, the main writ petition is being taken up for hearing.

6) Learned counsel for the petitioner would submit that (1) the consortium did not fulfill the eligibility criteria of three years experience; (2) the consortium does not fulfill the eligibility criteria of having a control room and a call centre, used solely for pre-hospital emergency response services. (3) The call centre of respondent No.4, is an in-house call centre, having no infrastructure as required in the RFP.

7) It is urged that the e-mail dated 20.10.2016 makes it clear that the call centre owned by U.K.S.A.S, used to support its ambulances fleet dispatches and that it does not fulfill the requirement of operating emergency services. It is further urged that the consortium failed to submit the user certificate, which is

a mandatory document, for acceptance of bid under RFP. Reference is made to Section 2 clause 3.10 of RFP, which mandates that the user certificate, as per the format laid down in Appendix 'A' is to be submitted by every interested bidder. It is further urged that the consortium failed to meet minimum fleet criteria of 33%. As per Section 5 clause 1 of the eligibility criteria, the minimum fleet shall be considered as 33% of the total fleet required to be operationalised. It is further urged that in a given set of circumstances, it can be said that the tender awarded to the consortium gets vitiated by favouritism and bias, more so, when the decision making process is not transparent and violative of Article 14 of the Constitution of India. Lastly, it is urged that respondent No.2 has no authority to enter into contract since the Government Order does not enable the Commissioner of Health and Family Welfare to enter into service contract.

8) A counter came to be filed by the official and un-official respondents disputing the averments made in the affidavit filed in support of the writ petition. They placed on record, documents to show that the lead consortium satisfies the eligibility criteria as prescribed in Section 5 of the RFP. The documents filed and the averments in the counter will be discussed later.

9) Similarly, respondent No.2 also filed his counter, clarifying the typographical error which was rectified immediately and further states that the tender was awarded to the consortium only

after being satisfied that the lead consortium fulfilled all the eligibility criteria and that the same cannot be found fault with.

10) Additional affidavit came to be filed on behalf of the Government, stating that under Article 299 of the Constitution of India, the Government acting on behalf of the Governor, vide notification, may authorize a specific authority to carryout certain functions. Therefore, it is urged that the argument of the learned counsel for the petitioner that respondent No.2 is not authorized to enter into an agreement is improper and incorrect. It is further stated that the Government has also authorized the Commissioner of Health and Family Welfare to transfer the services from the existing operator to the operator selected in the tender. The learned Government Pleader would submit that an amount of Rs1.41 lakhs per month per ambulance is being charged by the petitioner which is causing huge loss to the exchequer.

11) In order to appreciate the rival arguments it would be appropriate to refer to Section 5 of RFP, which is as under:

“Section-5 –Eligibility Criteria

1. The bidder can be a Company (Bidding Company) or a Registered Society or a Partnership firm (Registered) or a Consortium of Companies (Bidding Consortium) with one of the Companies acting as the Lead Member of the Bidding Consortium. A foreign company can also participate on standalone basis or as a member of consortium at RFP stage. But before signing the agreement it will have to form an Indian Company registered under the Companies Act, 1956. However, in case of consortium there the lead

bidder shall be required to fulfill all technical eligibility criteria.

2. Bidder should have at least 3 years of experience in the operation of Pre-Hospital "Emergency Response Services" with a minimum fleet supported by a control room, with a call centre set up by the entity/bidder/applicant. The minimum fleet would be considered as 33% of the total fleet required to be operationalized.
3. The bidder (s) must have turnover not less than Rs.18.00 Core for each of the last three years. (this amounts to approximate monthly cost per ambulance X estimated desirable minimum fleet quantity X 12 months.
4. The bidder should not be presently blacklisted by the any government agencies/local bodies.
5. In case of consortium, the lead member shall be legally responsible and shall represent all consortium members, if any, in all legal matters."

12) One of the main grounds urged by the learned counsel for the petitioner is that the consortium does not fulfill the eligibility criteria of three years experience in the said field.

