***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION NO.39813 OF 2018

%20.11.2018

M/s Sai Ram Constructions, H.No.5-10-31/1, Kishanpura, Hanamkonda, Warangal Urban District, Rep.by its Managing Partner, Challa Linga Reddy, s/o. Challa Ram Reddy.

...Petitioner

Vs.

$ The State of Telangana, rep.by its Prl.Secretary, Irrigation Department & Command Area Development (CAD) Department, Secretariat, Hyderabad and others.

...Respondents

!Counsel for the petitioner(s) : Sri A.Sudarshan Reddy, senior counsel appearing for Sri G.Madhsudhan Reddy, counsel for petitioner

Counsel for the Respondent(s) : Govt.Pleader for respondents 1 to 4; Sri K.G.Krishna Murthy for respondent no.5

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>Head Note:

? Cases referred:

(2003) 10 SCC 681
(2013) 10 SCC 95
2015 (4) ALD 345
(2016) 8 SCC 622
2016 (6) ALD 180 (SC)
2017 (4) ALD 133
2018(1) ALD 283
(2003) 4 SCC 289
(2007) 4 SCC 737
(2011) 13 SCC 167
(2012) 8 SCC 216
(1997) 1 SCC 738
(2006) 10 SCC 1
AIR 2004 SC 1962

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

WRIT PETITION NO.39813 OF 2018

Between:

M/s Sai Ram Constructions, H.No.5-10-31/1,
Kishanpura, Hanamkonda, Warangal Urban District,
Rep.by its Managing Partner, Challa Linga Reddy,
s/o. Challa Ram Reddy.

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary,
Irrigation Department & Command Area Development
(CAD) Department, Secretariat, Hyderabad and
Others.

.....Respondents

JUDGMENT PRONOUNCED ON : 20.11.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments ? : YES

2. Whether the copies of judgment may be marked to Law Reporters/Journals : YES

3. Whether Their Ladyship/Lordship wish to see fair Copy of the Judgment ? :NO

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.39813 OF 2018

ORDER:-

On 06.09.2018 Online tender notification was issued calling for bids to undertake the job of repairs and restoration of Rallavagu and Rallavagu Pick up Dam, Karegattu village, Paloncha Mandal, Bhadradri Kothagudem district as part of Mission Kakatiya Phase-IV Project. The Estimated Contract Value (ECV) was 41,29,10,539/-. The bid validity period prescribed as three months and time for completion of work as 24 months. Clause-17 of the tender notification prescribes submission of solvency certificate. Petitioner submitted his bid. He has obtained solvency certificate issued by the Indian Overseas Bank on 19.09.2018 certifying that petitioner can be treated as good up to a sum of 42.00 crores. Technical bids were opened on 20.09.2018 and the evaluation was completed by 26.09.2018. On 26.09.2018 petitioner was informed that the tender submitted by the petitioner was not accepted on the ground that the solvency certificate was conditional and, therefore, not acceptable. Challenging the same, this writ petition is filed.

2. Heard learned senior counsel Sri A.Sudarshan Reddy appearing for Sri G.Madusudhan Reddy, counsel for petitioner, learned senior counsel Sri K.G.Krishna Murthy for 5th respondent and the learned Government Pleader for respondents 1 to 4.

3. According to learned senior counsel Sri A.Sudarshan Reddy rejection of tender on the ground that solvency certificate is conditional is illegal and amounts to arbitrary exercise of power.

The rejection was deliberately made only to favour the other contractor. According to learned senior counsel, solvency certificate issued to the petitioner is not conditional. The reading of certificate would clearly show that the Bank certified that petitioner is capable of executing work worth 42.00 crores though solvency certificate required only for 1/3rd of ECV. He would further submit that solvency certificate is not mandatory and, therefore, merely because there are some technical defects in submission of solvency certificate is no good ground to deny the tender submitted by petitioner. Such defects are curable and if only an opportunity is afforded to the petitioner, he would have obtained a better solvency certificate as required by them. On such mere technical ground for non essential requirement tender condition, the tender submitted by the participant cannot be rejected. Merely because the tender conditions mentioned requirement of solvency certificate as mandatory cannot itself would amount to mandatory condition requiring strict compliance. Petitioner has submitted solvency certificate and what is objected is only form of submission of certificate and, therefore, opportunity ought to have been given.

