

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20990 of 2018

M/s Ujjain Naraini Joint Venture having its office at Hariwatika Chowki, Bettiah, P.S. Mufassil, District West Champaran through its authorised signatory Shri Anil Kumar Jha, son of Dinesh Garayan, R/o Hariwatika Chowk, Bettiah, P.S. Mufassil, District – West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. Engineer in Chief cum Additional Commissioner cum Special Secretary, Road Construction Department, Government of Bihar, Patna.
4. Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
5. Bihar State Road Development Corporation Limited through its Managing Director, Patna.
6. Managing Director, Bihar State Road Development Corporation Limited, Patna.
7. Chief General Manager, Bihar State Road Development Corporation Limited, Patna.
8. Deputy General Manager (Technical), Bihar State Road Development Corporation Limited, Patna.
9. M/s Tribhuwan Narayan Singh, through its proprietor Tribhuwan Narayan Singh (s/o not known to the petitioner), having its Office at Chandrashekhar Nagar Rauja, Gajipur, P.S. - Gajipur, District Gajipur (Uttar Pradesh).

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Jitendra Singh, Sr. Advocate Mr. Harsh Singh, Advocate
For BSRDC	:	Mr. Lalit Kishore, Sr. Advocate Mr. Manish Dhari Singh, Advocate
For Resp. No. 9	:	Mr. P.K. Shahi, Sr. Advocate Mr. Anjani Kumar Jha, Advocate
For the State	:	Mr. Sushil Kumar- GP-22

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 04-04-2019

This writ application has been preferred for the
following reliefs :



i) For issuance of an appropriate writ/order/direction in the nature of certiorari for quashing the decision of the tender committee declaring Respondent no. 9 as successful in the technical bid in connection with tender floated by the office of Deputy General Manager (Tech), Bihar State Road Development Corporation Limited vide NIT No. BSRDCL/PIU-3 Hajipur-01/2018-19 (hereinafter referred to as the tender), which was communicated vide Letter No. 2890 dated 13.09.2018.

ii) For issuance of an appropriate writ/order/direction in the nature of certiorari for quashing the results of the financial bids in connection with the tender, which was opened behind the back of the petitioner, in so far as the same pertains to Respondent no. 9, who has been shown to be the lowest bidder notwithstanding the fact that Respondent No. 9 does not meet the basic technical qualifications required under the tender.

iii) For issuance of an appropriate writ/order/direction in the nature of certiorari for quashing any consequential action taken in favour of Respondent No. 9 by the Respondent authorities in pursuance to the opening of the impugned financial bids in connection with the tender, including award of tender and/or execution of formal work contract agreement/work order, etc., in favour of Respondent No.9.

iv) For issuance of an appropriate



writ/order/direction in the nature of mandamus commanding the Respondent authorities to reject the tender of Respondent No.9 as not being technically qualified under the tender and to award the tender in favour of the petitioner, whose financial bid was found to be second lowest after that of Respondent No.9.

v) For issuance of an appropriate interim writ/order/direction in the nature of mandamus restraining the Respondent authorities from awarding the tender and/or executing any work contract agreement/work order, etc., in favour of Respondent No.9 during the pendency of the instant writ application.

vi) For issuance of an appropriate interim writ/order/direction in the nature of mandamus restraining Respondent No.9 from executing the work, which is the subject matter of the impugned tender during the pendency of the instant writ application in case of work contract agreement/work order, etc., having already been executed in Respondent No.9's favour.

vii) For any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

2. It is the case of the writ petitioner that pursuant to the tender vide NIT No. BSRDCL/PIU-3 Hajipur-01/2018-19 dated 16.05.2018 for the work of “widening and strengthening work of Manuapul – Nawalpur – Ratwal



Chowk Road (37.008 km) for the year 2017-18 under CRF” (hereafter referred to as the ‘contract work’) the petitioner and respondent no. 9 both participated and came out successful at the technical bid stage. The petitioner is aggrieved by the decision of the tender committee declaring respondent no. 9 as successful in the technical bid for the reason that according to the petitioner, the respondent no. 9 did not fulfill an essential condition of tender whereunder the contractor should have had work experience of similar nature and had to provide proof of “*satisfactory completion of atleast one similar work of value not less than 10% of the estimated value of contract*”.