13) As per Section 5 of RFP, the bidder should have atleast 3 years experience in the operation of pre-hospital emergency response services. It is the case of the petitioner, that the respondent No.3 started its services in the field of emergency medical ambulance services only in the month of January, 2014 and as such the consortium lead by respondent No.4 is not technically qualified to the bid.

14) It is to be noted here that technical eligibility was declared by respondent No.2 on 20.08.2016 and financial eligibility on

22.08.2016. The petitioner herein was present on both the occasions, but did not raise any objection as to the eligibility of the consortium till 24.08.2016, on which date he sent a letter to respondent No.2 questioning the eligibility of the consortium of respondent No.4. Be that as it may, as per Section 5 of the RFP, in case of consortium, the lead bidder shall be required to fulfill all the technical eligibility criteria.

15) It has been averred in the counter affidavit, that respondent No.4, who is a lead member of the consortium, is said to be a leading emergency ambulance services provided with 500 ambulances and specialized patient care services equipped with free emergency hospital responses services supported by call centre.

16) The letter dated 24.02.2013 issued by SCAS, NHS foundation Trust show that UK-SAS is providing fully equipped and staffed pre-hospital ambulances to SCAS NHS Foundation Trust for several years and have completed a successful tendering process in 2013, under the new framework agreement. The letter further discloses that SCAS utilises over 150 ambulances and 60 rapid response vehicles from UKSAS, which is supported with a call centre having computer telephony integration and ability to log calls with GISbased GPRS integrated vehicle monitoring system.

17) Apart from these documents, learned counsel also relied upon the letter dated 29.03.2013, to show that the consortium

was awarded the contract even in Maharashtra where similar such condition exists in the tender process.

18) The e-mail dated 20.09.2016 which is sought to be relied upon by the learned counsel for the petitioner to show that respondent No.4 has no experience and has no call centre, does not in my view support the case of the petitioner. A reading of the said e-mail would show that the consortium is serving SCAS-NHS Foundation Trust, Department of Health, Government of U.K. The same is bereft of details with regard to number of ambulances, manpower and duration of contract. Therefore, this document by itself may not be of any help to show that respondent No.4 is not having enough experience.

19) The counsel for the petitioner also relied upon the minutes of the proceedings dated 20.08.2016 at 2.00 p.m. to show that respondent No.3 alone was declared as qualified at the technical evaluation which is illegal and improper. But it is to be noted here that initial declaration that respondent No.3, as technically qualified appears to be a typographical error for the reason that the bid itself was submitted by consortium of respondent Nos.3 and 4, pursuant to the M.O.U. dated 10.08.2016. Appendix-B Form submitted by the consortium along with the bid document show the participation of the consortium with respondent No.4, as a lead member of the consortium. The technical evaluation report also shows that the same was submitted by the consortium.

20) Further, respondent Nos.1 and 2 in their counter stated that the declaration of respondent No.3 as technically qualified as L1 is a typographical error. Even in the State of Maharashtra and Delhi, respondent Nos.3 and 4 are operating 108 ambulance services, in which the petitioner participated and lost to the consortium. For the reasons stated above, it cannot be said that the lead consortium has failed to fulfill the eligibility criteria of three years experience.

21) The second ground urged by the learned counsel for the petitioner is that the consortium failed to fulfill the eligibility criteria of having a control room with call centre, used solely for pre-hospital emergency response services.

22) It is urged that respondent No.4 has a call centre, with a phone number of 0332 407 407, which does not pertain to pre-hospital emergency response services. According to him, pre-hospital emergency response services are owned by SCAS, whose phone number is 999. It is urged that respondent No.4 has experience of only providing ambulance services and not of providing pre-hospital emergency response services supported by a control room and call centre, as required under RFP. Learned counsel for the petitioner placed reliance on the reply dated 20.09.2016, which states that respondent No.4 does not provide call centre services. Therefore, it is urged that if the services provided by the writ petitioner is compared with that of the call centre services provided by the lead consortium, respondent Nos.3

and 4 no where stand in the picture and as such the said ground alone is sufficient to reject their technical evaluation.

