IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.A.Nos.2785 & 2786 of 2018
and CMP.Nos.23034 & 23037 of 2018

Mr.K.M.Mustafa ..Appellant in both W.As/ Petitioner

vs.

1.The Indian Railway Catering and
Tourism Corporation (IRCTC) Ltd.,
Rep.by its Group General Manager/LCS
11/12th Floor, Statesman House
148, Barakhamba Road,
New Delhi 110 001.

2.The Regional Director,
The Indian Railway Catering and
Tourism Corporation (IRCTC) Ltd.,
South Zone,
6A, The Rain Tree Place
Mc Nichols Road, Chetpet,
Chennai 600 031. ..Respondents in both W.As 1&2

M/s.Anjali Hotels Pvt.Ltd.,
Casino Hotel, Willingdon Island,
Cochin, Kerala 682 003. ..3rd Respondent in W.A.No.2785/2018

M/s.Adyar Anandha Bhavan Sweets,
India Private Limited,
No.9, Mahatma Gandhi Road,
Adyar, Chennai-20. ..3rd Respondent in W.A.No.2786/2018

Common Prayer:- Writ Appeal filed under clause 15 of the Letter Patents to set aside the order dated 07.12.2018 in W.P.No.13266 & 13265 of 2018 respectively and allow the writ appeal as prayed for.

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Prayer in WP.No.13265 and 13266 of 2018:

WP.No.13265 of 2018: Petition filed under Article 226 of constitution of India, for issuance of a writ of certiorarified Mandamus calling for the records of the 1st respondent herein in respect of the email dated 30.05.2018 sent to the petitioner and quash the same and direct the respondents 1 and 2 herein to grant license for setting up operation and management of Food Plaza at Chennai Central (Concourse) to the petitioner herein pursuant to tender notice No. CO/ NIT/FP-FFU/2017/04 Group B of the first respondent.

WP.No.13266 of 2018: petition filed under Article 226 of the constitution of India, for issuance of a writ of certiorarified Mandamus calling for the records of the 1st respondent herein in respect of the email dated 30.05.2018 sent to the petitioner and quash the same and direct the respondents 1 and 2 herein to grant license for setting up operation and management of Food Plaza at Chennai Central MMC to the petitioner herein pursuant to tender notice No. CO/ NIT/FP-FFU/2017/04 Group B of the first respondent.

For Appellant in both W.As. :Mr.A.R.L.Sundaresan
Senior Counsel for
Mrs.A.L.Gandhimathi

For Respondents in both W.As.:Mr.R.Thiyagarajan
Senior Counsel for R1 & R2
for Mr.V. G. Suresh Kumar
Mr.R.Vishnu for Mr.K.Ramu
for R3

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, both the writ appeals are taken up for final disposal and disposed of by this common judgment, as the impugned order passed in the writ petition is also a common one.

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W.A.No.2785 of 2018 against W.P.No.13266 of 2018:

2.1. The appellant claims that he is a Railway Contractor and the 1st respondent namely Indian Railway Catering and Tourism Corporation Limited (IRCTC) has floated a notice inviting Tender for setting up operation and management of food plazas at 24 railway stations all over India including Chennai Central Railway Station at Chennai in Tamil Nadu. The Bids have to be submitted in two parts namely Part 'A' consisting of Technical and other conditions as laid down in the bid document. Part 'B' consisting of financial bid as per the conditions laid down in the bid document. The bidders have to submit the Earnest Money Deposit of Rs.3,00,000/- along with the bids and the successful bidder would be informed about the award of license within 150 days of opening of the bid. It is further averred in the affidavit that the scope of the works is to provide a space on ''as-is-where-is'' basis and the Licencee have to construct the building or renovate the space, as the case may be, in consonance with the existing Building Bye-Laws of the State and the said superstructure will have standard characteristics as prescribed in the Tender. The last date and time for submission of the Tender was 15.02.2018 at 12.00 hrs. The opening of the Tenders was on 15.02.2018 at 12.15 hrs.

2.2. It is the case of the appellant/petitioner that he has satisfied all the eligibility criteria which was prescribed under the notice inviting Tender and the technical bids were opened on 15.02.2018 and he was qualified and he was sent a communication as to the qualification and thereafter, financial bid was opened on 30.05.2018. However, to the shock and surprise of the writ petitioner / appellant herein, on 30.05.2018 at 3.55 p.m, he was informed through E-mail that he was disqualified due to non-fulfillment of eligibility criteria as defined in Annexure B of the tender document.