4. In support of his contention, learned counsel placed reliance on the following decisions:

i) **K.Vinod Kumar v. S.Palanisamy and others**[1]; and

ii) **Rashmi Metaliks Limited and another v. Kolkata Metropolitan Development Authority and others**[2]

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1 (2003) 10 SCC 681
2 (2013) 10 SCC 95

5. *Per contra,* according to learned senior counsel Sri K.G.Krishna Murthy, the tender notification stipulate what are essential conditions to participate in the tender process. Whenever the condition is not essential, it is also specified. The petitioner is aware that submission of solvency certificate is mandatory. The tender process is governed by the orders of the Government vide G.O.Ms.No.94 Irrigation and CAD (PW-COD) Department, dated 01.07.2013. Annexure-II appended to the G.O., prescribes Rules for registration of contractors. As per paragraph-1(f)(iii)(b) solvency certificate has to be submitted in the form prescribed in Annexure-V(b). Admittedly, solvency certificate produced by the petitioner is not in accordance with form prescribed. Therefore, petitioner cannot be permitted to say that defect in submission of solvency certificate is to be ignored and his tender should be accepted. He would submit that violation of essential condition to participate in the tender is good ground to reject the bid offered by the contractor.

6. In support of his contention, learned senior counsel placed reliance on the following decisions:

i) **Sahakar Global Ltd., Mumbai v. Hyderabad Metropolitan Development Authority, Secunderabad and others**[3];

ii) **Central Coalfields Limited and another v. SLL-SML (Joint Venture Consortium) and others**[4];

iii) **Afcons Infrastructure Ltd., v. Nagpur Metro Rail Corporation Ltd., and another**[5];

iv) **K.Venkata Raju Engineers & Contractors (P) Ltd., Vijayawada v. State of Andhra Pradesh and others**[6]; and

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[3] 2015 (4) ALD 345
[4] (2016) 8 SCC 622
[5] 2016 (6) ALD 180 (SC)
[6] 2017 (4) ALD 133

v) **KRANS-TVSR (Joint Venture), Secunderabad v. General Manager, South Central Railway, Secunderabad and others**[7].

7. Learned Government Pleader would submit that submission of solvency certificate in the prescribed form is mandatory and as solvency certificate of the petitioner is not in the prescribed form, it is validly rejected. He would further submit that reading of the certificate submitted by petitioner would clearly show that Bank is not specifying the capacity of petitioner, but imposed certain conditions and, therefore, the same was not acceptable. Learned Government Pleader produced solvency certificate furnished by petitioner to participate in another tender issued by his banker i.e., Canara Bank dated 24.09.2018, which is in the prescribed form. He has produced copies of the solvency certificates submitted by other contractors.

8. I have carefully considered the respective submissions and the decisions cited by learned counsel appearing for petitioner and unofficial respondent, respectively.

9. The only issue for consideration in this writ petition is whether, non-submission of solvency certificate in the prescribed form would invalidate the bid submitted by the petitioner ?

10. In order to streamline the tender process, awarding of contracts and to avoid prescribing different criteria in different contracts and to standard the procedure for calling the tenders, registration of contracts etc., comprehensive guidelines are prescribed and notified vide G.O.Ms.No.94 dated 01.07.2003.

[7] 2018(1) ALD 283

Annexure-I prescribes tender procedure and Annexure-II prescribes Rules for registration of contractors. Annexure-V(b) contains form of solvency certificate by Banks. It is seen from the tender notification, G.O.Ms.No.94 is made applicable to the tender process. Clause-17 of the NIT requires furnishing of liquid assets and/or credit facilities of not less than 1477.17 lakhs. It prescribes that credit facility/letter of credits/solvency certificate issued from Banks alone would be considered. It shows compliance of the said clause is mandatory. Though petitioner has submitted his solvency certificate also, it is not in prescribed form.

11. The solvency certificate proforma prescribed reads as under:

> " **FORM OF SOLVENCY CERTIFICATE BY BANKS**
>
> I_______________ Managing Director/Manager/ General Manager/Agent of __________ Bank Ltd., do hereby certify that ________ (here the Names and address of the contractor) to be solvent to the extent of _____ (Rupees ________________) as disclosed by the information and record which are available with the aforesaid Bank.
>
> Date:
> Place
>
> For the _________ Bank
> (Designation of the Officer
> Authorized to sign.) "

Whereas, the solvency certificate issued by Indian Overseas Bank dated 19.09.2018 reads as under:

> " SOLVENCY CERTIFICATE
>
> This is to state that to the best of our knowledge and information M/s Sai Ram Constructions, H.No.5-10-31/1, Kishanpura, Hanamkonda, Warangal a customer of our Bank is respectable and can be treated as good up to a sum of 42.00 crores (Rupees forty two crores only). It is clarified that this information is furnished without any risk and responsibility on our part in any respect whatsoever more particularly either as guarantor or otherwise. This certificate is issued at the specific request of M/s Sai Ram Constructions.
>
> This certificate is issued at the specific request of the customer without any risk and responsibility of Bank or any of its officials.
>
> Senior Manager
> Date: 19.09.2018"

