**NAFR**

**HIGH COURT OF CHHATTISGARH BILASPUR**

**Order reserved on 31.08.2020**
**Order delivered on 18.09.2020**

**Writ Petition (C) No. 1727 of 2020**

Paramount Security Services Through Proprietor Uday Raj Singh Parihar, S/o Late J N Singh Parihar, Aged About 76 Years, G-10 Hira Arcade, New Bus Stand, Pandari Raipur Chhattisgarh.

**---- Petitioner**

**Versus**

1. State of Chhattisgarh Through Secretary, Department of Labor, Mahanadi Bhawan, Atal Nagar, New Raipur Chhattisgarh.
2. Commissioner Labour Department, Atal Nagar Mahanadi Bhawan New Raipur Chhattisgarh.
3. Chhattisgarh Building and Other Construction Workers Welfare Board Through its Secretary, P/3, Sector 27, Housing Board Colony, Raipur Chhattisgarh.

**---- Respondents**

**Writ Petition (C) No. 1740 of 2020**

Nature Clean Foundation Through Proprietor Sanjay Kumar Bhaskar, S/o Shri Baidya Nath Singh, Aged About 50 Years, Pandit Deendayal Upadhyaya Nagar Raipur, Chhattisgarh

**---- Petitioner**

**Versus**

1. State of Chhattisgarh Through Secretary, Department of Labour, Mahanadi Bhawan, Atal Nagar, New Raipur, Chhattisgarh
2. Commissioner Labour Department, Atal Nagar Mahanadi Bhawan New Raipur, Chhattisgarh
3. Chhattisgarh Building and Other Construction Workers Welfare Board Through its Secretary, P/3, Sector 27, Housing Board Colony, Raipur, Chhattisgarh

**---- Respondent**

**Writ Petition (C) No. 1741 of 2020**

Helping Hand Services and Consultant Through Saurabh Upadhyay S/o S.K. Upadhyaya, Aged About 46 Years, Office At House No. 606, Sunder Nagar Raipur.

**---- Petitioner**

**Versus**

1. State of Chhattisgarh Through Secretary, Department of Labor, Mahanadi Bhawan, Atal Nager, New Raipur

2. Labour Commissioner Labour Department, Atal Nager Mahanadi Bhawan New Raipur
3. Secretary Chhattisgarh Bhawan Avam Anya Sanirmaan Karmakar Kalyan Mandal (As Mentioned In Tender Document) Office At P/3, Sector 27, New Raipur

**---- Respondents**

---

**WPC No.1727 of 2020**

For Petitioners : Shri Chandradeep Prasad, Advocate
For Respondents/State : Shri Satish Chandra Verma, Advocate General with Shri Vikram Sharma, Government Advocate.

**WPC No.1740 of 2020**

For Petitioners : Shri Chandradeep Prasad, Advocate
For Respondents/State : Shri Satish Chandra Verma, Advocate General with Shri Vikram Sharma, Government Advocate.

**WPC No.1741 of 2020**

For Petitioners : Shri Anurag Jha, Advocate
For Respondents/State : Shri Satish Chandra Verma, Advocate General with Shri Vikram Sharma, Government Advocate.

---

**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**
**Hon'ble Shri Parth Prateem Sahu, Judge**

**C A V Order**

**Per Parth Prateem Sahu, Judge**

**1.** As the petitioners in all the three writ petitions are challenging one and the same tender notification issued by respondent No.3-Chhattisgarh Building and Other Construction Workers Welfare Board for supply of manpower of 370 employees and labourers, all the three writ petitions are being disposed off by this common order.

**2.** Respondent No.3 has issued tender notification on 07.07.2020 bearing Tender No.नि.सू.क./01/बीओसी/2020 for supply of manpower (370 employees and labourers). The start date of purchase of tender documents was 13.07.2020 which ends on 10.08.2020; the last date for submission of the tender documents was 10.08.2020 and further opening of bids submitted by interested tenderers was 10.08.2020.