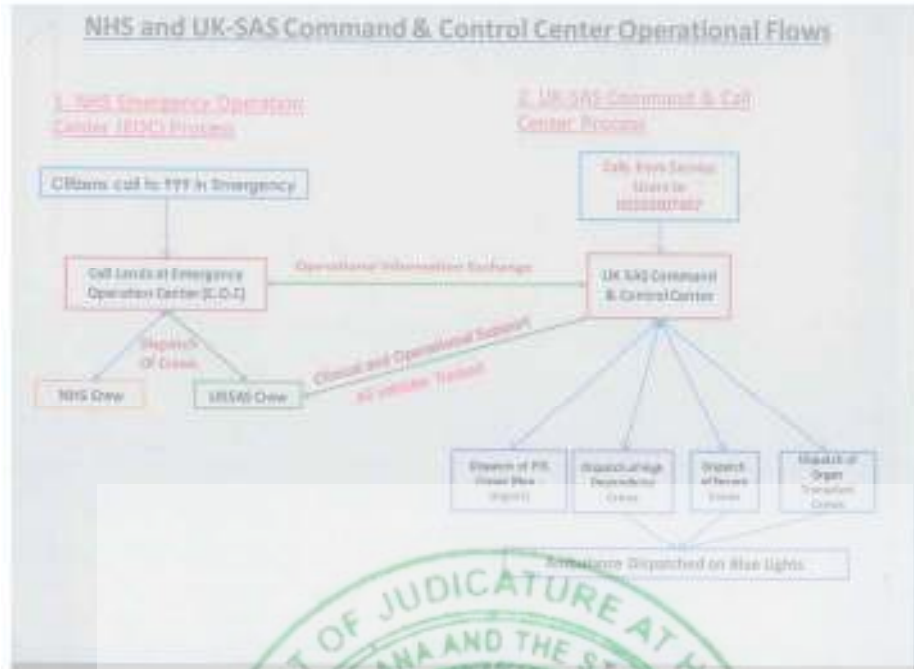
23) At first blush, the said document appeared to be in favour of the petitioner, but a close perusal of the same proved to be otherwise. If the said document is read with other documents, it is clear that while referring to the letter as to whether NHS & SCAS Trust Department uses the call centre services of respondent No.4, it was answered as “No”. Thus answer in my view does not support the plea of the petitioner. (answered later).

24) Sri D.V.Seetha Rammurthy, learned Senior Counsel took me through the number of documents, including the flow chart relied upon by the respondents to show the time taken to provide an ambulance service. The same is strongly refuted by Sri S.Niranjan Reddy, learned Senior Counsel appearing for un-official respondents. He submits that respondent No.4 has a call centre and the action taken by them to serve distress caller is more quicker than the petitioner.

25) The letter dated 04.10.2016 written by respondent No.4 to respondent No.2 (after tender process) show that the respondent No.4 operate a call centre in U.K. He enclosed a letter indicating the total call volume of the call centre data from 2013 to the said date. The letter also discloses that one will not able to view the caller Identity numbers as they are not entitled to allow this due to Data Protection Act. It is stated that the call centre has a capacity of seven agents and is manned 24 X 7. The letter also

indicate that the calls were supported by live track on all the vehicles providing real time GPS locations, with the functionality of a street by street or minute by minute progression, and an array of alarms including over speed and use of audible and visual warnings. In fact a letter dated 14.09.2016 also indicates the same.

26) As per the material and the flow chart, if a caller in distress makes a call to the call centre of respondent No.4 directly (0332407407), it dispatches ambulances, equipped with pre-hospital emergency services like oxygen tanks, medical equipment, para-medics and doctor within 15 to 20 seconds after receiving the call. If the call log details, annexed to the letter referred to above are seen, it would indicate the time taken for dispatch of each ambulance. When the caller in distress calls NHS-SCAS Trust on 999, the trust in turn contacts the call center of respondent No.4 for dispatch of its ambulance fleet. This ambulance, will be in constant touch with the call centre of respondent No.4, for various support services during transfer of the patient from the site of distress to the hospital. Therefore, it cannot be said that respondent No.4 has no call centre equipped with pre-hospital emergency services or that the ambulance fleet of respondent No.4 is not supported by hospital emergency services. The operation of ambulance services is displayed on the form of a flow chart, which is as under:



27) As seen earlier, the NHS & SCAS Trust Department does not use the call centre services of respondent No.4 and hence the word “No” was mentioned against question No.3, in the mail sent to the petitioner under freedom of information. Therefore, the argument of the learned counsel for the petitioner that respondent No.4 is not having call centre with the required infrastructure cannot be accepted since the material placed on record do not establish the same beyond doubt.

