

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

Reserved on: 12.07.2017
Pronounced on: 21.07.2017

+ **W.P.(C) 4443/2017, C.M. APPL.19406/2017, 19407/2017 & 23437/2017**

PRENIT WORLD LLP

.....Petitioner

Through: Sh. Sandeep Sethi, Sr. Advocate with Sh. Arav Kapoor and Sh. Divyadeep Chaturvedi, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through : Sh. Jitendra. K. Tripathi, Central Govt. Pleader with Sh. Vipul Agrawal and Sh. Anshuman. S. Nayak, Advocates, for UOI.

Sh. Ratan Kumar Singh, Sh. S. Abhishek Iyer, Ms. Saumya Priyadarshan, Sh. Gaurav Lavania and Sh. Aishwarya Kumar Tiwari, Advocates, for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioner is aggrieved by the rejection of its bid by the second respondent, a public sector agency of Union of India, for supply, installation, operation and trial running of 114 Modular Operation Theatres (MOTs) in 17 specified medical colleges/institutions getting upgraded to super

specialties under PMSSY Phase-III (hereafter “NIT”). A declaration is also sought that the petitioner’s bid ought to be declared compliant with the conditions contained in the NIT.

2. The petitioner, a Limited Liability Partnership, is engaged in the business of modular operation theatres, medical gas pipelines systems, medical equipment etc. The second respondent (hereafter “HLL Infra”) is a subsidiary of HLL Lifecare Ltd, a Central Government enterprise. The NIT by Tender Enquiry published on 25.03.2017 by HLL Infra, invited sealed tenders from eligible and qualified tenderers for supply, installation, commission and trial running of Modular Operation Theatre (MOT) in certain specified medical colleges/institutions getting upgraded to super-specialties under PMSSY Phase-III. The closing date and time for submission of the said Tender through E-Portal was 26.04.2017 at 06.00 PM and closing date and time for submission of the Tender Processing Fee and Earnest Money Deposit in physical form was 27.04.2017 at 02.00 PM. The tender enquiry underwent three amendments, on 06.04.2017, 12.04.2017 and 20.04.2017. The petitioner lodged its bid on 26.04.2017.

3. The petitioner received a letter dated 01.05.2017 from the Vice-President, Bio Medical, HLL Infra seeking certain clarifications for which the deadline given was 04.05.2017 up to 05.00 PM. The petitioner states that it duly submitted the said clarifications, to the complete satisfaction of HLL Infra on 04.05.2017, within the prescribed time limit. The petitioner received a second request for technical clarifications from one Mr. Prabhakar, representative of HLL Infra, by telephone on 06.05.2017 whereby its representative was asked to submit the said clarifications by 08.05.2017. It is

stated that the necessary clarifications were submitted on 08.05.2017. One of the clarifications related to the authorization of M/s. Heal Force Bio Meditech Holdings Ltd (hereafter “Heal Force”). The petitioner says that it advised Heal Force to send clarifications directly to HLL Infra with regard to the capacity and authorization of Mr. Bill Shum to sign the aforesaid certificates on behalf of the concerned group companies.

4. Mr. Bill Shum, authorized signatory of the manufacturer company, sent an e-mail to HLL Infra, wherein all the necessary documents and certificates as sought by the latter were attached. HLL Infra then sent a communication by e-mail to Mr. Bill Shum seeking a confirmation with regard to his capacity and authorization to sign the Certificates and declarations submitted by the petitioner. In response, Mr. Bill Shum sent a copy to HLL Infra of the Corporate Board Resolution of Heal Force authorizing him to sign on behalf of all the stated subsidiary companies of the said principal company. A third request for clarifications by e-mail dated 09.05.2017 (from HLL Infra Tech Services Project Team) was received, requiring the petitioner to submit certain details of its manufacturing facility. The petitioner contends that significantly, no further query with respect to authorization of the signatory, i.e. Mr. Shum was sought this time. The petitioner replied to this communication the same day, i.e. 09.05.2017, despite the stringent deadline given by HLL Infra in this regard.

5. On 10.05.2017, HLL Infra uploaded result of the technical evaluation of the tenders filed; the petitioner’s bid was rejected. The petitioner mentioned about its effort to have the matter rectified, through representation and its meeting with the CEO of HLL Infra on 11.05.2017, but without any

success.

6. The petitioner argues that only three bidders qualified in the technical bid, i.e. PES Installations Pvt. Ltd., MOD Medical Systems Pvt. Ltd. and Medical Products Services. It is stated that the acceptance of these parties' bids is unfair, because all of them were indicted for bid rigging by the Competition Commission of India, by an order dated 16.04.2012 in Case No. 43/2010.