12. A bare reading of the certificate obtained by petitioner would show that Bank is not certifying that petitioner is solvent to the extent of 42.00 crores, but it only says that petitioner is customer of that Bank, is respectable and "can be treated as good up to a sum of 42.00 crores". The Bank clarifies that said information is furnished "without any risk and responsibility on their part" and certificate was issued at the request of petitioner. Thus, certificate is not in the prescribed form and in the manner in which the employer expects the petitioner to obtain solvency certificate. It is also appropriate to note that the prospective bidder has the discretion to submit either certificate of extending credit facility/ letter of credit/solvency certificate. In other words, he should show his financial strength to undertake the work and the employer assess the financial strength of the bidder based on any one of the three certificates furnished by him. 'Solvency' means ability to make long term financial obligations/state of having enough finances to discharge its obligations. The financial capacity of the prospective contractor is one of the essential requirements to assess suitability of the contractor to undertake the work entrusted to him. If the contractor does not have the financial means to undertake the work, it may result in delay in implementation of the work, causing higher financial burden on the State and defeats the very objective to undertake the work, in this case de-silting the village tanks, which is the objective of Mission Kakatiya Project and is a time bound project. Therefore, it cannot be said that submission of solvency certificate is not essential condition.

13. It is also appropriate to note at this stage that on 24.09.2018 i.e., just few days after the certificate obtained by petitioner on 19.09.2018 filed along with bid document, petitioner obtained solvency certificate from Canara Bank for 20.00 crores. Said certificate is in the prescribed form. No explanation is forthcoming, as to how petitioner could have obtained two different forms of solvency certificates within the short span of time. This would also show that petitioner was aware of the format required to submit solvency certificate. Thus, apparently, it is not the case of petitioner that by oversight or in ignorance he submitted improper solvency certificate and, therefore, he ought to have been allowed to re-submit solvency certificate in proper proforma.

14. Two decisions relied by the learned senior counsel for petitioner do not come to the aid of petitioner.

15. In **K.Vinod Kumar,** the condition which was considered by the Supreme Court was with reference to providing land for godown facilities by prospective LPG distributor. The relevant clause enables the LPG distributor to provide land for godown facilities after the dealership was awarded to him. Therefore, it is not essential precondition to participate in the selection process. However, it is appropriate to note the observations of the Supreme Court in paragraph-11 of the said decision reads as under:

> "11. The law is settled that over proceedings and decisions taken ***in administrative matters, the scope of judicial review is confined to the decision-making process and does not extend to the merits of the decision taken***. ....."
> (emphasis supplied)

16. In **Rashmi Metaliks Limited**, relevant clause considered by the Supreme Court was dealing with the submission of copy of

acknowledgment of latest income tax return and provisional tax return. After reiterating the principles on the scope of judicial review of administrative action in terms of tender notification/ contract, on going through the relevant clause, Supreme Court observed that the clause is not an essential element or ingredient or concomitant of the subject NIT. As the clause did not require the prospective bidder to specify the gross income or net income, filing of latest income tax return was a collateral term and cannot be viewed as mandatory requirement. Said decision also do not come to the aid of petitioner. It cannot be said that requirement to produce solvency certificate is optional one or non essential condition as it is one of the criteria required to assess the financial strength of the prospective bidder to undertake the work as per the tender notification.

17. In matters of formulating tender conditions, employer has wider latitude and scope of judicial review is minimal. It is within the domain of employer to prescribe tender conditions. Court may interfere, in exercise of power of judicial review, to assess the terms of tender notification, within the limited parameters of judicial review, if such conditions are palpably and demonstrably illegal, irrational, tailor made to suit a contractor, *mala fide*, against public interest and no reasonable man could have stipulated such conditions.

18. The wholesome rule in regard to judicial interference in administrative decisions is that if the competent authority takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the

law, Courts should keep off the same [paragraph-18, **Federation of Rly. Officers Assn. v. Union of India**[8]**].** Legality of policy and not the wisdom or soundness of the policy is the subject of judicial review [paragraph-16, **Directorate of Film Festivals v. Gauraw Ashwin Jain**[9]**].** On the scope of judicial review against the decisions of executive, more particularly decisions involving technical matters, in **Union of India v. J.O., Suryavamshi**[10], Supreme Court warned the Courts to resist the temptation to usurp the power of executive.

19. At this stage a brief recapitulation of the law on judicial review on contracts and particularly on tender conditions is necessary.

19.1. In **MICHIGAN RUBBER (INDIA) LTD.** v. **STATE OF KARNATAKA**[11]**,** Supreme Court held:

> 23. From the above decisions, the following principles emerge:
>
> (*a*) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
>
> ***(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;***
>
> ***(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;***

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8 (2003) 4 SCC 289
9 (2007) 4 SCC 737
10 (2011) 13 SCC 167
11 (2012) 8 SCC 216

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(*e*) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

(emphasis supplied)

19.2. In **Asia Foundation & Construction Ltd.** v. **Trafalgar House Construction (I) Ltd.**[12], while referring to guidelines laid down in **Tata Cellular** v**. Union of India** [(1994) 6 SCC 651], Supreme Court held as under:

"9. ……. The High Court in construing certain clauses of the bid documents has come to the conclusion that such a correction was permissible and, therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. We are of the considered opinion that it was not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the appellant. In *Tata Cellular* v. *Union of India* [(1994) 6 SCC 651] this Court has held that:

"The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers,

2. committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. ***Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:***

(*i*) ***Illegality***: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;

(*ii*) ***Irrationality***, namely, Wednesbury unreasonableness.

