

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11211 OF 2017

JCB India Limited and Another.

..Petitioners.

Versus

State of Maharashtra & Others.

..Respondents.

Dr. Milind Sathe, Senior Advocate with M. A. Kamdar, Rashmin Jain and Rishabh Ranka I/b Kanga & Co., for the Petitioner.

Mrs. M. P. Thakur, AGP for the Respondent-State.

Mr. Ricab Chand, Saiprasad Mandlik I/b Rakesh Sawant for Respondent No. 3.

Mr. Rajshekhar Upadhyay I/b Dave & Girish Co., for Respondent No. 6.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **July 17, 2018.**

P. C. :

1. Rule. Rule made returnable forthwith and by consent, matter is taken up for final disposal. Heard the learned counsel for the respective parties. The petition is filed seeking following reliefs :

(a) That this Hon'ble Court issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction :

(i) ordering and declaring that the impugned tender contained in the notice inviting application dated 16th September 2017 and tender documents (collectively annexed at Exhibit-"A" hereto) and the process of the impugned tender are illegal and unconstitutional;

(ii) ordering and declaring that the impugned tender contained in the notice inviting application dated 16th September 2017 and tender documents

(collectively annexed at Exhibit-"B" hereto) and the process of the impugned tender are illegal and unconstitutional;

(iii) restrain, injunct and/or prohibit Respondent Nos. 1, 2 & 7 their respective servants, officers and /or agents from opening of the bids scheduled on 7th October 2017 or in any manner (directly and/or indirectly) implementing, acting in furtherance of continuing with and/or completing the process of the impugned tender commenced under the impugned tender documents (collectively annexed at Exhibit-"A" and Exhibit-"B" hereto) and/or in any manner awarding the impugned tender;

(b) that this Hon'ble Court be pleased to issue writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records of the impugned tender and its process conducted under the tender document (collectively annexed at Exhibit-"A" and Exhibit-"B" hereto) and after perusing the legality, veracity and/or constitutionality of the tender process, this Hon'ble Court be pleased to quash and set aside the impugned tender documents (collectively annexed at Exhibit-"A" and Exhibit-"B" hereto) and the impugned tender and its process."

2. The Petitioner is, thus, challenging the impugned tenders bearing Nos.A-04 of 2017-18 and A-06 of 2017-18 issued by the office of Executive Engineer, Mechanical Stores Division, Yantriki Bhavan, Dapodi, Pune.

3. It is pertinent to note that on 16th September 2017, 1st and 2nd Respondents issued impugned tender notices for supply and commissioning of crawler mounted hydraulic excavator with dozer attachment standard bucket capacity 0.60 cum. quantity 26 and for

supply and commissioning of crawler mounted hydraulic excavator with dozer attachment standard bucket capacity 0.30 cum. quantity 27. The impugned tenders invited bids from original equipment manufacturers, authorised distributors or authorised dealers of equipments.

4. The technical specifications for e-tender bearing No. A-04 of 2017-18 are as follows :

Sr. no.	Important features.	Technical specifications of Crawler Mounted Hydraulic Excavator with Dozor attachment standard bucket capacity 0.30 m3 minimum
1	Engine (H.P) Net at flywheel end	Min 93 H.P.@ Max. rated 2100 rpm
2	Std. Bucket Capacity (Cu.m.) :- Bucket Capacity to handle material of density	Minimum 0.60 Cum (Std.HD Bucket)
3	Operating Weight (Kg.)	Minimum 13100 Kg
4	Maximum Engine Torque	Minimum 375Nm @ 1600 RPM
5	Swing Speed (RPM)	Minimum 11 RPM
6	Operating Weight (Kg.)	Note less than 13100 Kg
7	Max draw Bar Pull	Minimum 109KN
8	Bucket Digging Force (without power boost)	Minimum 83KN
9	Std. Boom (mm)	Minimum 4600 mm
10	Std. Arm (mm)	Minimum 2090 mm
11	Max. digging depth (mm)	Minimum 5130 mm
12	Under Carriage Frame Type	Welded Track X Frame or Equivalent
13	Hydraulic Pump Type	2 Variable Displacement axial piston Pump
14	Hydraulic Pump maximum flow	Minimum (2x116) LPM
15	Relief valve setting	
	a) Impelment Circuit	Minimum 305 bar
	b) Swing Circuit	Minimum 230 bar
	c) Travel Circuit	Minimum 340 bar