7. Mr. Divyadeep Chaturvedi, learned counsel, argues that the rejection of the petitioner's bid, on one hand, and clearance of the technical bids of parties who were indicted for wrongdoing in the past, for the same supplies, clearly demonstrates non-application of mind, and lack of *bona fides*. Counsel further submits that each of the grounds on which the petitioner's bid was rejected, is untenable.

8. Learned counsel also argues that the first ground of rejection of tender was alleged failure to provide the manufacturer's undertaking in respect of all components of wall and ceiling system from the same manufacturer. The petitioner submits that the manufacturer concerned, i.e. Universal Metaltek, in fact did furnish an undertaking, through a letter directly to HLL Infra, which stated, *inter alia*, as follows:

"Dear Sir,

We, a manufacturer, exporter, supplier of various items for wall and ceiling systems, hereby confirm to supply all items of wall & ceiling system as per specification of said tender. The panels are available in various sizes and can be customized to requirement. The wall panels will be made of SMS (solid mineral surface) on the front face. The entire panel will be

antimicrobial, dense and non-porous. These panels can be cleaned with hospital disinfectant, water etc. and can be individually dismountable.”

9. A similar letter was sent once again, directly in response to the second query made by HLL Infra. Learned counsel submitted that HLL Infra, rejected these letters, in an utterly frivolous and perverse manner, resulting in arbitrariness. It was next submitted that the second ground for rejection was the alleged non-compliance with tender standards in respect of Anaesthetic and surgeon dual arm pendant system. HLL Infra was of the view that the petitioner's offer was in respect of equipment that had a 1600mm surgeon's arm in place of "1800mm +/-10%" stipulated in the NIT. Learned counsel for the petitioner relied upon the clarification given, in response to HLL Infra's query, i.e. *"that each arm of the pendant is of 820mm. Hence total coverage will be $820 \times 2 = 1640\text{mm}$ which is within Tender Specification ($1800\text{mm} \pm 10\% = 1620\text{mm}$)"*. Learned counsel submitted that in view of the clarification given, there could be no doubt that the equipment offered by the petitioner, i.e. a pendant surgeon arm, was of the required specification, as it had a coverage of 1640 mm, which was more than the lower end (1620 mm) indicated in the NIT. The rejection of the petitioner's bid, submitted learned counsel, was therefore illegal and arbitrary.

10. Dealing next with the other two grounds of rejection, i.e. not providing a valid European CE with 4 digit notified body number or USFDA not being submitted for Anesthetic & Surgeon Pendants, and similar inability to provide valid European CE or USFDA for OT Light, it was argued by Mr.

Chaturvedi that European Certificate with 4 digit notified body number was duly submitted by the petitioner in the original tender bid under the category of USFDA/CE certificates of manufacturers. Thereafter, a frivolous clarification was sought in the first clarification request dated 01.05.2017 again asking the petitioner to submit the aforesaid document. In response to the same, the said document mentioned above was again attached with the response, dated 04.05.2017. Again in response to the telephonic clarification sought by HLL Infra in this regard, the petitioner gave a clear explanation with regard to the CE certificates. Moreover, even the General Manager of Heal Force International Trading (Shanghai) Ltd., Shanghai Lonyee Co. Ltd. and Shanghai Fuhong Science and Technology Development Co. Ltd sent a clarification in this regard as required by the HLL Infra. It is argued that being satisfied with the responses provided, no further clarification in this respect was sought in the third clarification request. Thus, the third ground of rejection clearly showed the respondents' *mala fide*.

11. The fourth ground of rejection was the lack of valid European Certificate/declaration (in terms of CE guidelines) for OT Light. It is submitted that this was duly furnished by the petitioner in the original tender bid under the category of USFDA/CE certificates of manufacturers. Thereafter, a clarification was sought in the first clarification request dated 01.05.2017 asking the petitioner to submit valid CE certificate for the offered Light. In response to the same, the petitioner submitted the valid CE certificate/declaration and the valid ISO 13485 certificate with the response dated 04.05.2017. The petitioner submits that all these documents were already submitted in the original tender bid under the category USFDA/CE

certifications. Again in response to the telephonic clarification sought by HLL Infra in this regard, the petitioner gave a clear explanation with regard to the CE certificates. Furthermore, even the General Manager of Heal Force International Trading (Shanghai) Ltd., Shanghai Lonyee Co. Ltd. and Shanghai Fuhong Science and Technology Development Co. Ltd sent a clarification in this regard as required by HLL Infra. It is argued that the latter was clearly satisfied with the responses provided, since no further clarification in this respect were sought in the third clarification request. Thus, the ground for rejection cited was clearly arbitrary.