3. The estimated value of the work in this case is 1,22,45,79,736.00 (Rs. One Hundred Twenty Two Crores Forty Five Lakhs Seventy Nine Thousand Seven Hundred and Thirty Six only). The petitioner submits that in terms of clause ‘5’ of the technical bid sheet the proof of completion of one similar work was to be furnished by the contractor.

4. It is submitted that respondent no. 9 had in order to obtain contract work obtained a collusive experience certificate dated 21.07.2018 (Annexure-E/1 to



the counter affidavit of respondent no. 5 to 8) under signature of the Assistant Engineer of the Construction Part – III, Public Works Department, Gazipur (U.P.) showing that the petitioner had completed a similar work of Mau – Yusufpur Marg between kilometer 11 – 44.400 at a cost of Rs. 71,66,08,918.41. The date of completion of work has been shown as 23.05.2018.

5. Learned senior counsel representing the petitioner has in fact extended his whole argument based on his submission that this experience certificate is nothing but a kind of fraud played upon the official respondents in collusion with the concerned authorities of the respondents for obtaining the work contract. Learned counsel has taken this court through the pleadings particularly the statements made in the paragraph 16 of the writ application wherein it is stated that the petitioner came to know at a later stage that respondent no. 9 had not completed the work and the said road was lying in an incomplete condition which the petitioner's representative had seen from his own eyes and had also made a video recording of the same. It is for this reason that the petitioner lodged a complaint through email



dated 27.09.2018 to the respondent authorities enclosing videographs of the road to show that the same was incomplete.

6. In order to strengthen his argument with regard to his submission that the respondent no. 9 had not completed the work, learned senior counsel for the petitioner has drawn the attention of this court towards the table available in paragraph 8 of the reply cum second supplementary counter affidavit to the second supplementary affidavit on behalf of the respondent no. 5 to 8 at page 94 of the brief. It is submitted that the table showing the item of work, the quantity as per agreement and the quantity as per MB would show that the work such as clearing and rubbing work as per agreement was 103200.00 M² whereas the quantity of work done by the petitioner as per measurement book was only 84345.20 M². Similarly learned senior counsel has pointed out with reference to the item of each and every work that a bare glance over the said figure would show that the petitioner had failed to carry on the work as per the Bills Of Quantity (BOQ).



7. In this connection learned senior counsel has also taken this court through the copies of the measurement book available as Annexure-Q to the same affidavit at page 101. It is submitted that on the very first page it is clearly mentioned against the column showing actual date of completion that the work is in progress, therefore it is his submission that when the measurement book shows that the work was still in progress, the experience certificate saying that the work had been completed by respondent no. 9 would not be correct.

8. Learned senior counsel submits that when the complaint was made by the petitioner on 28.09.2018, the same was sent for verification to the concerned department of the Public Works Department at Gazipur. Vide letter no. 2375/7A dated 28.09.2018, on the same day the Executive Engineer responded saying that the experience certificate which was sent for verification had been issued by the said Construction Division – III, Gazipur. This letter dated 28.09.2018 (Annexure ‘F’ to the counter affidavit of respondent no. 5 to 8) also says that the cost of work in relation to which the experience certificate pertains was Rs.



66,16,050,42.00 but because some additional works were required at the spot, the contractor had carried on the work for cost of Rs. 71,66,08,918.41. The letter further says that because of paucity of funds the work could not be completed within time but there was no fault of the contractor in this respect.

9. Learned senior counsel submits that if this court goes through letter no. 3155 dated 28.09.2018 by which the respondents called upon the construction Part-III, Public Works Department, Gazipur to confirm the genuineness of the experience certificate, it would appear that in the said letter the respondents called upon the certificate granting authority to say as to whether the work has been completed or it is incomplete and in case it is incomplete then whether the contractor is guilty for the same. This, according to the learned senior counsel, would amount to changing the terms of the tender particularly clause 4.5(b) which specifically talks of satisfactory completion of a similar work as a prime contractor. It is submitted that if the work has not been completed the respondent no. 9 would not be eligible in terms of Clause



4.5(b) of the Instruction to Bidders. It is submitted that it was not within the domain of the respondent authorities to re-write the words of the tender document by calling upon the Gazipur authorities to declare as to whether for non completion of work the respondent no. 9 is to be held guilty or not.