16	Fuel Consumption for Earthwork application	8 to 9 lit/hr
17	Life Time Lubricated Sprocket Idlers nad Rollors	Life Time Lubricated
18	Maintenance Cost / Hour for first 5000 Hrs	0.20 times of capital cost of machine
19	Warrantee (Major Componants)	5 years / 6000 hrs whichever earlier
20	General	GPS system with inbuilt microprocessor
21	Make & Model of Equipment Offered	

Note :- 1) Only Standard Equipment will be accepted. Under any circumstances modified or optional attachment will not be accepted.
 2) Documentary Evidence for above parameters should be uploaded during tender submission.

5. The technical specifications for e-tender bearing No. A-06 of 2017-18 are as follows :

sr. no.	Important features.	Technical specifications of Crawler Mounted Hydraulic Excavator with Dozor attachment standard bucket capacity 0.30 m3 minimum
1	Engine (H.P) Net at flywheel end	Minimum 54 H.P. @ rated rpm
2	Std. Bucket Capacity (Cu.m.) :- Bucket Capacity to handle material of density	Minimum 190N-m @ rated rpm
3	Operating Weight (Kg.)	Minimum 0.30 Cu.M (Std. Bucket)
4	Maximum Engine Torque	Minimum 10 RPM
5	Swing Speed (RPM)	Not less than 7000 Kg
6	Operating Weight (Kg.)	Minimum 4850 Kg
7	Max draw Bar Pull	Minimum 44KN
8	Bucket Digging Force (without power boost)	Minimum 3700mm
9	Std. Boom (mm)	Minimum 1600mm
10	Std. Arm (mm)	Minimum 4000 mm
11	Max. digging depth (mm)	Minimum 6200 mm
12	Under Carriage Frame Type	X- Frame
13	Hydraulic Pump Type	Variable Displacement Axial piston Pump
14	Hydraulic Pump maximum flow	Minimum 145LPM
15	Relief valve setting	

	a) Impelment Circuit	Minimum 245 bar
	b) Swing Circuit	Minimum 190 bar
	c) Travel Circuit	Minimum 245 bar
16	Fuel Consumption for Earthwork application	6 to 7 ltr /hr
17	Life Time Lubricated Sprocket Idlers nad Rollors	0.15 % of capital cost of machine
18	Maintenance Cost / Hour for first 5000 Hrs	Life Time Lubricated
19	Warrantee (Major Componants)	5 years /6000 hrs whicever earlier
20	General	Standard Equipment with GPS system inbuilt Remote monitoring system OEM Server
21	Make & Model of Equipment Offered	

Note :- 1) Only Standard Equipment will be accepted. Under any circumstances modified or optional attachment will not be accepted.
2) Documentary Evidence for above parameters should be uploaded during tender submission.

6. The petitioner has challenged the tender specifications of both the tenders on the ground of arbitrariness, discrimination and unreasonableness. It is the case of the petitioner that tender specifications are fixed with a view to favour respondent nos.3 to 7 and to oust the petitioner who is otherwise eligible to undertake the work in question. It is contended that the terms and conditions of the impugned tenders attempt to thwart equal opportunity and does not satisfy the test of reasonableness and fairness and is therefore unconstitutional.