**3.** The petitioners in Writ Petition (C) Nos.1727 of 2020 and 1740 of 2020 have challenged the tender notification pleading therein that tender notification issued is incomplete, arbitrary and in violation of all the applicable rules and guidelines. It is mentioned that total estimated value of the tender has not been mentioned in the tender notification deliberately and the purpose of the same is to avoid newspaper publication and calling bids through e-tender/e-procurement process. From perusal of the requirement of number of employees and taking the minimum salary of an employee as Rs.15,000/- per month per employee, tender value will come to Rs.13,32,00,000/-, for which, as per Chhattisgarh Works Department manual, bids ought to have been called through e-tender and not manually. Chhattisgarh Works Department specifically issued an order dated 21.01.2020 mentioning therein that all the tenderers which are above 2 Crore ought to have been floated under the e-tender/e-procurement process. The tender notification has not been published in two newspapers, which is contrary to Clause 4.3.3(iv) of the Chhattisgarh Store Purchase Rules, 2002 (hereinafter referred to as 'Rules of 2002') and further, demand of Rs.30,00,000/- as earnest money is unreasonable. It is also pointed out that the Works Department Manual Volume-1 requires the earnest money to the maximum of 0.5% of the value of tendered work, of which, the work value exceed Rs.2 Crore. The requirement of depositing of Rs.30,00,000/- towards earnest money is only to minimize the participation of the tenderers. The requirement of registration of Shops and Establishments Act, 1958 (hereinafter referred to as the 'Act of 1958') is not at all required as it is nothing to do with supply of manpower, therefore, the said requirement is unreasonable. The other Government Departments/local bodies have issued e-tenders for supply of manpower as per Government guidelines, but the subject tender has been issued manually. The conditions imposed/forming part of the tender notification is to minimize the participation of the tenderers and to accommodate the favourable contractor. Similar pleadings have been made in Writ Petition (C) No.1741 of 2020 and sought for following reliefs :

> "10.1 That, this Hon'ble Court may kindly be pleased to allow the writ petition and direct the respondents to cancel the tender dated 07.07.2020 (Annexure (P/1) and reschedule the tender maintaining transparency.
>
> 10.2 That the Hon'ble Court may kindly be pleased to direct the authorities to retender and strictly follow the norms of

> the tender process and also grant opportunities to other contractors via process of e-tender/e-procurement process.
>
> 10.3 Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner. ”

**4.** In Writ Petition (C) No.1741 of 2020, the petitioner has pleaded that it is partnership firm named and styled as “Helping Hands Services and Consultant” and working as contractor in the State of Chhattisgarh. The respondents failed to publish the tender notification in two newspapers, which is violation of their own norms under the Rules of 2002. Respondent No.3 has deliberately not floated the subject work through e-tender/en-procurement process, which is in contravention of Section 14, Chapter 2 of the Works Department Manual, wherein it is prescribed that the tenders having the value of above Rs.2 Crore, are to be floated under e-tender/e-procurement process only. The action on the part of respondent No.3 in issuing the tender notification manually and calling the bids for supply of 370 employees during the period of COVID-19 pandemic, smacks color of doubt. Even if average salary at the rate of Rs.15,000/- per month is taken, the total estimated value of the tender will come to Rs.13,32,00,000/-, but total estimated value has not been shown in the tender notification deliberately. There was no publication of the tender notification in two newspapers as per requirement under the Rules of 2002 (Clause 4.3.3(iv)).

The earnest money demanded in the tender is excessive and contrary to Works Department Manual, Volume-1.

**5.** In all three writ petitions, the petitioners have sought for cancellation of tender notification dated 07.07.2020 and re-tendering of the same work after following the norms of the tender process through e-tender/e-procurement process.