10. Learned senior counsel has also drawn the attention of this court towards his another submission as stated in paragraph 10, 12, 13, 15 and 19 of the writ application to submit that on 04.10.2018, the respondent corporation declared the results of the financial bid by uploading the same on their website without giving any prior information/intimation of the time and venue for opening of the financial bids to the petitioner. The financial bids published on the website revealed that respondent no. 9 was lowest bidder having bid 10% less than the contract value, while the petitioner was the second lowest bidder at 3.01% less than the contract value. Learned senior counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Haffkine Bio-Pharmaceutical Corporation Limited vs. Nirlac Chemicals** reported in (2008) 12 SCC



790. Reference has been made to paragraph 6, 9, 10, 18 & 19 of the judgment to submit that if the bid was opened without prior information to the bidders, the whole process of bidding has been conducted contrary to the terms and conditions of the tender document and hence it is liable to be set aside.

11. In order to strengthen his submission that the respondent corporation could not have relaxed the tender conditions by taking into account as to whether or not respondent no. 9 is responsible for non-completion of work of Mau – Yusufpur road, learned senior counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **R.D. Shetty vs. International Airport Authority** reported in **(1979) 3 SCC 489** (paragraph 7 & 9) and the judgment in the case of **M/s Welcome Distilleries Pvt. Ltd. Vs. State of Bihar** reported in **(2015) 3 PLJR 328** (paragraph 10).

12. It is submitted with reference to his Interlocutory Application being I.A. No. 8446/2018 seeking amendment in the writ petition for assailing the letter of acceptance dated 06.10.2018 awarding the contract work to



respondent no. 9, that the respondent no. 9 has been awarded the work in haste without considering the submission of the petitioner that respondent no. 9 had indulged in corrupt and fraudulent practice within the meaning of clause 33.1 of the general conditions of contract. It is submitted that since the respondent no. 9 has obtained the contract work as a result of wrong tendering and by dint of non-bonafide methods of competitive tendering, in terms of clause '14' of general conditions of contract, the competent authority may call upon respondent no. '9' to show as to why the contract work be not cancelled. It is submitted that in the facts of the present case it would only be just and proper to cancel the contract awarded to respondent no. 9.

13. It is submitted that in its meeting held on 01.10.2018 the Tender Evaluation Committee rejected the complaint of this petitioner without looking into the various evidences such as the videographs and the photos just by taking note of the letter of the Gazipur authorities saying that respondent no. 9 is not guilty of non-completion of work in time. It is submitted that the decision of the Tender



Evaluation Committee in its meeting held on 01.10.2018 is a result of arbitrary exercise of power without consideration of the materials available on the record and hence it is liable to be set aside. A copy of the decision of the Tender Evaluation Committee taken in its meeting on 01.10.2018 has been brought on record as Annexure-11 to the writ application. Finally it has been contended with reference to paragraph 18 to 25 of the second supplementary affidavit cum rejoinder to reply cum supplementary counter affidavit on behalf of the petitioner that it would be desirable and expeditious and in public interest that this court may issue notices to the Government of Uttar Pradesh and the Executive Engineer, Construction Division – III, PWD Gazipur (UP) after impleading them as respondent no. 10 and 11 and call upon them to produce the entire records with respect to the agreement of Mau – Yusufpur Road so that the tender of such public importance secured by respondent no. 9 by playing fraud can be set at naught or to direct the respondent authorities to procure the said records and produce before this court.



Submission of the Corporation

14. Mr. Lalit Kishore, learned senior counsel representing respondent nos. 5 to 8 has opposed the prayer of the writ petitioner on various grounds. The first ground taken by learned senior counsel is that in the facts of the present case, considering the scope of judicial review in contract matters, this court may not take upon itself the role of a fact finding body or a court hearing a complaint to enquire into the various allegations. It is submitted that what has been virtually argued on behalf of the petitioner is that the certificate of experience issued by the authorities of the Public Works Department at Gazipur is in the nature of collusive and fraudulent certificate obtained by respondent no. 9. It is submitted that so far as the answering respondents are concerned, they have rightly relied upon the experience certificate after due verification. It is his contention that in the present case the respondent corporation has not changed the terms and conditions of the NIT/Tender document only because it called upon the certificate issuing authority to say clearly as to whether the work of Mau – Yusufpur road is complete or incomplete and in case it is incomplete who is responsible for the same.