7. One Shri Pundalik Maisaji Thotwe, Suptd. Engineer, Mechanical Circle (Water Resources Dept.) Pune has filed his affidavit on behalf of the respondent nos.1 and 2. He has denied that the

technical specifications are unfair, arbitrary or discriminatory. He has stated that technical specifications were prepared and finalized by the technical committee constituted as per the Govt. resolution No. Tantrik Samiti -0116/Pra.Kra. 21/2016 Yantriki, dt. 15.3.2016, considering the need of the water resources department and the nature and quality of work found in State of Maharashtra. It is further stated that the tender process is followed in accordance with Government Resolution Industries, Energy and Labour Department Govt. Resolution No. Bhakhas-2014/Pra.Kra. 82/Part-III/Udyok-4 Revise dt. 1.12.2016 and PWD Manual.

8. It is stated on behalf of the respondent nos.1 and 2 that technical specification of e-tender notices are finalized by the technical Committee after considering basic requirements of equipment with respect to variety of work applications of water resources department in different geographic areas. It is contended that execution of tender process does not affect business of prospective bidder and does not infringe the fundamental rights.

9. Shri Sathe, the learned Sr. Counsel for the Petitioner contends that the tender specifications of both the tenders are arbitrary, unfair and unreasonable. He further contends that the respondent nos.3 to 5 and respondent no.6 are the only

manufacturers/ bidders who have the equipment with exact technical specification in details that meets the requirement of the impugned tender notices. He has submitted that the said technical specifications are engineered to preclude the petitioners, as also the other bonafide bidders from bidding and thus are mainly unfair and arbitrary. He further contends that the impugned conditions in the tender notices have no rational nexus or purpose with the nature of the work in question. The impugned tender is nothing but a colorable exercise of power to serve the vested interest of respondent nos.2 and 7. The learned counsel for the Petitioner submitted that the impugned tender notices are, therefore, required to be quashed and set aside.

10. Learned AGP has opposed the petition vehemently. She has submitted that the Purchase Committee and the Technical Specification Committee have been formed under the Government Resolutions [for short "the GR"] and the technical specifications in the present case are fixed by the Technical Committee. She submitted that Technical Specifications Committee is formed / consisting of four persons and not of one person. Therefore, no fault can be found with the specifications fixed by said committee. She submitted that committee has fixed the technical specifications after considering the needs of Water Resources Department and nature and quality of work.

11. The learned counsels for Respondent Nos. 3 and 6 also opposed the petition. They submitted that tender conditions cannot be lightly interfered with by the High Court in exercise of power under Article 226 of the Constitution of India. It is submitted that no work order has been issued in favour of these respondents, who are the bidders and manufacturers of the required equipments and hence they have no locus in the matter. They submitted that the petition is devoid of any merit and deserves to be dismissed.

12. The law in the realm of public contract and policies has been restated by the Apex Court in *Tata Cellular vs. Union of India* AIR 1996 SC 11. These principles have been reiterated by the Apex Court in ***Directorate of Education & Ors. vs. Educomp Datamatics Ltd.***

as :-

9. It is well settled now that the courts can scrutinise the award of the contracts by the government or its agencies in exercise of its powers of judicial review to prevent arbitrariness or favoritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in Tata Cellular vs. Union of India [1994 (6) SCC 651]. After examining the entire case law the following principles have been deduced.

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) 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.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a 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 principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

[Emphasis supplied]

...

10. In *Air India Limited vs. Cochin*

International Airport Limited [2000 (2) SCC 617], this Court observed:

"The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness."

[Emphasis supplied]

11. This principle was again re-stated by this Court in *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation & Ors.* [2000 (5) SCC 287]. It was held that the terms and conditions in the tender are prescribed by the government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts

to say whether the conditions prescribed in the tender under consideration were better than the one prescribed in the earlier tender invitations.

12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. That the government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.”

13. In **Afcons Infrastructure Ltd.** (supra), the Apex Court has held that:-

"13... 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 some one arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision.

...

15. 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 documents, unless there is malafide 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."