12. Reliance is placed on the judgment of the Supreme Court in *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh*, (2011) 5 SCC 29, which highlighted that State action in regard to contracts and award of tender must be founded on reasons:

“Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a nondiscriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. *We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications*

made by individuals, bodies, organisations or institutions de-hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution."

13. HLL Infra, in its counter affidavit, and during its submissions made through counsel, Mr. Rattan Singh, argues that five bidders had participated in the tender process out of which two including the petitioner were rejected, as technically non-responsive. Financial bids of the three technically responsive bidders were opened on 11.05.2017 and were under consideration on the date of filing of the writ petition. The allegation that HLL Infra favoured the three successful bidders which were penalized by the Competition Commission of India (CCI) for bid-rigging by an order dated 16.04.2012 is denied. It is stated that the petitioner concealed the fact, that after the CCI order, some government organizations started a practice of debarring parties who had earlier been penalized by CCI. The respondents, however, realized that in India, there were only 5-6 major vendors in the business of supply and installation of MOTs and, therefore, debarring 3 of them might lead to no responsiveness/single responsiveness bid situations. As a result, the Central Government, issued a notification dated 28.02.2014 and prescribed that the practice of debarring, based on penalty imposed by CCI should not be adopted, with a view to promote competition and to

protect the interest of citizens of India. It is pointed out that there is no allegation of bid rigging on the part of three qualified bidders with respect to the present tender. HLL further states that the petitioner also concealed that the CCI's order was appealed against before Competition Appellate Tribunal (COMPAT) and later before the Supreme Court. The Supreme Court by an order dated 24.04.2014 in Civil Appeal No.7823 of 2013, noticed that the COMPAT's order did not mention any restraint on penalized parties against participation in other tenders.

14. On the first ground of rejection of petitioner's tender, HLL cites clause 1 of Section VII-Technical Specifications of the Tender Enquiry Document as amended by Amendment No. 1 dated 06.04.2017:

"All components of wall and ceiling system should be from the same manufacturer for the following-

- 1. Subframe/ Structure*
- 2. Wall Panels*
- 3. Angular Wall Corners*
- 4. Sealing Material*
- 5. Ceiling Panels"*

15. This condition, to procure all components of wall and ceiling system from the same manufacturer was added to the tender specifications to ensure compatibility, smooth change of defective components and to assure quality of only reputed makes. It is submitted that it could not be ascertained from the petitioner's bid, if it had complied with this condition. HLL Infra, therefore, sought clarification, dated 01.05.2017 - *"Clarification required for undertaking from manufacturer for all items from same manufacturer"*. In

response to this clarification sought, the petitioner submitted an undertaking by M/s. Universal Metal Tek stating the following:

"we, a manufacturer, exporter, supplier of various items for wall and ceiling systems, hereby confirm to supply all items of wall and ceiling systems as per specifications of the tender"

16. HLL submits that this undertaking- submitted by the petitioner, is evasive as it did not state that the same manufacturer (listed in the Tender Enquiry Document) manufactured all items. When the second clarification in this regard was sought from the petitioner, instead of correcting its mistake, it again sent the same evasive undertaking without making any amends. HLL Infra asserts that it was well within its rights under clause 28 of Section II- General Instructions to Tenderers (GIT) of the Tender Enquiry Document to ignore the petitioner's tender as the response given by the latter was evasive, despite seeking clarifications twice.

17. As to the next product, i.e. the double arm surgeon's pendant, HLL Infra relies on the specification: *"Double moveable arms (any combination) with total coverage of 1800mm +/- 10% and 330 deg. Horizontal movements for each arm. Vertical movement should be motorized and the arm height should remain to height greater than 6 feet above floor level."* HLL Infra urges that since the coverage provided by the petitioner's equipment in its bid was unclear from its documents, a clarification was sought on 01.05.2017, to the following effect:

"Clarification needed for availability of total coverage of 1800mm +/-10% and 330Deg with supporting document/datasheet."