**6.** Respondents/State submitted reply to the writ petitions pleading therein that the idea and understanding of the petitioners in the writ petitions is *per se* wrong, illegal misconceived and incorrect. The reason behind procuring the services of the employees through placement agency is to avoid relationship of employee and employer, following the liability upon the Government. Schedule-II of the tender notification prescribes the financial bids wherein it is mentioned that interested candidates/tenderers have to quote the relevant percentage of service charge only, therefore, the total estimated value has not been mentioned in the tender notification. Unless and until, the percentage of service charge is shown, it cannot be judged about the estimated value of the tender. The payment of the employees engaged by the placement agency is to be directly made by respondent No.3 through the placement agency and it is not for placement agency to pay the salary from their own. Earlier, in the year 2016, the respondent authorities floated a tender for selection of placement agencies in same format and style and in that also, estimated cost was not shown, the tender was also floated manually. With regard to publication of tender notification in newspaper under the Rules of 2002, the petitioners have not placed the correct facts; the respondents have made wide publication in two national newspapers as well as two regional newspapers, namely, Navoday Times New Delhi, Khabare Aaj Tak Mumbai, Hari-Bhoomi and Deshbandhu respectively and the tender notification has also been shown in the website of respondents. The Rules of 2002 have been drafted with an intention to regularize in the purchase of the goods within the Government Departments. The Works Department Manual is prepared and drafted only with regard to work carried out in the Public Works Department, Irrigation Department and Public Health Engineering Department. The Work Department Manual is not applicable to the subject NIT, which was floated keeping in mind the relevant provisions of Rules of 2002. As per the Works Department Manual if the method of online e-procurement tender will apply then only those contractors will be able to participate, who are registered under the Public Works Department, Irrigation Department and Public Health Engineering Department or registered under the Chhattisgarh e-Procurement. The purpose of e-tender has been achieved by floating subject tender in the official website of the Department of Labour and on that count only, instant tender proceedings cannot be vitiated. The condition of deposit of earnest money of Rs.30,00,000/- has been made keeping in mind Clause 4.7 of the Rules of 2002, which prescribes for the minimum of 3% of the total tender value. Looking to the previous year cost i.e. financial year 2018-19 of Rs.11 Crore, the quantum of earnest money has been fixed as Rs.30,00,000, which is 3% of the total tender value assessing the work value as Rs.10 Crore. The condition of registration with the Act of 1958 is for the purpose that the bidders have to participate in the tender proceedings for the manpower services and licence is to be issued on the fixed office address. It is also pleaded that the conditions enumerated in the tender are only to select few is also not correct. The requirement of submission of the service under the Act of 1958 is for the purpose that the tenderer should have minimum number of employees as per requirement under the Act. Only because some of the conditions enumerated in the tender notification if prejudicial to the interest of the petitioners, it cannot be termed as arbitrary and unreasonable. This ground will not help the petitioners in any way. The other Organizations of the State have floated tenders in similar manner manually. The petitioners have no *locus standi* to challenge the impugned NIT as the petitioners are not qualified to participate in the subject tender proceedings. The petitioners do not fulfill the technical qualification as the petitioners do not have experience and valid licence of 250 persons and licence under the Act of 1958, which are mandatory requirements. NIT floated by different Municipal Corporations are under the Rules governing to them.

**7.** Rejoinder has been filed by the petitioners in Writ Petition (C) Nos.1727 of 2020 and 1740 of 2020, in which, it is pleaded that the publication made in two national newspapers as well as two regional newspapers is merely an eyewash and just for the sake to complete formality of Clause 4.5 of the Rules of 2002. The advertisement published in two local newspapers does not fulfill the criteria, there was no specific 30 days' time gap between date of publication and the last date for submission of the tender notification. It is also pointed out that the publication was made on 12.07.2020 whereas the last date for submission of tender was 10.08.2020. It has been further pleaded that M/s. Call Me Services is working with respondent No.3 in the year 2016 within the 0.01% service charge. The company charging the service charge at the rate of 0.01% in the year 2019 shows the corruption.

**8.** Shri Chandradeep Prasad, learned counsel for the petitioners in Writ Petition (C) Nos.1727 of 2020 and 1740 of 2020 submits that the action on the part of respondent authorities is wholly arbitrary as they have not mentioned the tender value in tender notification. As per Clause 6 read with Clause 7.1 prescribed for payment of salary on contractual basis to the employees for a period of two years. The requirement of excessive earnest money deposit to the tune of Rs.30,00,000/- is highly arbitrary and illegal. There was no detail of the tender notification in the newspaper as per the requirement under the Rules of 2002. The publication of tender notification in newspapers is only a formality, done in a mechanical manner as the publication which has been made in

'Hari-Bhoomi' is only as per the requirement of the tender clauses. 'Deshbandhu' newspaper does not have wide circulation in the State of Chhattisgarh. The contract cannot be beyond one year whereas in the case at hand, after completion of one year, the contract can be extended for a further period of six months. Learned counsel for the petitioner has relied upon the case laws of **V. Punnen Thomas v. State of Kerala** reported in **AIR 1969 Kerala 81 (V 56 C 20) Full Bench** relied by the Hon'ble Supreme Court in the matter of **Harminder Singh Arora v. Union of India and others** reported in **(1986) 3 SCC 247**, **Reliance Energy Ltd. and Another v. Maharashtra State Road Development Corpn. Ltd. and Others** reported in **(2007) 8 SCC 1** *(para 38 at page 22)* and **Ram and Shyam Company v. State of Haryana and Others** reported in **(1985) 3 SCC 267** and different writ petitions as **Writ Petition (C) No.6574 of 2007 and C.M. Nos.12416 of 2007, 5651 of 2008 and 8457 of 2008**.