2.3. According to the appellant/writ petitioner, he is fully qualified as per the eligibility criteria and he had quoted a sum of Rs.5,27,57,786/- and the second highest bidder was the third respondent, who had quoted a sum of Rs.3,51,00,000/- and though he was the highest bidder, in order to avoid him or prevent him from becoming the successful tenderer, the 1st respondent thought fit to send a communication through E-mail as if he did not fulfill the eligibility criteria. Therefore, the appellant / writ petitioner came forward to challenge the said communication of the 1st respondent dated 30.05.2018, by filing W.P.No.13266 of 2018 praying for a writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to E-mail dated 30.05.2018 sent to him and quash the same with a consequential direction directing the respondents 1 and 2 to grant license for setting up operation and management of food plaza at Chennai Central pursuant to the Tender Notification of the 1st respondent.

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W.A.No.2786 of 2018 against W.P.No.13265 of 2018:

3. The appellant / writ petitioner in the affidavit filed in support of the writ petition, made the same averments as that of the facts made in W.P.No.13266 of 2018 and according to him, he applied for setting up operation and management of Food Plazas at Chennai Central (concourse) and he has fulfilled all the necessary and eligible criteria. He would further aver that he has quoted a sum of Rs.2,33,57,786/- and the second highest bidder was the third respondent, who has quoted for Rs.2,16,00,000/- and the appellant /writ petitioner would further aver that the Technical bids were opened on 09.02.2018 and thereafter financial bid was opened on 30.05.2018 and however, to his shock and surprise, he was informed through the E-mail at about 3.55 p.m on 30.05.2018 stating that the appellant / writ petitioner was disqualified due to non fulfilment of eligibility criteria as stated in Annexure B of the tender document. The appellant / writ petitioner aggrieved by the rejection of his technical bid through the impugned E.mail communication dated 30.05.2018, has filed the said writ petition for the similar relief.

4. Both the writ petitions were entertained and interim orders were granted on 31.05.2018, granting liberty to the respondents to proceed with the Tender process, but they are restrained to pass final orders by accepting any tenders till 12.06.2018.

5. The respondents, on entering appearance, had filed counter affidavits and they took a stand that after receipt of the tenders, they are opened and scrutiny was done by the Tender Scrutiny Committee in New Delhi and it was found that the documents submitted as per Annexure B of the document, the appellant / writ petitioner did not provide the names of the mobile/static units held by him and that the annual turnover as per the documents of Profit and Loss Statement for the year 2014-2015 did not tally with the Annual Sales Turnover for the year 2014-2015 as per Chartered Accountant Certificate submitted as Annexure B and subsequently, he was found to be ineligible in the technical bid. The official respondents also took a stand that everything was finalized at Delhi and therefore this Court lacks territory jurisdiction to entertain the writ petitions. The official respondents on the merits of the cases took a stand that the appellant / writ petitioner did not satisfy the mandatory technical eligibility criteria as laid down in Annexure B of the tender document and as per Annexure B-2 of the tender document, the appellant has to provide the names of mobile and static units while giving turnover from catering business, but he has not mentioned the details of static / mobile units in Chartered Accountant Certificates for the year

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2014-2015, 2015-2016 & 2016-2017 and thereby he failed to satisfy the mandatory eligibility criteria and that apart as per Profit and Loss statement for the Financial year 2015-2015, submitted by him, the total sales turnover shown was Rs.5.75 Crores, whereas, the sales turnover as per the Chartered Accountant Certificate of sales turnover for the financial year 2014-2015 was shown as 6.25 Crores and both values are not matching.

6. It was pointed out by the official respondents that as per (d) of Annexure-A of the tender document, the 1st respondent has a right to summarily reject the bid and the Tender Scrutiny Committee did not accept the said certificate as a valid one on the ground that he did not comply with the required eligibility criteria stipulated under the tender document. It was also pointed out that by adopting similar procedure in terms of the tender conditions, tender documents of five other bidders were also rejected and therefore, the stand taken by the writ petitioner that he was targeted and his tender bids were rejected, cannot be sustainable at all and therefore, for the said reasons, the official respondents prayed for vacating the interim order and dismissal of the writ petitions.