28) The third ground urged by the learned counsel for the petitioner is that consortium of respondent Nos.3 and 4 failed to submit a user certificate, which is a mandatory document for the acceptance of a bbid under RFP. According to him, Section 2 clause 3.10 of RFP mandates that the user certificate as per the format laid down in Section 7 Appendix-A is to be submitted by every interested bidder, which is a condition precedent for

accepting the bid. Relying upon the letters dated 24.02.2015 and e-mail dated 26.10.2016 issued by SCAS NHS Foundation trust in favour of UKSAS, it is said that SCAS does not avail the call centre services of UKSAS and hence cannot certify the call centre services of UKSAS as emergency call centre services.

29) Insofar as user certificate is concerned, learned counsel for the petitioner submits that the letter of SCAS, NHS Foundation Trust issued in favour of UKSAS are vague and not specific which do not satisfy the requirement of Section 2 clause 3.10, since the user certificate is required to be submitted by the bidder and only a user can issue the said certificate. Since SCAS is not the user of the call centre and has taken call centre services as emergency call centre services, the letter issued by SCAS is not valid.

30) Insofar as this aspect is concerned, it is to be noted here that there are no pleadings in the affidavit with regard to improper submission of user certificate. Since there are no pleadings in the affidavit, the learned counsel for the un-official respondents states that though respondent Nos.3 and 4 have submitted the valid user certificate in the format required under RFP, but could not file the same along with the counter. It is to be noted that the affidavit filed in support of the writ petition is silent on this aspect and therefore, the counters filed by respondents are also silent on the submission of the user certificate. The said argument came to be advanced during the

course of arguments, basing on the letters submitted along with the writ petition and the counter.

31) It is to be noted here that the letter dated 24.02.2015 issued by SCAS, NHS Foundation trust, clearly shows that the Lead Manager, is not only having ambulance services and rapid response vehicles, but is supported with a call centre with all the equipments to track the vehicle. The said certificate itself is sufficient to show that the un-official respondents have complied with the condition of submitting user certificate issued by the user to the bidder.

32) The fourth ground urged by the learned counsel for the petitioner is that respondent Nos.3 and 4 failed to meet the minimum fleet criteria of 33%. The Appendix-B format submitted by the consortium records the number of ambulances operated by respondent No.4. The details indicate that during the year 2012-2013, they have operated 300 ambulances, in the year 2013-2014 operated 350 ambulances and like wise in the year 2014-2015 they have operated 450 ambulances. Adopting random calculation learned counsel for the petitioner tried to urge that respondents do not satisfy the said requirements.

33) It is to be noted here that as per the judgment of the Apex Court in *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and another*¹, in tender matters, the owner or the employer of the project, being the author of the document

¹ (2016) SCC Online SC 940

is the best person to understand and appreciate its requirements and interpret its documents. It would be apt to refer the relevant paragraphs of said judgment, which are as under:

12. Recently, in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)*² it was held by this Court, relying on a host of decisions that the decision making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

14. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision.

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16. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender

² (2016) 8 SCALE 99

documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”

34) Since respondent Nos.1 and 2 were satisfied with the material supplied along with the tender document and as the documents placed do indicate that respondent No.4 was having not only ambulance services but also call centre with pre-medical emergency services, accepted the tender which cannot be said to be arbitrary or a mala fide action on the part of respondent Nos.1 and 2.

35) The scope of judicial review in tender matters came up for consideration before this Court and also before the Apex Court in various judgments.