15. Learned senior counsel submits that under clause 4.5 of the Instruction to Bidders (in short 'ITB'), the satisfaction that the contractor has completed a similar work to the extent of 10% of the value of work is that of the employer. The said clause, it is submitted, has been inserted only to ensure that the contractor who participates in the tender must have an experience of successful completion of a work to the extent of the value as provided under clause 4.5(b) of the 'ITB'. In the present case, since the certificate of the experience has been issued by the Gazipur authority clearly saying that the respondent no. 9 has completed the work for value of more than the contract amount, there is no reason why the said experience certificate be not accepted.

16. Learned senior counsel submits that the Adhishashi Abhiyanta, Nirman Khand-3, Lok Nirman Vibhag, Gazipur has clearly stated that respondent no. 9 has completed the work. On the face of the certificate it would not be proper exercise of discretion by this court to go into the minute details of each and every item of the work and to find out a fault by analysing the same. It is submitted that the experience certificate has been issued by a competent



authority.

17. As regards the submission of learned senior counsel for the petitioner with reference to the quantity of work mentioned in the agreement and the actual quantity of work done by respondent no. 9, learned senior counsel submits that the bill of quantity is prepared on the basis of an estimate but if the actual work required to be done at the spot is less than the bill of quantity, it cannot be said that the contractor has not completed the work. It is contended that the submission of learned senior counsel for the petitioner in this regard is totally misleading and incorrect.

18. As regards the submission that the date of opening of the financial bid was not communicated to the petitioner, it is the submission of learned senior counsel that in e-tendering system, it is not required to open the financial bid in physical presence of the bidders. Earlier a letter dated 13.09.2018 was issued to all the bidders giving the opening date of financial bid as 19.09.2018 but in the meantime the petitioner gave two petitions dated 18.09.2018 and 26.09.2018 which took time to deal in the light of the allegations made. It is submitted that since the authorities



were bound to act within given time frame and too much time were lost since the sanctioning of the project i.e. the date of administrative approval being 14.02.2018, the respondent corporation opened the financial bid. It is submitted that it is not only the petitioner rather none of the tenderers were given information with regard to the date of opening of the financial bid so it is not a case of discrimination and further this had not caused any prejudice to the petitioner. The submission is that no pleading has been made on behalf of the petitioner saying that because of not giving prior information as to the date of the opening of financial bid any prejudice has been caused to the petitioner. It is submitted that it is well settled by judicial pronouncements that in contract matters the writ court need not interfere only because a party challenging the tender make out a legal point. It is necessary to see in such cases as to whether the decision of the tendering authority is arbitrary and is against the public interest. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Air India Limited Vs. Kochin International Airport Limited** reported in (2002)



2 SCC 617 (Paragraph 7).

19. Learned senior counsel further submits that the respondent no. 9 in this case had successfully completed work for more than the amount of work required under the present NIT/Tender. The respondent no. 9 had completed the work for total amount of Rs. 71.66 Crores while the agreement was for Rs. 66.16 Crores only. It is submitted that in these circumstances the contention of the petitioner that respondent no.9 had not successfully completed the work is wholly misleading. With reference to clause 4.5(b) of the ITB learned senior counsel submits that as per the said clause the contractor had to complete a work to the extent of 10% of the contract work which will come to Rs. 12.245 Crore only whereas the respondent no. 9 had completed the work amounting to Rs. 71.66 Crore.

20. For the aforesaid reasons it is submitted that the writ application as well as Interlocutory Application are fit to be dismissed.

21. Mr. P.K. Shahi, learned senior counsel representing respondent no. 9 has apart from adopting the submission of Mr. Lalit Kishore, learned senior counsel,



submitted that it is not in dispute that this respondent no.9 was the lowest tenderer as he had quoted the maximum below. It is pointed out that on an estimation it may be found that petitioner had quoted at least 5 Crores of Rupees more than the respondent no. 9. It is submitted that even the larger public interest would require that a contractor who has quoted lesser amount and was declared L1 be not disturbed at the instance of a party who has been declared L2.