7. In respect of the counter affidavit filed by the official respondents, the appellant / writ petitioner has filed his reply affidavit by taking a stand that it was also open to the 1st respondent / IRCTC to ask for documents from bidders of the bids and admittedly, they did not do so and insofar as the discrepancy pointed out in the Profit and Loss Account and the Chartered Accountant Certificates, it was the stand of the appellant / writ petitioner that the sales amount of catering and food items in two places viz., Sales of catering and food items Rs.5,75,92,584/- and another entry by catering income Rs.49,84,395/- are added together and it comes to Rs.6,25,76,979/- and as such, there is no discrepancy between the Profit and Loss Account and the Chartered Accountant Certificates and prays for allowing of the writ petition.

8. Since both matters are connected with each other, the learned Judge took up both the writ petitions and dealt with the same through a common order dated 07.12.2018. The learned Judge found that the bidder is under obligation to comply with the conditions stipulated in the tender notification strictly and meticulously and also placed reliance upon decision rendered by a Division Bench of this Court dated 12.06.2018 in W.A.No.137 and 138 of 2017 (The Tamil Nadu Police Housing Corporation Limited Represented by its Superintending Engineer Vs. M/s.P & C Projects (P) Ltd.,Represented by its Executive Director, Mr.S.C.Keerthi Shankar, P & C Garden, Nolambur, Mogappair West, Chennai - 37.) The learned Judge has also found that the

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petitioner has not given any reason for not providing the details of mobile unit while giving turnover from catering business and reply affidavit filed by the appellant / writ petitioner also does not explain anything about the said requirements.

9. The learned Judge further found that in the light of the various pronouncements of the Hon'ble Supreme Court of India, the question as to whether opportunity has been given to the petitioner (appellant herein) before rejecting technical bid by the 1st respondent or not and whether rejection of the technical bid was correct or not, cannot be gone into by this Court and citing the said reasons, dismissing both the writ petitions, vide common order dated 07.12.2018 and challenging the legality of the same, the writ petitioner in both writ petitions came forward to file these writ appeals.

10. Mr.AR.L.Sunderasan, learned Senior Counsel assisted by Mrs.A.L.Gandhimathi, learned counsel appearing for the appellant / writ petitioner has drawn the attention of this Court to the Tender Notification and the conditions and would submit that as per Clause No.4.3, ''Bids submission process will be end as per prescribed schedule after due date and time submission of tender will not be possible''. As per Clause No.4.4, ''Once the tender is submitted only bid documents can be replaced or modified. Other relevant documents cannot be removed but addition of documents is possible within stipulated time.'' The learned Senior Counsel appearing for the appellant/writ petitioner has drawn the attention of this Court to Clause No.5.2 and would submit that as per Clause No.5.2 (c), IRCTC may ask for additional documents/information from the bidders after receipt of bids and the appellant / writ petitioner had done similar line of trade, nothing prevented the 1st respondent IRCTC to call for the additional particulars required if any from the appellant and they have deliberately failed to do so. It is the further submission of the learned counsel for the appellant that admittedly, the bid quoted by the appellant / writ petitioner was the highest and by citing hyper technical reasons, his bid was rejected and the 3rd respondent who admittedly quoted the lesser amount was licensed and selected and he has yet to put up the superstructure for running food plazas and as such, there cannot be any impediment to direct the 1st respondent to open his financial bid also.

11. The learned Senior Counsel appearing for the appellant further invited the attention of this Court to the Chartered Accountant Certificate dated 08.06.2018 and would submit that whatever requirement sought for by the 1st respondent under the tender document, it have been submitted and therefore, the 1st

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respondent may be directed to take into consideration the said documents and act accordingly and therefore, prays for interference in the impugned order passed in the writ petition as well as the impugned E-mail communication sent by the 1st respondent.

