



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.01.2018
DELIVERED ON : 01.02.2018

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.(MD) No.22878 of 2017 and
W.M.P.(MD) No.19184 & 19185 of 2017 &
W.M.P.(MD) No.857 of 2018

BHEL Small and Medium Industries Association,
D-87, Developed Plot Estate,
Thuvakudi,
Trichy 620 015.

Rep. by its Secretary
Mr.P.Senthil Kumar
Son of P.Parthasarathy

... Petitioner

-Versus-

1. Bharat Heavy Electricals Limited,
Rep. by its Chairman, BHEL House, Siri Fort,
New Delhi 110 049.

2. The Executive Director - Trichy Unit,
Bharat Heavy Electricals Limited,
Thiruverumbur,
Trichirappalli District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India, praying to issue a writ of Certiorarified mandamus calling for the records relating to the impugned Tender Nofication in 2017OVM009 dated 06.11.2017 of the 2nd respondent and to quash the same as devoid of transparency leading to arbitrariness and for a consequential direction to the respondent to issue a fresh tender specifying the estimated fair price and restricting the bid with plut or minus 5% bandwidth in all the tenders wherever MSMEs are participating in the tender.

For Petitioner : Mr.S.Parthasarathy,
Senior Counsel for
Mr.S.M.S.Johnny Basha

For Respondents : Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.K.Prabhakar for R2
No appearance for R1 despite
notice

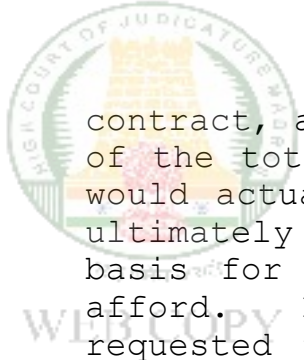
**ORDER**

This writ petition has been filed by an Association known as "BHEL Small and Medium Scale Industries Association" challenging the tender notification issued by the respondent-Bharat Heavy Electrical Limited [hereinafter referred to as "the BHEL"] inviting offers from eligible vendors for entering into Annual Rate of Contract for fabrication and supply of boiler components with vendor's material fabrication and other components and also for consequential direction to issue a fresh tender notification specifying the estimated fair price and restricting the bid with (+) or (-) of 5% bandwidth in all the tenders wherever the members of the petitioner association are participating in the tender.

2. The brief facts which led to the filing of the present writ petition is as follows:- The members of the petitioner association are having ancillary units for BHEL in other words, they are carrying out work for BHEL only. They wholly dependent on the BHEL contracts alone and that all their units are being classified as Micro, Small and Medium Entrepreneurs (hereinafter referred to as "MSME units"). There are around 500 units at Trichy and they had supplied nearly 1.00 lakh Tons of finished goods to BHEL and now it has been increased to about 3.00 lakh Tons. These units have been developed for about four decades and that they are supported by BHEL. More than 50000 persons are employed in these units directly and more than 50000 persons have been getting job opportunities indirectly.

3. The BHEL in order to meet its industrial needs floated tender for entering into annual rate of contracts for supply of various products. There are two types of product vendors namely, the vendors who supply products after procuring raw material and the others who process raw materials supplied by the BHEL. The lowest rate quoted in each tender will be fixed as "L1" and that the other competitors will be called upon to make their counter offers to match the prices quoted by L1. The above method is followed without any reference to their quoted rates. The big companies, with large scale production, with their large capacity, would be able to withstand the lowest price and they quote the lowest price, but the small and medium units like the members of the petitioner association would not be able to match the offers made by them. If the members of the petitioner association accept the counter offers, then they would incur heavy loss or if they do not give their counter offers, they would loose the opportunity and would be left with no job, in the above circumstances, the members of the petitioner association who are entrepreneurs of the small and medium scale industries and wholly dependent on BHEL, would not be able to compete with the big companies which would ultimately result in heavy loss to them.

4. It is the further case of the petitioner that practically even though the big companies quote L1 prices in order to bag the



contract, and after award of contract, they would undertake only 10% of the total requirement and the remaining 90% of the requirements would actually be met out by the small and medium scale units and ultimately they will be forced to do the work on labour contract basis for L1 companies at the lowest price which they could not afford. In the above circumstances, the petitioner association requested the BHEL to disclose the estimated rate of the product and the tenderers to quote (+) or (-) of 10% of the estimated rate of the products. If any tenderer quotes beyond 10%, he shall be disqualified and his tender should be rejected. The object of quoting this bandwidth is to ensure that no tenderer shall quote beyond 10% so that the cost shall not increase and likewise no tenderer shall quote below 10% so that the quality is not compromised. Further, according to the petitioner, the estimated cost should be an affordable cost of the product which would only lead to a healthy competition and in that event, the members of the petitioner association also will also be in a position to compete with the other big companies.