14. While concurring with the aforesaid statement, the Apex court in **Montecarlo Ltd, versus NTPC Ltd** (supra) has held that:

"24 ...In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinized by the technical experts and some times third party assistance from those unconnected with the owners organization is taken. This ensures objectivity. Bidders expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessments, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are

workable and realistic... There is multiprong complex approach; highly technical in nature. The tenders were public largessee is put to auction stand on a different compartment... Exercise of powers 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 melodies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or sub serves the purpose for which the tender is floated, the court should follow the principle of restraint."

15. The controversy in the present case needs to be considered on the touchstone of these well-settled principles. In the instant case, by GR dated 16th March 2016 a Technical Specification Committee has been formed to purchase machinery and other equipments required by the Water Resources Department. Under the later GR, a Technical Committee has also been constituted for determining technical specifications of machineries/ equipments required to be purchased by the department. While fixing technical specifications, the Technical specification committee is required to follow following procedure. :

- [1] Finalising the technical specifications of the machinery after chekcing its usefulness for the work under water resources department.
- [2] Take detail review of machinery with new technology required for water resources deparment and presently

- available in market.
- [3] After checking the market rating and performance of available machinery suggest the required machinery.
 - [4] Finalising the technical specifications of the useful machinery after considering the after sale services, availability of spare parts, warranty period etc.
 - [5] Preferably selecting the machinery which require low maintenance and repair and the fuel efficient machinery.
 - [6] Considering the necessity of the department, preferably selecting multi-functional equipment.
 - [7] After checking the parts of machinery eg. Engine performance, pump, motor, control valve bank etc. of high quality, selecting such machinery.
 - [8] While deciding the technical specifications in respect of self-started vehicles, finalise the technical specifications with respect to the present rules/norms of the RTO.

The Technical Specification Committee is required to finalize the technical specification keeping in mind the aforesaid requirements vis-a-vi the need of the department and thereafter submit the report to the State Level Administrative Department Purchase Committee.

16. In the instant case, it is seen that for the purpose of fixing technical specification in respect of tender no. 06 (impugned tender no.1 notice) the Technical Specification Committee had called for the catalogues from the three manufacturers/models viz. Caterpillar, Cobelco and Volvo, and for the purpose of fixing technical specification in respect of tender no. 04 (impugned tender no.2 notice) the Technical Specification Committee had called for the catalogues of four manufacturers/models viz. Tata Hitachi, Sany, Komatsu and Hyundai. On the basis of these catalogues a comparative chart was

prepared. The technical specification Committee prepared charts which are at page nos.205 and 208 wherein it has given comparative details of technical specifications of the machineries/equipments of the above stated manufacturers and based upon the same, it has recommended specifications in respect of the impugned tender notice nos.1 and 2. Though the affidavit filed on behalf of the Government states that Technical Committee has taken into consideration the object mentioned in the said GR, and need of the Water Resources Department and nature and quality of work, we do not find that the technical specification committee had taken into consideration any of these aspects. In fact, it is not known as to on what basis the technical specification committee had called for the catalogue of selected manufactures. Suffice it to say that by calling for catalogues from such selected manufacturers for finalizing specifications, the technical specification committee has effectively eliminated a wider participation of other reputed and eligible manufacturers. Hence, we are of the considered view that the technical specification committee has not acted in fair, just and reasonable manner, having regard to one of the principle objectives, namely selection of the best contractor / manufacturer.

17. The records also do not reveal that while formulating

the technical specifications, the committee had independently considered the nature and scope of work. Under the GR the committee was required to finalised the technical specifications after checking its usefulness for the work, take detail review of machinery with new technology, check the market rating and performance of available machinery considered after sale service, availability of spare parts, cost of maintenance, etc. In the instant case, there is nothing on record to indicate that the committee had considered these guidelines/criteria or the procedure prescribed in the G.R. In fact, there is no legitimate explanation as to on what basis the Committee has fixed the minimum and maximum specifications. The manner in which the technical specifications have been formulated raises a doubt that the tender conditions have been designed or engineered to favour a particular manufacturer and /or oust other eligible manufactures/ competitors.