12. Per contra, Mr.R.Thiyagarajan, learned Senior Counsel appearing for the respondents 1 and 2 has invited the attention of this Court to the conditions of the tender document and would submit that as per Clause No.4.4, ''Once the tender is submitted only bid documents can be replaced or modified. Other relevant documents cannot be removed but addition of documents is possible within stipulated time.'' and admittedly, last date for submission of tender was on 09.02.2018 and the additional particulars submitted in the form of Chartered Accountant Certificate are dated 08.06.2018, which was well beyond the last date for submission of tender and therefore, the said document cannot be taken cognizance to come to the aid of the appellant / writ petitioner. The learned Senior Counsel appearing for the respondents 1 and 2 would further submit that admittedly, the petitioner is a seasonal contractor for quite number of times and therefore, he was well aware of the requirements as per the tender documents and since discrepancies have been found, his technical bid was rightly rejected and only in the event of technical bid being accepted, financial bid will be opened and since the order of rejection came to be passed even at the stage of technical bid itself, there was no option on the part of the respondents 1 and 2 to open the financial bid and then only it can be found that whether the petitioner is quoted higher sum of amount. Lastly, it is submitted by the learned Senior Counsel appearing for respondents that the learned Judge has correctly appreciated the factual aspects and applied the correct legal position and dismissed the writ petitions and this Court, in exercise of it's appellate jurisdiction under clause 15 of the Letter Patents, cannot interfere with the same and therefore, prays for dismissal of these writ appeal. The learned Senior Counsel appearing for the official respondents 1 and 2 has also invited the attention of this Court to the judgment dated 12.06.2018 made in W.A.No.137 & 138 of 2017 (cited supra) in support of his submission.

13. The learned counsel appearing for the 3rd respondent would submit that he became the successful bidder and third party rights has also intervened and this Court may not interfere with the process of Tender when the scope of interference is limited in interfering with the tender process and prays for dismissal of this writ appeal.

14. This Court has carefully considered the rival submission and also perused the entire materials placed before it.

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15. It is relevant to extract Clause No.4.4 and 4.5:Submission of Bids:

4.4: Over writing/cutting not allowed: once the tender is submitted only bid documents can be replaced or modified. Other relevant documents cannot be removed but addition of documents is possible within stipulated time.

4.5: Signing and Stamping of bid document:All the pages of the Bid documents must be signed and stamped by Proprietorship/Partnership firms authorised signatory may be Proprietor/Partner of the firm and in case of Company, Copy of the Board's resolution along with attested signature of the signing authority, failing which the Bid may be treated as invalid.

and Clause No.5.2 :System of Award of License

A) Following scrutiny of Packet-'A' by IRCTC, Packet-'B' of only those parties will be opened who are found eligible as per laid down criterion.

B) An individual / firm / company / brand will be allowed to hold, maximum two units per Division, subject to a further limit of 25 units over Indian Railways.

C) IRCTC may ask for additional documents/information from the bidders after receipt of bids.

Clause No.7 and 8 of Annexure B:

7.Minimum 5 (Five) years experience in the field of Catering / Hospitality in India - please enclose Certificate of breakup of Sale Trunover clearly indicating the sale from Catering / Hospitality business as per Annexure B-1 for the said Five completed financial years duly certified by Chartered Accountant.

(The said experience can be from any five years in the past and which need not be corresponding current or from the same unit)

8.For Type A & Type C: Average annual Sales Turn Over in last three completed Financial Years should not be less than Rs.5.00 Crore (A1 category of stations) and Rs.3.00 crores (A Category of stations), from Catering business in India involving sale/service of food items. Trader/stockist/Distributors are not eligible.

For Type B: Average annual Sales Turnover in last three completed Financial years should not be less than Rs.10.00 Crore from Catering business in India involving Sale / service of food items. Trader/Stockist/Distributors are not eligible.

Please Enclose: i)Certificate of breakup of sales trunover clearly indicating the sales from catering business as per ''Annexure B2 for last completed three

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financial years, duly certified by the Chartered Accountant.

ii) Also enclose Balance Sheet and profit and loss account of the last three completed financial years duly audited by the Chartered Accountant.

Clause No.1 of Annexure B-1:

SI.No.	Particulars	Nature of Activity	Details	Amount (in Rs.)
1.	Sales/Trunover from Catering Business	Railway Catering	Mobile Units (Train no./Name of the Unit to be mentioned)	
			Static Units (Name of the Unit to be mentioned)	
		Non-Railway Catering (Institutional Industrial Out-door, F&B etc.,)	Specify Description	

16. The ground of rejection as per the impugned order, was that the petitioner did not fulfill the eligibility criteria as defined in Annexure B of the tender document. The counter affidavit of the official respondents filed in support of this writ petition would also disclose that he did not satisfy the mandatory technical eligibility criteria as laid down in Annexure B of the tender conditions and as per Annexure B2, he has to provide mobile / static units while giving turnover from catering business and he has failed to mention the same in the Chartered Accountant Certificates for the years 2014-2015, 2015-2016, 2016-2017. It was also pointed out by the official respondents in their counter affidavit that in the statements of Profit and Loss account for the year 2014-2015, the total sales turnover was shown as Rs.5.75 Crores whereas, sales Turnover as per chartered Accountant certificate for the financial year 2014-2015, was shown as Rs.6.25 Crores and both the values for same record "turnover'' are not matching and as such, the technical bid of the writ petitioner / appellant came to be rejected rightly.