5. It is the specific case of the petitioner that the other public sector industries are furnishing the estimated price while calling for tenders, but BHEL alone for the reason best known to them is not opting to furnish the estimated price of the product. In the absence of disclosure of the estimated price of the product, the big companies quote very low rate and the members of the petitioner association are unable to compete with the big companies and now they are left without any job. It is also case of the petitioner that some of the tenderers who quote very low price are not able to complete the contract and they abandon the work in mid-way which would result in heavy loss to the BHEL. In the above circumstances, the petitioner came forward with the present writ petition to set aside Tender Notification in 2017OVM009 dated 06.11.2017 floated by the 2nd respondent and to quash the same as devoid of transparency leading to arbitrariness and for a consequential direction to the respondent to issue a fresh tender specifying the estimated fair price and restricting the bid with plus or minus 5% bandwidth in all the tenders wherever MSMEs are participating.

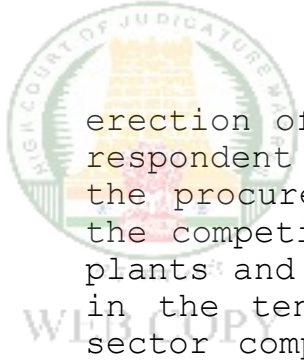
6. The respondent opposed the writ petition *inter alia* raising a preliminary objection in respect of the maintainability of the writ petition filed by the association. According to the respondent-BHEL, they invited tender for 37 different work schedules. Now the members of the petitioner association have participated in the tenders relating to many of the schedules. The price bids were opened and the members of the petitioner association were emerged as "L1" in 7 schedules and in respect of the remaining schedules, when L1 price was made known to vendors for counter offers, as many as 164 counter offers have been made by vendors and out of 164 counter offers, 131 counter offers have been made by the members of the petitioner association and they have participated in the tender process without questioning the tender conditions. In the above circumstances, the association cannot maintain the writ petition



challenging the tender notification when the members of its association have participated in the tender process without questioning the tender conditions.

7. The respondent further contended that the tender called for by the respondent BHEL was a limited tender restricted only to the vendors registered with BHEL and it was for fabrication and supply of boiler components by vendors at their costs and with their own materials as per the technical specification given by the respondent. There are totally 37 different work schedules with a total requirement of 267000 Metric Tons. As per one of the tender conditions, a special concession has been given to the members of the petitioner association who are small and medium scale entrepreneurs. The tender also stipulates a provision for MSMEs in view of the policy of the Ministry for Micro, Small and Medium Scale Entrepreneurs that 20% of the tender work will be earmarked for MSMEs and also permits them to quote L1 + 15% to counter offer at L1 price. The tender conditions were strictly in compliance with all statutory requirements regarding the special concessions to be offered to MSMEs. The tender called for by BHEL is a supply contract where the vendors have to procure raw materials and manufacture products at their end as per the specification stipulated by the respondent and supply to end-point. The BHEL will not automatically accept the lowest offer made by L1 and they reserve every right to reject all impracticable lowest bids which are not acceptable and workable and they would accept only the reasonable and practicable lowest bids as L1. The counter offer of L1 price will be done as per tender terms and the work will be broken up and offered to other vendors who accept L1, offer price. The number of persons who offer work and the quantum of work depends on number of counter-offers made against each work schedule. The distribution of work would also be depending upon the tender ranking, peak performance, delivery and quality of performance in the previous pending orders. Therefore, the work would be equally distributed to all the vendors who matches the counter offer and no vendor will be dumped with the entire work and no one will be forced to complete the work which is left incomplete by the previous ranking vendor. In the event of any vendor fails to complete the work allotted to them and abandons the same in mid-way, BHEL will take necessary penal actions like blacklisting and demoting him in tender ranking as appropriate. That part, the BHEL will also initiate civil proceedings to invoke the bank guarantee and to claim liquidated damages wherever appropriate.