22. It is further submitted that a lot of submissions have been made against the experience certificate issued by the Assistant Engineer but it is to be seen that he has signed for and on behalf of the Executive Engineer and the said experience certificate has been confirmed by none else than the Executive Engineer vide his letter dated 28.09.2018. Submission is that while filing the writ application the petitioner did not think it just and proper to implead the authorities who had issued and confirmed the genuineness of the experience certificate. It is only at a belated stage in the second supplementary affidavit the petitioner made a statement in paragraph 25 that this



court may in public interest issue notices to the government of Uttar Pradesh and the Executive Engineer, Construction Division – III after impleading them as respondent no. 10 & 11. It is submitted that the petitioner has shown only a casual approach in making such statement in it's second supplementary affidavit without there being any proper application seeking impleadment of the parties. Further it is submitted that this court is not dealing with a public interest litigation, therefore the scope of judicial review in so far as the present writ application is concerned, has to be kept confined to the contest between the petitioner and respondents of this case.

23. It has been further pointed out from the supplementary counter affidavit filed on behalf of respondent no. 9 that respondent no. 9 has already completed 90% of the earth work of 16 kilometer road and up to 22 kilometer general clearance and tree cuttings have already been done for earth work. Two bridges have already been completed among 19 bridges on the work site. Respondent no. 9 is said to have collected 52,652 cubic meter material for construction of road which has already



been measured by the department and which is of the value of about Rs. 10 Crores and payment is being processed by the department. Learned senior counsel further submits that respondent no. 9 has received more than Rs. 3 Crores against the work done and payment of Rs. 10 Crore is under process. It is submitted that a further payment of Rs. 5 Crore is due against the work completed by respondent no. 9. In these circumstances, learned senior counsel submits that apart from the fact that petitioner has failed to make out a case for interference with the decision of Tender Evaluation Committee as contained in Annexure-11 to the writ application, this court may also consider the intervening circumstances and the larger public interest and be pleased to dismiss the writ application.

Consideration

24. Having heard learned senior counsel for the parties and on perusal of the records this court finds that the entire contest between the parties clusters around the experience certificate dated 21.07.2018 which states that the respondent no. 9 has completed the work on 23.05.2018 as per bill/actual quantity. The last line of the certificate says



“उपरोक्त कार्य संतोषजनक रूप से पूर्ण कराया गया है।”

25. When a complaint was lodged by the petitioner alleging that the respondent no. 9 had not completed the work, the respondent corporation vide its letter no. 3155 dated 28.09.2018 called upon the certificate issuing authority to say as to whether or not respondent no. 9 has completed the work. While writing the said letter respondent corporation, in order to ascertain the suitability of respondent no. 9 in terms of clause 4.5(b) of the ITB called upon the certificate issuing authority also to say in case the work has remained incomplete as to whether for the incomplete work the contractor is guilty. This court is unable to agree with the submission of learned senior counsel for the petitioner that by calling upon the certificate issuing authority to say in case the work has remained incomplete as to whether the contractor is guilty, the respondent corporation has changed the terms and conditions of the NIT/tender.

26. The court is willing to agree with the submission of Mr. Lalit Kishore learned senior counsel for the respondent corporation that the verification of



experience certificate was done by the respondent corporation in order to satisfy itself with the suitability of the contractor. To that extent clause 4.5(b) of the ITB is to be read as if it requires satisfaction of the present employer i.e. Respondent-Corporation with respect to the suitability of the contractor.

27. In course of argument with reference to the measurement book and the table showing the item of work, quantity as per agreement and the quantity as per MB, a submission has been raised on behalf of the petitioner that the work said to have been done by respondent no. 9 is not in tune with the quantity of work as mentioned in the bill of quantity and as per agreement, and hence this court should necessarily hold and declare that the respondent no. 9 has not completed the work satisfactorily and the experience certificate issued by the Assistant Engineer, Construction Division – III, PWD, Gazipur and confirmed by the Executive Engineer is a fraudulent document which has been obtained by respondent no. 9 in collusion with those authorities. This court is afraid that sitting in it's jurisdiction under Article 226 of the Constitution of India, this court



would not go into such submissions contrary to the view taken by the certificate issuing authority saying that the respondent no. 9 had completed the work satisfactorily. Mr. Lalit Kishore learned senior counsel has explained that even though in the 'BOQ' the quantity of a particular item of work may be mentioned more as per estimate but in course of rendering the actual work at the spot it may require a lesser quantity of work, thus, on this ground alone that the work done at the spot does not tally with the quantity of work as per BOQ and agreement it cannot be safely held that the contractor has not satisfactorily completed the work. This court would, therefore, refrain from entering into any such fact finding exercise sitting under Article 226 of the Constitution of India.