18. According to HLL Infra, the petitioner submitted a catalogue showing

dual arm system with total coverage of either 1200 mm, 1400 mm or 1600mm. The maximum deviation permissible as per the tender specifications is from 1620mm to 1980mm (1800mm+/-10%). It is stated in HLL's counter affidavit that petitioner could supply a surgeon pendent arm that was 1600mm, which was 20 mm short of the least permissible coverage as per Tender specifications. It argues that despite this, instead of rejecting the petitioner's bid on this ground, HLL gave a further opportunity to the petitioner to clarify its position with respect to this discrepancy between the tender specification and their bid by telephonically seeking another clarification, dated 06.05.2017. In response to this clarification, the response submitted was that *"each arm of the Pendant is of 820mm. Hence total coverage will be $820 \times 2 = 1640\text{mm}$ which is within Tender Specification ($1800\text{mm} + /-10\% = 1620\text{mm}$)"*. Learned counsel submits that the task of considering whether the article offered in answer to the NIT was compliant with the specifications, was carried out fairly; since the petitioner's final clarification showed that two single arms were sought to be put together, to say that the minimum standard was fulfilled, HLL Infra was of the opinion that the space taken to create the joint (i.e. the overlap of the two arms) was such that the final double arm pendant's length was still less than 1620 mm. This assessment was done in a fair and objective manner, therefore, not calling for any interference.

19. With respect to the specifications of the Tender Enquiry Document as regards the CE Certificate, it is pointed out that the document showed the manufacturer as Heal Force. However, the CE Certificate submitted by the petitioner was issued by Shanghai Lonyee Co. Ltd, and not by Heal Force as

mentioned in the technical compliance sheet. HLL Infra, therefore, sought a clarification on 01.05.2017 from the petitioner to either submit a valid European CE with 4 digit notified body number or USFDA certificate for the offered model. In response to this clarification, the petitioner again submitted the same CE Certificate. The petitioner was nevertheless given a further opportunity to clarify its stand. In response, the petitioner submitted EC Certificate, ISO 13485:2003 and ISO 9001:2008 Certificate in the name Shanghai Lonyee Co., Ltd. The petitioner also submitted a Relationship Certificate on the letterhead of Heal Force where the two companies' names were mentioned. HLL Infra submits that the petitioner's documents were not clear; the instructions were unambiguous in that, the manufacturer's CE certificate or equivalent had to be furnished, none else. Since these conditions were not complied with, the bid required rejection.

20. It is stated that as with the surgeon's pendent arm, the CE certificate with respect to OT light systems clearly stated as follows:

"Surgical Light System should be European CE/USFDA certified and certificate should be submitted for offered model."

The petitioner submitted its Technical Compliance Sheet mentioning that the OT Lights to be supplied were manufactured by Heal Force. However, the petitioner submitted CE Certificate issued by Shanghai Fuhong Science Technology Development Co Ltd and Heal Force International Trading (Shanghai) Ltd and not in the name of Heal Force as mentioned in the technical compliance sheet.

21. Before discussing the merits and soundness of the rejection of the petitioner's bid, it would be useful to recapitulate the parameters of judicial

review of tender conditions and decisions awarding contracts, (pursuant to public advertisements) to private parties, by public or state agencies. The law in this regard was reviewed in *Michigan Rubber (India) Limited Vs. State of Karnataka & Others* (2012) 8 SCC 216 where it was held that:

“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 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 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 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 negative, then there should be no interference under Article 226."

22. In *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr* 2016 SCC Online SC 940, the Supreme Court held as follows:-

"14.....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."

23. In an earlier decision, *Master Marine Services (P) Ltd v Metcalfe Hodgkinson (P) Ltd & Anr* (2005) 6 SCC 138, the legal position was reiterated in the following words:

"12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision,

without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi- administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

24. Keeping the above principles in mind, this court must proceed with its task of deciding whether the rejection of the petitioner's bid was unreasonable or arbitrary, as to invite judicial interdiction under Article 226. So far as the first complaint made, i.e. that parties who had indulged in bid rigging and were judged to be so guilty by the Competition Commission goes, this court finds no impediment in law- nor is there any express provision in any binding circular, prohibiting participation of such parties. Furthermore, this court notices that whilst the petitioner displayed alacrity in saying that bid rigging took place, there is correspondingly no diligence on its part to disclose the future course of litigation – i.e. the orders of the Competition Appellate Tribunal and the Supreme Court. Indeed, HLL Infra's disclosure of these facts, particularly that the Supreme Court held that there can be no impediment in proceeding to permit bidding by such parties, and the Central Government's clarification, negates the petitioner's submission that such parties could not have been permitted to bid. The petitioner's submission, therefore, has to fail on this score.