**9.** Shri Anurag Jha, learned counsel for the petitioner in Writ Petition (C) No.1741 of 2020 making argument on similar lines as of the learned counsel for the petitioners in Writ Petition (C) Nos.1727 of 2020 and 1740 of 2020 and submits that there is no mention of estimated tender value in the tender notification, no mention of percentage. Pleadings made in the reply that e-tender is only for registered contractor with Public Works Department is not correct. He referred to Clause 4.7 of the Rules of 2002 to argue that there is no paper publication of the tender notification. During the period from 2012 to 2020, respondents have issued tender notification only three times for the supply of manpower and the period of one year as per tender document was extended by them for two times, six months each of all the tenderers to extend undue favour to the successful tenderer in those tenders. Publication though made as per the Rules of 2002, is not in compliance thereof. The respondents have not complied with the requirement of the Rules of 2002. The earnest money would be only 0.5%, but they have asked at the rate of 3%, which shows that the excessive demand of earnest money is only to extend the benefit to the contractor of their own choice. Requirement of the licence under the Act of 1958 is not at all required because it is only a work of agency, for which, there is no requirement of office for keeping the employees, but the employees are to be deputed in the offices where the employer will direct to be posted for their working. It is only one contractor/agency working in the State i.e. M/s. Call Me Services, which is working with CREDA and Chhattisgarh Tourism Board. The conditions have been made only to benefit the State agency.

**10.** Controverting the submissions made by learned counsel for the respective petitioners, Shri Satish Chandra Verma, learned Advocate General submits that there is supply of fixed number of employees and also the salary has been shown to be paid as per Government norms, therefore, there is no requirement of specifically mentioning of the tender value in the tender notification. He submits that as per Rules of 2002, both the modes for calling tenders/bids can be applied i.e. manual mode as well as e-procurement process. Under the e-procurement process only the registered persons/contractors can apply, whereas under the manual tender notification, large number of interested candidates/contractors can apply and the respondents will have an option to choose the best suitable. The requirement of deposit of earnest money to the tune of Rs.30,00,000/- is with some purpose. It is because of the safety of labouers and employees and if for one or other reason, contractor fails to pay the salary to them, the Government can pay employees working with their office, employed by the contractor from the EMD deposit by the contractor. Clause 1.001 of the Works Department Manual clearly shows that its application is with Departments mentioned therein only and in which, the name of Department of respondent No.3 does not find place. It is pointed out that as per Annexure P/2 of Writ Petition (C) No.1741 of 2020, the licence enclosed shows the employment of 20 contract labourers whereas requirement under Clause 2.2 of the tender notification is having licence of minimum of 250 employees/labourers. It is contended that Clause 2.2 is with a purpose that the tenderers or bidders should have experience of managing 250 employees/labourers under the licence issued under the Contract Labour Regulation and Abolition Act, 1970 (hereinafter referred to as 'Act of 1970') because the requirement under the subject tender notification is for supply of 370 employees/labourers. The publication has been properly done as per requirement of Rules of 2002 and tender notification has been published in two national newspapers as well as two regional newspapers, namely, Navoday Times New Delhi, Khabare Aaj Tak Mumbai, Hari-Bhoomi and Deshbandhu respectively. He points out that petitioner in Writ Petition (C) No.1741 of 2020 is not qualified to participate in the tender proceedings as per the requirements under the tender notification as he is not having experience of supply of 250 employees under Clause 2.2 of the tender notification and not having licence/registration under the Act of 1958. He also pointed that as the tender notification has been published in the official website, tender notification has been brought to the knowledge of public at large. It is contended that petitioner in Writ Petition (C) No.1727 of 2020 has filed Annexure P/2 which is registration under the Act of 1958 which ended on 31.12.2018. From the documents enclosed in the writ petition shows that the petitioner does not fulfill the requirement of Clause 2.9 which prescribes for filing of the licence certificate under the Act of 1958. It is further contended that petitioner in Writ Petition (C) No.1740 of 2020 had not filed the documents fulfilling the minimum eligibility criteria as prescribed under Clause 2 of the tender notification and unless and until, petitioners show that they fulfills the minimum eligibility criteria/qualification as prescribed under Clause 2 of the tender notification, they cannot be permitted to challenge the tender notification. He points out that from perusal of writ petitions, it is apparent that the petitioners have not filed document showing that they are fulfilling eligibility criteria prescribed in Clause 2.2 and 2.9, particularly amongst others. It is submitted that the Municipal Corporation adopted the Works Department Manual, therefore, they have floated the tender by e-procurement process. There is no malice on the part of the respondents for calling the bids manually because under the e-procurement platform system, only the registered contractor will participate, whereas in the manual system, any interested person can participate in the tender proceedings subject to fulfilling eligibility criteria. The petitioners have not placed any material to prove their submissions that the terms and conditions have been formulated only to favour a person of their choice. He points out that earnest deposit of Rs.30,00,000/- is strictly in accordance with the Rules of 2002, wherein by way of amendment, it has been mentioned that earnest money cannot be less than 3% of the total tender value. Learned Advocate General referred to Clause 4.7 of the Rules of 2002 and reliance on the verdict passed by Hon'ble Supreme Court in the matter of **Commissioner of Customs (Import), Mumbai v. M/s. Dilip Kumar and Company and Others** reported in **AIR 2018 SC 3606** to buttress his submission.