28. The scope of judicial review has come for discussion before the Hon'ble Apex Court in a number of judgments one of which is the case of **Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 = AIR 1996 SC 11**. In paragraph 70 (of SCC) (para 85 of AIR) the parameters of judicial review of the courts in the field of contractual powers by Government bodies have been



discussed as follows:

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or reusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

29. Further paragraph 7 of the Judgment in the



case of Air India Limited (supra) reads as under: -

“7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, CCE v. Dunlop India Limited, Tata Cellular v. Union of India, Ramniklal N. bhutta v. State of Maharashtra and Raunaq International ltd. v. I.V.R. Construction Ltd. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. 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.”

30. In the present case a lot of arguments have been made saying that the experience certificate is a collusive document and the respondent no. 9 has obtained it by playing fraud, to this court it appears that in case the petitioner is of the opinion that respondent no. 9 has obtained this contract by playing fraud, he has got forums available to agitate this aspect of the matter where an appropriate enquiry may be made to find out the truth but this court sitting in its jurisdiction under Article 226 of the Constitution of India would not convert itself in court of competent jurisdiction to decide a complaint alleging fraud as any such venture would require inquiry at various levels and recording of evidences etc. Much emphasis has been given saying that the photographs enclosed with the



affidavit is that of the Mau – Yusufpur Road but again this court finds that the photographs enclosed with the affidavit is required to be proved in accordance with law. A writ court, in the opinion of this court, would not be the appropriate forum to give a declaration by looking to the photograph which has been placed with the affidavit that it is the same Mau – Yusufpur Road which was lying incomplete on the date of issuance of certificate. This court is not willing to interfere with the decision of the Technical Evaluation Committee as contained in Annexure-11 to the writ application dated 01.10.2018 for the reason that it would not be just and proper to extend the scope of judicial review to the extent it has been sought to be invoked in course of argument on behalf of the petitioner. This court finds that the submission of Mr. Lalit Kishore, learned senior counsel that it is e-tendering process in which the physical presence of the bidders are not required is correct. A date for opening of the financial bid was required to be notified but then the same was not informed to any of the bidders including the petitioner. Thus, it is not a case where the petitioner was singly chosen in the matter of not giving



information with regard to opening of financial bid, further petitioner has not pleaded any prejudice. No case of prejudice has been set up on behalf of the petitioner, hence the court accepts the explanation furnished by Mr. Lalit Kishore, learned senior counsel for the respondent corporation that because the tender was to be completed within a time frame it was opened on 04.10.2018.

31. This court has also gathered from affidavit of respondent no. 9 that he was declared L1 and has already proceeded with the work and has completed some substantial work till now. The judgments which have been cited at the bar on behalf of learned senior counsel for the petitioner are in support of the submission that there could not have been a relaxation of condition and further that by not notifying the date of opening of the financial bid the whole tender had vitiated. However, in the facts of the present case, I have already held that by calling for certain information in its letter dated 28.09.2018 the respondent corporation cannot be said to have changed the terms of NIT/Tender. This court has also accepted the explanation of the corporation as to why the date of opening of the



financial bid was though initially notified by letter dated 13.09.2018 but after decision of the Technical Evaluation Committee dated 01.10.2018, the financial bid was opened on 04.10.2018 because the whole work was to be completed within a time frame and further no prejudice has been caused to the petitioner.

32. For the aforesaid reasons, this court does not find any merit in the writ application. It is dismissed accordingly but since this court has not gone into the allegation of fraud, there will be a liberty to the petitioner, if so advised, to agitate his pleas as to fraud in the matter of issuance of experience certificate dated 21.07.2018 and pronouncement of tender on that basis before an appropriate forum.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.04.2019
Transmission Date	