8. The respondent further contended that revealing the estimated price would foreclose the competitive price and the same would also lead to a cartelisation. Technically the estimated price with (+) or (-) of 5% bandwidth on estimated price will foreclose the competitive prices and the same would lead to loss to BHEL and they have to necessarily reject the reasonable offer of the tenderer who quoted below 5% bandwidth which is not abnormally low. If the estimated price is disclosed, the respondent would definitely loose to its competitors as the respondent is participating in tenders for

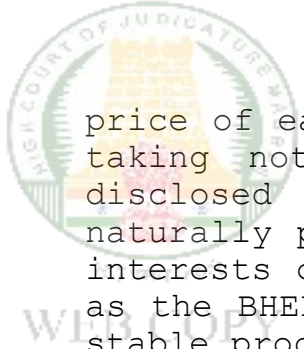


erection of power plants for private and foreign companies. If the respondent disclosed the estimated price of the components, then, the procurement cost will be made known and it will be easier for the competitors to outbid BHEL in the tenders for erection of power plants and it will further diminish the chances of BHEL to compete in the tenders for erection of power plants. None of the public sector companies in the country discloses the estimated price in respect of supply contract and the examples cited by the petitioner association are all related to work contracts wherein all the variables will be made known and the estimated price would be easily arrived at. No public sector company in the matter of infrastructure products reveal its estimated price. Further more, the tender is not restricted to the companies in and around Trichy alone and it is spread all over the country.

9. The instant tender is a supply contract where tenderer has to procure raw materials, labour and manufacture products as per the specification given by the BHEL and would include variables like price of raw materials in the locality where the vendor's industry is situate, proximity, labour cost and transportation to end-point. These factors are highly variable which cannot be determined by the respondent. In the above circumstances estimated price cannot be fixed by the respondent. The tender in question was floated strictly in compliance with the statutory provisions, more particularly, the provisions relating to MSME policy and the petitioner association cannot find fault with the BHEL. More particularly, when many of the members of the petitioner association having been submitted their tenders and having been participated in the tender process, the association cannot challenge the tender conditions at a belated stage. The writ petition is, therefore, liable to be dismissed.

10. On the above pleadings, I have heard the learned senior counsel for the petitioner and the learned senior counsel for the 2nd respondent and also carefully perused the materials placed on either side.

11. The learned senior counsel for the petitioner would submit that the members of the petitioner association are either small or medium scale entrepreneurs (MSMEs). They are ancillary units for BHEL and they wholly dependent on the respondent BHEL. The members of the petitioner are now compelled to compete with the big companies, who have been placed in an advantageous position and able to quote low rates. The MSMEs are forced to match the offers of such big companies which are not at all practicable. Earlier when the petitioner association had made representation to the higher authorities of the BHEL, they assured them that the issue will be resolved. But, so far the BHEL have not come out with any fruitful solution to redress the grievance of the members of the petitioner association. If the fair price with a bandwidth as claimed by the petitioner is revealed, the same would lead to a healthy competition and it would also be profitable to BHEL. The internal estimated

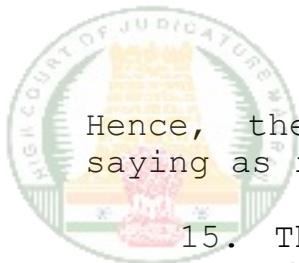


price of each item could be calculated in a scientific manner after taking note of various factors and if the estimated price is disclosed for each schedule of work, the upper bandwidth could naturally prevent over quoting which would ultimately safeguard the interests of both the members of the petitioner association as well as the BHEL and also protect the BHEL as they will be assured of a stable procurement.

12. The learned senior counsel would further contend that the vendors awarded with contract do only limited work and the remaining works are being carried out by MSMEs like the members of the petitioner association. Therefore, MSMEs are compelled to carry out the work at a lowest price quoted by L1 which is not at all practicable for them and ultimately it would result in irreparable loss to them. On the other hand, if the estimated price is disclosed in the tender notification, then, MSMEs will be in a position to carry out the work at a reasonable cost. Among big companies, L1 company who quoted lowest price will ultimately bag the contract, but, they would abandon the contract in mid-way as it is not profitable which would only result in loss to the BHEL. The policy of the respondent not to disclose the fair price would only lead to arbitrariness and the entire tender condition are liable to be set aside and the respondent should be directed to issue afresh tender with a clear mention about the fair price of the components in respect of each work schedule.

13. The learned senior counsel for the petitioner would also refer to the report submitted by the Department of Economics and Statistics, Government of Tamil Nadu wherein current status of ancillary units of BHEL have been analyzed elaborately and a suggestion has also been made thereunder to constitute a committee to redress the grievance of the MSMEs and to arrive at a consensus. According to the learned counsel, despite the fact that various problems pointed out by the petitioner association were analyzed in the report, so far no steps have been taken to address their grievance.