17. A perusal and consideration of the materials placed / documents annexed in the typed set of documents would indicate that the petitioner / appellant had failed to fulfill the mandatory criteria. It is to be pointed out at this juncture

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that the last date for submission of tender was on 09.02.2018 and as per Clause No.4.3 of the tender conditions, ''Bids submission process will be end as per prescribed schedule after due date and time submission of tender will not be possible'' and as per Clause No.4.4, ''Once the tender is submitted only bid documents can be replaced or modified. Other relevant documents cannot be removed but addition of documents is possible within stipulated time.'' Admittedly, the petitioner did not separately indicate the details regarding mobile and static unit and the said details given by the Chartered Accountant was dated 08.06.2018 and admittedly, it was beyond the last date fixed on 09.12.2018. Similarly, the Chartered Accountant Certification regarding breakup details for Annexure 1 was also dated 08.06.2018 and once again, it was submitted beyond the prescribed time limit fixed viz., on 09.02.2018.

18. The sum and substance of the submission made by the learned Senior Counsel appearing for the appellant is that since the reasons are inadvertent and are trivial in nature, this Court can direct the official respondents 1 and 2 to consider the same and accept the technical bid with consequential direction to open the financial bid and process the same. In the considered opinion of this Court, it cannot do so for the following reasons.

19.The Hon'ble Supreme Court of India in the case of Bakshi Security & Personnel Services (P) Ltd. v. Devkishan Computed (P) Ltd., [(2016) 8 SCC 446] held that the essential conditions cannot be relaxed for deviated from and there is no power to relax such a conditions. In the same decision, the Hon'ble Supreme Court of India has considered the scope of interference under Article 226 of the Constitution of India and it is relevant to extract paragraph No.19 of the said judgment:

> ''19.It is also well to remember the admonition given by this Court in Michigan Rubber (India) Ltd.v.State of Karnataka [Michigan Rubber (India) Ltd.v.State of Karnataka, (2012) 8 SCC 216] in cases like the present, as under: (SCC p. 228, para 21)
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> “21.In Jagdish Mandalv.State of Orissa[Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , the following conclusion is relevant: (SCC p. 531, para 22)
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> ‘22.Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is

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

(i) Whether the process adopted or decision made by the authority is 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";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.'"

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20. In C.S.Traders rep. by its proprietor C.Ramesh v. The Managing Director, Tamil Nadu Civil Supplies Corporation [2016 W.L.R. 704], a learned Single Judge of this Court has considered the issue relating to conditions in the tender notification and observed in paragraph No.21 that ''it i well settled proposition of law laid down by this Court as well as the Honourable Supreme

Court in a catena of cases that invitation to tender as well as the terms and conditions incorporated thereof are not open fro judicial scrutiny. In contractual matters, judicial interference is limited.

21. In the judgment dated 12.06.2018 in W.A.Nos.137 & 138 of 2017 (cited supra), the facts of the case would disclose that the learned Judge had allowed the writ petitions quashing the rejection order of the tender of the petitioner therein with consequential direction directing the appellant namely the Tamil Nadu Police Housing Corporation Limited to consider the financial bids and evaluate them along with other bidders before allowing the contractors. The Hon'ble Division Bench of this Court has considered the catena of decision rendered by the Hon'ble Supreme Court of India as well as by this Court and it is relevant to extract Paragraph Nos.27, 29, 32 & 40:

> 27. It was also observed that the tender conditions cannot be ignored as being redundant or superfluous, they must be given a meaning and the necessary significance. In West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and others reported in (2001) 2 SCC 451 the Hon'ble Supreme Court had an occasion to consider the claim of the bidder to correct his bid documents. The Hon'ble Supreme Court while considering such claim had rejected the same observing that a bidder who participates in tenders of very high value should be careful and they cannot make mistakes and thereafter seek to rectify the said mistakes. While saying so, the Hon'ble Supreme Court had observed as follows:
>
> > "24. The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency.
> > The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sancity and integrity of process of tender/ bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfill prequalification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose

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of issuing rules/ instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. ”