36) In *Sahakar Global Limited Mumbai v. Hyderabad Metropolitan Development Authority, Secunderabad and others*³ a learned Single Judge of this Court held as under:

“12. Before examining the contentions, urged by Counsel on either side on merits, it is useful to briefly take note of the scope of judicial review in evaluation of tenders and in award of contracts. The actions of the State are amenable to judicial review only to the extent that they must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State or its instrumentalities act reasonably, fairly and in public interest in awarding the

³ (2015) 4 ALD 345

contract, interference by the Court is limited. (M/s. Michigan Rubber (I) Ltd., v. State of Karnataka⁴)

The limited question that has to be considered, in a writ petition filed by the unsuccessful tenderer, is whether the authority had acted unreasonably in taking the decision to reject the tender. Before interfering in tender or contractual matters, in the exercise of its power of judicial review, the Court should pose to itself the following question:

(1) Whether the process adopted or decision made by the authority is *mala fide* or is intended to favour someone or the process adopted or the 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 the relevant law could have reached'; and (2) Whether public interest is affected. If the answers are in the negative, there should be no interference in proceedings under Article 226 of the Constitution of India. (Jagdish Mandal v. State of Orissa⁵, Master Marine Services (P) Ltd., v. Metcalfe and Hodgkinson (P) Ltd.⁶, Himachal Pradesh Housing and Urban Development Authority v. Universal Estate⁷, and Tejas Constructions & Infrastructure (P) Ltd., v. Municipal Council, Sendhwa⁸). In the absence of allegations of *mala fides* in their conduct, in refusing to accept the best offer, the Court must proceed on the footing that the State or its instrumentalities have acted *bona fide*. (Star Enterprises v. C.I.D.C. of Maharashtra Ltd.⁹)

14. There is inherent limitations in the exercise of judicial review of contractual powers as the Government must have the freedom of contract and a free-play in the joints. The duty to act fairly will vary in extent, depending upon the nature of cases to which the said principle is sought to be

⁴ Civil Appeal No.5898 of 2012

⁵ (2007) 14 SCC 517

⁶ (2005) 6 SCC 138

⁷ (2010) 14 SCC 253

⁸ (2012) 6 SCC 464

⁹ (1990) 3 SCC 280

applied. The State has the right to refuse the lowest or any other tender, provided it tries to get the best person or the best quotation, and the power to choose has not been exercised for collateral purposes or in infringement of Article 14. (*Tata Cellular v. Union of India and Tejas Constructions and Infrastructure (P) Ltd.* case (9 supra).

This Court must ever remain conscious that, while exercising its jurisdiction under Article 226 of the Constitution of India, it does not sit in appeal over the decision of the competent authority in rejecting the petitioner's tender. The power of judicial review, in respect of contracts entered into on behalf of the State, primarily involves examination of the question whether there was any infirmity in the decision-making process and, if such process was reasonable, rational and non-arbitrary, the Court would not interfere with the decision. (*Sterling Computers Ltd.*¹⁰; *Tejas Constructions & Infrastructure (P) Ltd.*(9 supra). In the matter of formulating conditions of a tender document, and in 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, interference by Courts is not warranted. (*M/s. Michigan Rubber (I) Ltd.*(4 supra) . If a reasonable procedure has been followed, the decision should not be challenged except on the *Wednesbury* principle of unreasonableness (*Delhi Science Forum. v. Union of India*¹¹) and, unless the decision is so unreasonable that no sensible person would have arrived at such a decision, it should not be upset. (*New Horizons Limited and Anr. v. Union of India*¹²).

15. Commercial transactions, of a complex nature, involve balancing and weighing of all relevant factors and a final decision is taken on an overall view of the transaction. (*Air India Ltd. V. Cochin International Airport Ltd.*¹³). When the

¹⁰ AIR 1996 SC 51

¹¹ (1996) 2 SCC 405

¹² (1995) 1 SCC 478

¹³ (2000) 1 SCR 505

power of judicial review is invoked, in matters relating to tenders or award of contracts, certain special features should be borne in mind. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. The limited scope of judicial review by the High Court envisages examination of the question whether there is any material irregularity in the decision making process or whether the decision to reject the tender is irrational, unreasonable or arbitrary. If the decision relating to the award of contract is bonafide and in public interest, Courts will not 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 invoked to protect private interest at the cost of public interest or to decide contractual disputes.