18. At this stage it would be relevant to refer to the decision of the apex Court in Reliance Energy Limited v. Maharashtra State Road Development Corp. Ltd [(2007) 8 SCC 1] wherein it has been held as follows :

“36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. [Article 14](#) of the Constitution embodies the principle of "non-discrimination". However, it is not a free- standing provision.

It has to be read in conjunction with rights conferred by other articles like [Article 21](#) of the Constitution. The said [Article 21](#) refers to "right to life". It includes "opportunity". In our view, as held in the latest judgment of the Constitution Bench of nine-Judges in the case of [I.R. Coelho vs. State of Tamil Nadu](#) (2007) 2 SCC 1, [Article 21/14](#) is the heart of the chapter on fundamental rights. It covers various aspects of life. "Level playing field" is an important concept while construing [Article 19\(1\)\(g\)](#) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When [Article 19\(1\)\(g\)](#) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of "level playing field". We may clarify that this doctrine is, however, subject to public interest. In the world of globalization, competition is an important factor to be kept in mind. The doctrine of "level playing field" is an important doctrine which is embodied in [Article 19\(1\)\(g\)](#) of the Constitution. This is because the said doctrine provides space within which equally-placed competitors are allowed to bid so as to subserve the larger public interest. "Globalization", in essence, is liberalization of trade. Today India has dismantled licence-raj. The economic reforms introduced after 1992 have brought in the concept of "globalization". Decisions or acts which results in unequal and discriminatory treatment, would violate the doctrine of "level playing field" embodied in [Article 19\(1\)\(g\)](#). Time has come, therefore, to say that [Article 14](#) which refers to the principle of "equality" should not be read as a stand alone item but it should be read in conjunction with [Article 21](#) which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of "level playing field". According to Lord Goldsmith - commitment to "rule of law" is the heart of parliamentary democracy. One of the important elements of the "rule of law" is legal certainty. [Article 14](#) applies to government policies and if the policy or act of the government, even in contractual matters, fails to satisfy the test of "reasonableness", then such an act or decision would be unconstitutional.

23. In the case of [Union of India and another vs. International Trading Co. and another](#) - (2003) 5 SCC 437, the Division Bench of this Court speaking through Pasayat, J. had held :

"14. It is trite law that [Article 14](#) of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of [Article 14](#) is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of [Article 14](#) and the requirement of every State action qualifying for its validity on this touchstone irrespective of

the field of activity of the State is an accepted tenet. The basic requirement of [Article 14](#) is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

24. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This "legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of "level playing field".

25. In the case of [Reliance Airport Developers \(P\) Ltd. v. Airports Authority of India and others](#) -(2006) 10 SCC 1, the Division Bench of this Court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision-maker must understand correctly the law that regulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of "judicial review" cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, however, such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of rule of law will not arise. The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above "certainty" is an important aspect of rule of law. In the case of *Reliance Airport Developers* (supra), the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks had different stages. Objectivity was thus provided.

19. In the instant case, the Respondents have excluded bonafide prospective bidders from participating in the impugned tender. If the technical specifications fixed by Respondent Nos.1 and 2 for the said tender works are considered along with the ratio of above mentioned decision of the Apex Court, we find that there is no transparency in fixing the criterion. The technical specifications are not based on valid and relevant considerations and have no rational nexus or purpose to the object of the impugned tenders. We are therefore of the view that the fixation of the technical specifications is arbitrary and that cannot sustain the scrutiny of Article 14 of the Constitution of India.

20. Under the circumstances, and in view of discussion supra, the impugned tender processes are, therefore, liable to be quashed and set aside. Consequently, the petition succeeds. Rule is made absolute in terms of prayer clause (b).

21. Needless to state that this order shall not preclude the Respondent Nos.1 and 2 from inviting fresh tenders in accordance with law.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]