14. Per contra, the learned senior counsel for the respondent BHEL would contend that first of all the writ petition filed by the association is not at all maintainable on the ground that as many as 56 members of the petitioner association have already submitted their tenders and in most of the work schedules, they emerged as L1 and in the other schedules also some of the members of the petitioner association have made their counter offers. After having accepted the tender conditions, submitted their tenders and after having participated in the tender process, it is not now open to the petitioner association to challenge the tender conditions. That apart, the contention of the petitioner cannot be countenanced for the sole reason that already 20% of the work has been earmarked for MSMEs in view of the policy of the Union Government. The members of the petitioner association not solely depend upon the BHEL and they do obtain contract for supply of material for other industries also.



Hence, the petitioner association cannot have any grievance by saying as if they wholly depend upon BHEL.

15. The learned senior counsel for the respondent would, in support of his contention, rely upon the judgments of the Hon'ble Supreme Court in the cases of Master Marine Service (P) Ltd v. Metcalfe & Hodgkinson (P) Ltd, (2005) 6 SCC 138; Jagish Mandal v. State of Orissa, (2007) 14 SCC 517; Haryana State Agricultural Marketing Board v. Sadhu Ram, (2008) 16SCC 405; Southern Region Bulk LPG Transport Owners Association v. Union of India, (2010) SCC online Mad 3373; Lanco Infratec Ltd v. Chief General Manager (Contracts) NLC Ltd, 2013 (6) CTC 667; PUnjai Puliyampatti Municipality Shopping Complex Lessee Welfare Association v. Commissioner of Municipalities Administration, (2016 SCC online Mad 1727; and T.Vijaya Sekar v. Union of India and others (W.P.No.315, 316, 3066, 3818 of 2016 dated 25.04.2016).

16. I have carefully considered the rival submissions.

17. The scope of judicial review of administrative decisions, more particularly, exercise of powers in awarding the contract has been well settled by the Hon'ble Supreme Court as well as by this Court in number of pronouncements.

18. In **Tata Cellular v. Union of India, AIR 1996 SC 11**, the Hon'ble Supreme Court has held as follows:-

"(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



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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.

19. In Air India Ltd v. Cochin International Airport Ltd, (2000) 1 SCR 505, the Hon'ble Supreme Court has held as follows:-

"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 of 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. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

20. In Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, the Hon'ble Supreme Court has as follows:-



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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 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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21. In **Michigan Rubber (India) Ltd v. The State of Karnataka, (2012) 8 SCC 216**, the Hon'ble Supreme Court has held as follows:-

"35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with 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. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

22. From the above decisions, it is clear that respondent-BHEL could evolve its own terms and conditions while calling for tender and it cannot be subjected to judicial scrutiny unless it is found to be arbitrary, malafide or discriminatory. The power of judicial review will not be permitted to invoke to protect the private



interest at the cost of public interest or to decide contractual disputes. No person can claim a fundamental right in carrying on business with the government and all that he can claim is while competing for the contract, he should not be unfairly treated and discriminated and overwhelming public interest requires interference by the court.

23. Keeping the above principle in mind, let me now consider the present case. The petitioner claims that the petitioner association was formed to safeguard the welfare of the MSMEs. The members of the petitioner association are ancillary units for BHEL and wholly dependent on BHEL contracts only. The grievance of the petitioner was that without fixing a fair price or an estimated price of the component to be supplied by the vendors, the members of the petitioner association are not able to compete with the big companies who quote very low price and if the members of the petitioner are compelled to make their counter offers to match the price quoted by big companies, the survival of their industries would be difficult and ultimately they would be put into irreparable loss and in order to protect their interests, the policy of BHEL should be changed. While calling for tender for supply of materials, the respondent should be compelled to foreclose the estimated / fair price for each component to be supplied by the vendors.

24. The above contention has been resisted by the respondent-BHEL on the ground that they cannot arrive at an estimated price as the price will include various factors, like cost of raw materials, the place where the vendor's unit is located, the proximity to steel industry, availability of labour and labour cost and also the cost of transportation from the vendor's unit to end-point. When these factors are variable from one place to other, the respondent cannot determine the estimated / fair price of the component. That apart, revealing the estimated / fair price would definitely lead to cartelisation. Once the price of the commodity is disclosed, the same would foreclose the competition and it would also cause to the respondent. If estimated / fair price with a bandwidth is fixed, the respondent has to necessarily reject the price bid even if the same is at a reasonable price and not abnormally low which would ultimately result in loss to the BHEL. IF the estimated / fair price of the component procured by BHEL is known, it would be easier for the respondent's competitors to know the procurement cost while supplying the finished product which will ultimately cause loss to the respondent-BHEL. It is also clearly stated by the respondent that they will not automatically accept the lowest quoted price as L1 and BHEL reserved its rights to reject all such impractical low bid which are not feasible and workable and the respondent will finalize only the most reasonable and practical lowest bid as L1. It is also contended that the respondent is only trying to get a best price quoted for fabrication and for supply of boiler components and the right of the BHEL to find the the best price cannot be considered as arbitrary. It is further contended by the respondent that non disclosure of the estimated / fair price is not for any