29. In Maharashtra Housing Development Authority Vs. Shapoorji Pallonji and Company Private Limited and others reported in (2018) 3 SCC 13, the Hon'ble Supreme Court had rejected the contention of the tenderer that a tenderer should be afforded a second opportunity to rectify the defects since the same is impermissible as per the tender conditions. No doubt the Hon'ble Supreme Court in B.S.N.Joshi and Sons Ltd., Vs. Nair Coal Services Ltd., and others reported in (2006) 11 SCC 548 had relying upon the judgment in G.J.Fernandes Vs. State of Karnataka reported in (1990) 2 SCC 488 held that the requirements in a tender notice can be classified into two categories viz., those which lay down the essential conditions of the eligibility and others which are merely auxiliary or subsidiary to the main object to be achieved by the conditions. Upon such classification, the Hon'ble Supreme Court had held that there can be a relaxation of such conditions which are of the second type viz., the conditions which are auxiliary or ancillary or subsidiary to the main object.

32. The combined effect of the judgments of the Hon'ble Supreme Court in Central Coal Fields Limited and another Vs. SLL-SML (Joint Venture Consortium) and others reported in (2016) 8 SCC 622, Maharashtra Housing Development Authority Vs. Shapoorji Pallonji and Company Private Limited and others reported in (2018) 3 SCC 13, West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and others reported in (2001) 2 SCC 451 and Goldyne Technoserve Ltd., Vs. State of Madhya Pradesh and others reported in AIR 2011 SC 2574 would go to show that it is not for the Court to substitute its own opinion as to the relevancy of the tender conditions. If the Tender Evaluating Authority had rejected the bids on the ground that they are not in strict compliance of the requirement of the tender

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> conditions, this Court cannot substitute its own reasons to nullify the rejection on the ground that the deficiencies are either trivial in nature or are capable of rectification by providing an opportunity.
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> 40. Admittedly, the technical bids of the tenderer/ the respondent were rejected even before the price bids were opened. Therefore, the Authorities had no clue of the price bid of the respondent tenderer at the time when they rejected the technical bid. Hence, we are unable to accept the said submission on behalf of the respondent based on the actual price bids which were subsequently opened.

In the above said judgment, after considering various decision of the Apex Court, this Court has laid down preposition that it is not for the Court to substitute its own opinion as to the relevancy of the tender conditions. If the Tender Evaluating Authority had rejected the bids on the ground that they are not in strict compliance of the requirement of the tender conditions, this Court cannot substitute its own reasons to nullify the rejection on the ground that the deficiencies are either trivial in nature or are capable of rectification by providing an opportunity.

22. In the considered opinion of this Court, the propositions laid down in the said judgment would squarely applicable to the facts of this case for the reason that from scrutiny and analyses of the materials placed, the appellant / writ petitioner has failed to fulfill the essential conditions and he had taken steps to comply with the same belatedly after the last date for submission of the tender. It is also an admitted fact that the appellant had clarified the split up income through his communication dated 21.06.2018 and it is also beyond the prescribed time limit for submission of tender. It is also brought to the knowledge of this Court that the 3rd respondent viz., M/s.Anjali Hotels Pvt. Ltd., in W.A.No.2785 of 2018 and M/s.Adyar Anandha Bhavan Sweets, India Private Limited, in W.A.No.2786 of 2018 became the successful bidder.

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23. In the considered opinion of this Court, the learned Judge has properly appreciated the factual aspects and correctly applied the legal decisions and rightly dismissed the writ petition and this Court on an independent application of mind to the entire materials is the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge for dismissing the writ petition and finds no merit in this writ appeal.

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24. In the result, the writ appeals stand dismissed confirming the order dated 07.12.2018 in W.P.Nos.13265 & 13266 of 2018. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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Internet :Yes

To
1.The Group General Manager/LCS
The Indian Railway Catering and
Tourism Corporation (IRCTC) Ltd.,
11/12th Floor, Statesman House
148, Barakhamba Road,
New Delhi 110 001.

2.The Regional Director,
The Indian Railway Catering and
Tourism Corporation (IRCTC) Ltd.,
South Zone,
6A, The Rain Tree Place
Mc Nichols Road, Chetpet,
Chennai 600 031

+ 2 ccs to M/s. A.L. Ganthimathi, Advocate Sr.88123
+ 2 ccs to Mr.V. G. Suresh Kumar, Advocate for 88200 & 88201)
+ 1 cc to Mr.K. Ramu, Advocate Sr.88574

सत्यमेव जयते
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