**11.** We have heard learned counsel appearing for the respective parties and perused the documents annexed with the writ petition.

**12.** Before dealing with the grounds raised and submissions made by learned counsel for the petitioners, we find it appropriate to deal with the grounds raised by learned Advocate General with regard to eligibility of petitioners to participate in the tender proceedings in view of eligibility criteria as mentioned in the tender document (Annexure P/1).

**13.** To appreciate the submission made by learned Advocate General that all the three petitioners are not eligible, we have perused Annexure P/1, which is the tender notification. Clause 1 of the terms and conditions of tender document deals with security amount. Clause 2 deals with minimum eligibility criteria. Clause 2.2 mentions about the requirement of licence of the participants, institution/firm of minimum 250 employees/ labourers and Clause 2.9 mentions about the firm/institution should have the licence/certificate of registration under the Act of 1958.

**14.** In Writ Petition (C) No.1727 of 2020, the petitioner has filed registration certificate under the Act of 1958 as Annexure P/2, in which, nature of occupation has been shown as 'security service/training certificate', the date of registration is shown as 19.11.1999, registration was renewed from time to time which is appearing from endorsement made in the document and lastly, it was renewed for a period from 31.12.2014 to 2018. Last renewal period appearing in Annexure P/2 enclosed by the petitioner, registration certificate under the Act of 1958 is not renewed after 2018. As per Annexure P/2, petitioner is not having valid registration. The petitioner has not filed any other document of registration under the Act of 1958. During the course of argument, learned counsel for the petitioner was not able to point out that petitioner is having valid registration certificate on date.

**15.** In Writ Petition (C) No.1740 of 2020, the petitioner has not filed any document to show his eligibility fixed under Clause 2 of the tender document.

**16.** In Writ Petition (C) No.1741 of 2020, learned counsel for the petitioner has not placed on record any document showing fulfilling eligibility criteria of Clause 2.9. During the course of argument, it is stated that time may be given to verify the eligibility of petitioner under Clause 2.9. Respondent/State filed their reply to the writ petition on 13.08.2020, in which, they have taken a specific plea in this regard in paragraph-15, but even then, no document has been placed on record, but they have pleaded and argued before this Court that eligibility criteria as fixed vide Clause 2.9 is not at all required for the tendered work and eligibility criteria of requirement of registration of firm under the Act of 1958 is only to select few and oust maximum like the petitioner.