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other collateral purpose and therefore, it cannot be said that BHEL discriminates the members of the petitioner association or show favoritism to others thereby neglecting the MSMEs. The above contentions of the respondent are more convincing. When the respondent competes with the other multi national companies, they are expected only to get best lowest price from their suppliers. Merely because the members of the petitioner could not be able to compete with the lowest offered price, it cannot, at any rate, be construed that the respondent is acting arbitrarily or with any mala fide intention and it is unreasonable.

25. Even though the petitioner has contended that similar type of public sector undertakings are disclosing the estimated / fair price while floating tender notification, from the instances cited by the petitioner, it could be seen that were all related to works contract and not in respect of supply contract like the one in the instant case and the petitioner association cannot compel the respondent to disclose the estimated / fair price, by which, there are more possibility to form a cartels by the bidders and the same will ultimately cause loss to the respondent. The Hon'ble Supreme Court in **Haryana State Agricultural Marketing Board v. Sadhu Ram, (2008) 16SCC 405**, in a similar situation, has held as follows:-

"18. Let us now take up the other aspect of the matter. As noted herein earlier, the reserve price was not shown in the public notice and therefore, the respondents had no knowledge of the reserve price. Even assuming that the reserve price had to be given in the public notice, then also, we are of the view that the best course for the High Court would be to cancel the entire auction in view of the decision of this Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651] rather than substituting its own opinion by directing allotment of alternative plots. It is, therefore, difficult to accept the views expressed by the High Court that since reserve price was not known to the respondents and they were found to be the highest bidders in the said auction, they have acquired a right to get the allotment of alternative plots and the appellants had no authority to reject the highest offers given by the respondents or to cancel the auction itself. Since the entire auction was cancelled, we do not find any justification how the High Court could pass an order directing allotment of the alternative plots on the same terms and conditions when, after cancellation, the second auction was held in which the price fetched was much higher than the offers made by the respondents. That apart, we do not find anything unfair in not disclosing the reserve price. It is common knowledge that when reserve price is



30. Even though this writ petition has been dismissed on legal grounds, this Court could understand the problems faced by the petitioner Association, as they are all the ancillary units to the respondent Bharat Heavy Electrical Limited and admittedly they are all supplying various components to the respondents and also given employment to large number of persons. Now, they are expressing some grievance regarding competing with big companies in the awarding of contracts. From the perusal of records, it could be seen that various steps have been taken by the Government of India, and also by the respondents to redress their grievance. Earlier, the survey report filed by the Department of Economics and Statistics, Government of Tamil Nadu also made some suggestions to the respondents to redress the grievance of the members of the petitioner Association. In the above circumstances, since all MSME industries are mainly depending upon the respondents, this Court hopes that in future, the respondents will consider their genuine grievances and take sincere efforts to redress their genuine grievances.

31. Now, the learned senior counsel appearing for the petitioner submitted that the members of the petitioner may be permitted to make their counter offers in respect of the remaining price bids to match with L1 offer and the learned Senior Counsel appearing for the 2nd respondent fairly accepted the same and submitted that it is always open to the members of the petitioner association to make their counter offers and BHEL will permit the members of the petitioner association to make their counter-offers to match the L1 offer. Therefore, the respondents are directed to permit the members of the petitioner to make their counter-offers to match L1 offer in all the remaining work schedules.

32. In the result, this writ petition is dismissed with the above directions. Consequently W.M.P.(MD) No.19184 and 9185 of 2017 and W.M.P.(MD) No.857 of 2018 are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.S.M.S.JOHNNY BASHA, ADVOCATE IN SR No. 45604
+ 1 CC TO Mr.K.PRABHAKAR, ADVOCATE IN SR No. 45478

KMK

TE/SV-MMS/SAR-3 : 19/02/2018 : 14P/3C

Order in
W.P.(MD) No.22878 of 2017
& W.M.P.(MD) No.19184 &
19185 of 2017 &
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01.02.2018