(*iii*) Procedural ***impropriety.***

The above are only the broad grounds but it does not rule out addition of further grounds in course of time." (emphasis supplied)

[12] (1997) 1 SCC 738

19.3. In **Reliance Airport Developers (P) Ltd.** v. **Airports Authority of India**[13], Supreme Court elaborated on these three parameters. Supreme Court observed:

> "65. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

19.4. In **Directorate of Education and others** v. **Educomp Datamatics Ltd and Others[14],** Supreme Court held as under:

> "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 their powers of judicial review to prevent arbitrariness or favouritism. 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* v. *Union of India* [(1994) 6 SCC 651] . After examining the entire case-law the following principles have been deduced: (SCC pp. 687-88, para 94)
>
> > "***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***

[13] (2006) 10 SCC 1
[14] AIR 2004 SC 1962

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 Ltd.* v. *Cochin International Airport Ltd.* [(2000) 2 SCC 617] this Court observed: (SCC p. 623, para 7)

“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 procedure 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.”

11. This principle was again restated by this Court in *Monarch Infrastructure (P) Ltd.* v. *Commr., Ulhasnagar Municipal Corpn.* [(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 ones 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. Directorate of Education, Government of NCT of Delhi had invited open tender with prescribed eligibility criteria in general terms and conditions under tender document for leasing of supply, installation and commissioning of computer systems, peripherals and provision of computer education services in various government/government-aided senior secondary, secondary and middle schools under the Directorate of Education, Delhi. In the year 2002-03, 748 schools were to be covered. Since the expenditure involved per annum was to the tune of Rs. 100 crores, the competent authority took a decision after consulting the Technical Advisory Committee for finalisation of the terms and conditions of the tender documents providing therein that tenders be invited from firms having a turnover of more than Rs. 20 crores over the last three years. The hardware cost itself was to be Rs. 40-45 crores. The Government introduced the criterion of turnover of Rs. 20 crores to enable the companies with real competence having financial stability and capacity to participate in the tender, particularly in view of the past experience. We do not agree with the view taken by the High Court that the term providing a turnover of at least Rs. 20 crores did not have a nexus with either the increase in the number of schools or the quality of education to be provided. Because of the increase in the number of schools the hardware cost itself went up to Rs. 40-50 crores. The total cost of the project was more than Rs. 100 crores. A company having a turnover of Rs. 2 crores may not have the financial viability to implement such a project. As a matter of policy the Government took a conscious decision to deal with one firm having financial capacity to take up such a big project instead of dealing with multiple small companies which is a relevant consideration while awarding such a big project. Moreover, it was for the authority to set the terms of the tender. ***The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them,*** unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. The provision of the terms inviting tenders from firms having a turnover of more than Rs. 20 crores has not been shown to be either arbitrary or discriminatory or actuated by malice.

14. This apart SSI having a turnover of more than Rs. 20 crores was the lowest bidder. Faced with the situation that the bids given by the respondents were not competitive with the bid given by SSI Limited, learned counsel for the respondents contended that because of the fall in price in the computer hardware and lowering of duty on the imports of the computers or its components the Government should invite fresh bids. It is not for us to comment as to what course is to be adopted by the appellants, in the changed circumstances attributed to lapse of time. It is for them to decide whether to continue with the tenders already floated, if necessary, by making negotiations so as to bring down the rates quoted or to invite fresh tenders. (Emphasis supplied)

19.5. In **Meerut Development Authority** v. **Assn. of Management Studies,** Supreme Court held as under:

> "27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

20. In the case on hand, the requirement to furnish solvency certificate is not under challenge and admittedly solvency certificate produced by petitioner is not in the prescribed form. This condition is applicable to all bidders. Thus, it cannot be said that decision to reject the tender submitted by petitioner was made in arbitrary exercise of power and authority and without application of mind. It cannot be said that the reason assigned that "furnished conditional solvency" is contrary to the record warranting interference by this Court. There is no 'illegality' or 'irrationality' or 'procedural impropriety'. The Court cannot go into merits of the decision made and hold otherwise, more so when it is an essential condition.

21. The Writ Petition fails and is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 20.11.2018
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HONOURABLE SRI JUSTICE P.NAVEEN RAO

<u>WRIT PETITION NO.39813 OF 2018</u>

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