17. While examining and scrutinising the decision making process, the facts of a given case may be needed to be appreciated as, otherwise, the decision cannot be tested on grounds of illegality, irrationality or procedural impropriety. To the limited extent, of scrutinising the decision making process, it is open to the Court to review the facts evaluated by the decision maker. (*State of A.P. v. Johri Mal*¹⁴); *Noble Resources Ltd. Vs. State of Orissa*¹⁵). In examining the rival contentions on merits, it is necessary for this Court to refer to the tender conditions, and to the construction placed thereon by the Evaluation Committee. Bearing these aspects in mind, let us now examine the contentions urged by Counsel on either side.”

37) In *Montecarlo Limited v. National Thermal Power Corporation Limited*¹⁶, after referring to the judgments of the Apex Court in *Sterling Computers Limited* (11 supra), *Tata Cellular* (10 supra), *Jagdish Mandal v. State of Orissa and others* (5 supra)

¹⁴ (2004) 4 SCC 714

¹⁵ (2006) 10 SCC 236

¹⁶ (2016) 15 SCC 272

and Michigan Rubber (India) Ltd. (4 supra), the Apex Court held as under:

“Exercise of power of judicial review would be called for if the approach is arbitrary or malafide or procedure adopted is meant to favour one. The decision making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.”

38) Though the learned counsel for the petitioner tried to state that the tender has been processed in favour of respondent Nos.3 and 4 with a *mala fide* intention and to favour them, but no material has been placed to substantiate the same. On the other hand, it is urged that awarding tender due to non-compliance of the conditions itself is sufficient to show that the decision making process was a biased one, which I am not willing to accept as the discussion and observations made clearly show that respondent Nos.3 and 4 satisfied the requirement of RFP. Hence, it can be said that the tender came to be awarded in favour of un-official respondents only after perusing the entire material and on being satisfied that they fulfilled all the requirements.

39) At this stage, the Government Pleader would submit that they have no interest on any of the parties and the tender came to be awarded to the person, who has fulfilled the requirements. He only pleaded for an early decision of the case, so that the needy would not suffer. He submitted across the bar that the rates which are being paid to the petitioner is far more higher than what has been quoted by un-official respondents and if the decision is taken earlier, the loss, which is being caused to the Government can be restricted, as the writ petitioner is continuing with the services pursuant to the interim order passed by this Court.

40) The record discloses that the price quoted by respondent No.3 for each ambulance is Rs.1,30,001.00 per annum, where as the petitioner quoted Rs.1,32,669/- per ambulance per year. If the total number of ambulances on road per day is taken as 439, as required under RFP, and if the period of three years is taken into consideration, the loss caused to the government would be about Rs.4,21,00,000/- . Since the decision making process by the authorities does not indicate showing favouritism on any particular party, the process adopted cannot be said to be irrational or arbitrary or illegal.

41) The last straw in the argument was with regard to non-compliance of G.O.Rt.No.148, dated 27.04.2016. It is stated that the said G.O. does not authorize respondent No.2 to enter into any agreement with the successful bidder. Reliance is sought to

be placed on the judgment of a learned Single Judge of this Court in W.P.No.13092 of 2016 to show that respondent No.2 is not authorized to enter into service agreement and to take consequential proceedings.

42) Insofar as this aspect is concerned, it is to be noted that a reading of G.O.Rt.No.148, dated 27.04.2016 would show that the Government constituted a committee consisting of Commissioner of Health and Family Welfare and others to prepare RFP document, calling for tenders, identification of service provider and transactions from the existing operator to the operator who is selected, as per the tender process. Para No.4 of the said G.O. clearly gives power to the Commissioner of Health and Family Welfare to take necessary steps accordingly. Though it does not specifically say that he can enter into agreement but it gives power to proceed with the follow up action. Hence, I see no illegality in respondent No.2 entering into an agreement with respondent Nos.3 and 4.

43) For the aforesaid reasons, I see no merits in the writ petition and accordingly, the Writ Petition is dismissed.

44) There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.08.2017
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