25. As far as the four points on which the petitioner's grievances are to be

considered, it is seen that the first relates to the condition requiring an undertaking by the manufacturer of the wall and ceiling system, which consisted of 4 components. Amendment No. 1 to the tender introduced this condition. As the document produced by the petitioner was unclear, a clarification was sought in this regard, on 01.05.2017 specifically that *“undertaking from Manufacturer for all items from same manufacturer”* should be provided. The petitioner submits that the document furnished fulfilled the specification, as the manufacturer Universal Metal Tek stated that they produced all the wall and ceiling systems mentioned in the tender. This document was rejected. HLL Infra points out that the letter by the manufacturer merely states that it would *“confirm to supply all items of wall and ceiling systems as per specifications of the tender”*.

26. This court is of the opinion that a definitive conclusion that HLL Infra acted wrongly in its interpretation, cannot be rendered. Obviously, the tender condition amendment wished an undertaking by the manufacturer, that it had manufactured the products. The document produced prevaricated and did not categorically state that the company (Universal Metal Tek) undertook that it manufactured the product. The court does not find the rejection of the petitioner’s bid unfair or unreasonable.

27. Coming next to the surgeon’s pendant, it must be noticed that according to the tender conditions, the length of the double arm had to be 1800 mm +/- 10%. Concededly, the petitioner’s equipment spelt out (in the catalogue provided) a dual arm system with total coverage of either 1200 mm, 1400 mm or 1600mm. In reply to clarifications, the petitioner’s case was that the two arms put together were 1640mm (820mmx2) thereby

fulfilling the criteria. HLL counters this by saying that putting together two single arms was not a system it sought; more importantly it disputes the petitioner's argument by saying that the overlap at the point of jointure of the two single arm, covers about 40mm rendering the equipment offered ineligible.

28. This court cannot delve into technical specifications to decide whether the equipment for which the petitioner submitted its bid was compliant with the tender conditions. That falls within the exclusive domain of the agency: HLL Infra. It is only when that determination is palpably arbitrary or opposed to reason (a decision so unreasonable that no reasonable man would render it) that judicial review is permitted. Facially, the petitioner did not offer any product, that conformed to the specification of +/- 10% arm length @ 1800 mm length (for surgeon pendant). What it produced was a catalogue showing dual arm system with total coverage of either 1200 mm, 1400 mm or 1600mm. It was in the clarification that the petitioner stated that two single arms of 820mm each would be put together for the dual arm equipment. Now, it cannot be said that the petitioner's offer conformed to the specification. Apart from the further explanation given by the petitioner that the joining of the two single arms would result in a dual arm equipment, the court is unpersuaded that the catalogue clearly showed that the petitioner was in a position to offer what was specified in the tender. In any case, it cannot be said that the respondent HLL Infra acted arbitrarily; it provided two opportunities to the petitioner to clarify its position about compliance with the bid conditions. Its rationale for bid rejection too is based on reason and is convincing.

29. So far as the two CE certificates are concerned, the petitioner, despite being provided opportunities to furnish manufacturer's certificates, did not do so. There is apparent logic in HLL Infra's insistence that the manufacturer and none other should provide the certificate, given that the bid clearly showed that Heal Force provided the certificate instead of Shanghai Lonyee Ltd and in the second case, Shanghai Fuhong Science Technology Development Co Ltd and Heal Force International Trading (Shanghai) Ltd furnished the certificate, (not in the name of Heal Force as mentioned in the technical compliance sheet). HLL Infra, in the opinion of this court, did not commit any illegality in saying that the certificates did not comply with its conditions. The tender specifications were clear that the manufacturer's European CE certificate or USFDA certificates (which spell out a compliance with a certain manufacturing standard, recognized internationally) had to be given. The petitioner, despite awareness, chose to furnish – and that too twice - certificates of other group entities (no doubt backed with their inter-relationship). But the absence of the manufacturer's certificate meant that there was no clear document with respect to the quality and standard of the product: the manufacturer was unwilling to claim responsibility for compliance with these international standards. Had HLL blinked and allowed the petitioner's documents to be taken on record, it would have deviated from the standard it prescribed for itself and other bidders. In these circumstances, the court holds that there was no arbitrariness in its insistence with respect to the manufacturer's certificates.

30. The result of the foregoing discussion is that the rejection of the petitioner's bid by HLL Infra is neither arbitrary nor unreasonable. The writ

petition fails and is, therefore, dismissed; however, without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

JULY 21, 2017