**17.** In Writ Petition (C) No.1727 of 2020, the petitioner has filed Annexure P/2 to show that petitioner is in occupation of supply of manpower and showing himself to be eligible. Annexure P/2, registration certificate under the Act of 1958 has been filed, period of validity was upto the year 2018; page 21 of the same Annexure is the licence issued on 16.11.2011 permitting him to do business of private security; page 22 is FORM ST-2 i.e. registration under the Service Tax and page 23 is the registration with Regional Provident Fund Commissioner showing working of 20 persons. No document is placed on record that petitioner is having licence of 250 employees/labourers under the Act of 1970. In Writ Petition (C) No.1740 of 2020, no documents have been placed on record by the petitioner to show his eligibility of participating in the said tender proceedings under Clause 2 of the tender document. In Writ Petition (C) No.1741 of 2020, the petitioner has filed the licence showing the employment of 20 contract labourers issued under the Act of 1970.

**18.** In view of above, it is apparent that petitioners are not having the eligibility as mentioned in Clause 2.2 of the tender document wherein there is a requirement of licence of minimum 250 contract labourers/employees.

**19.** From the above discussions, submission/ground raised by learned Advocate General with regard to non-fulfillment of eligibility criteria by petitioners as the petitioners are not having the experience of working with minimum 250 contract labourers/employees and not having registration under the Act of 1958, appears to be correct.

**20.** In the aforementioned facts and circumstances of the case where the petitioners have not filed documents to show their eligibility of fulfilling Clauses 2.2 and 2.9 of the tender document as pointed out by learned Advocate General, we are of the considered view that all the three petitioners are not eligible under the terms and conditions of the tender document as prescribed under Clause 2.

**21.** Now we will consider the argument raised by learned counsel for the petitioners that estimated amount of security deposit has been asked to submit as the earnest money of Rs.30,00,000/- to be arbitrary and contrary to the Works Department Manual Volume-1 Chapter-2 and non-compliance of the provisions of Rules of 2002.

**22.** We have perused the pleadings made by the respective parties on this point. The petitioners have pleaded that non-publication of tender notice in two local newspapers to be contrary to Clause 4.3.3 (iv) of the Rules of 2002. From the pleadings, it appears that the case of the petitioners is that the tender proceedings will be governed by the Rules of 2002. The petitioners have argued that tender notification has not been in terms of the Works Department Manual Volume-1 Chapter -2. Perusal of 1.001 of the Works Department Manual Volume-1 Chapter-1 Section-1 at page-49 of the reply would show its applicability only with three Departments i.e. Irrigation Department including Major and Medium Irrigation Department, Minor Irrigation Department and Narmada Valley Development Department, Public Works Department and Public Health

Engineering Department only.

**23.** The relevant Rule 4 of the Chhattisgarh Store Purchase Rules, 2002 has been filed as Annexure R/4. Clause 4.6 deals with calling for tenders, in which, Clause 4.6.1 talks about the manual tenders, in which, there is an amendment on 30.09.2019 with regard to schedule of dates in online tenders and Clause 4.7 talks about the security deposit/earnest money deposit, in which, it is mentioned as minimum 3% of the estimated value.

**24.** Clause 4.7 is reproduced below for ready reference :

> "**4.7 सुरक्षा निधि–** केवल वास्तविक प्रदायकर्ता फर्में ही अपनी निविदा प्रस्तुत कर सकें, इसलिए यह आवश्यक है कि प्रत्येक निविदा के साथ अनुमानित क्रय मूल्य का कम से कम 3 प्रतिशत सुरक्षा निधि प्राप्त की जाये। यह सुरक्षा निधि सफल निविदाकार की रोककर, शेष की 15 दिवस में वापस लौटा दी जाए। प्रदेश की लघ ु एवं कुटीर उद्योग इकाई जो उद्योग विभाग से पंजीकृत है तथा सक्षमता प्रमाण–पत्र प्राप्त है, उसका परीक्षण कर उन्हें शासकीय क्रय प्रक्रिया में भाग लेते समय सुरक्षा निधि जमा करने से छूट दी जाये। इकाईयों द्वारा इस आशय का प्रमाण, टेण्डर के साथ देने पर ही उन्हें छूट प्राप्त होगी।"

**25.** Clause 4.7 of the Rules of 2002 prescribes earnest money deposit/security deposit to be minimum 3% of the value of work. The submission of learned Advocate General that previous contract value of the same work was Rs.11 Crores and looking to it, security amount has been fixed as Rs.30,00,000/-, taking lump-sum contract value as Rs.10 Crores. The submission of learned Advocate General was not disputed by learned counsel for the petitioners, in fact, their case is that, value of work to be more than Rs.13 Crores.

**26.** The law with regard to interference in the tender proceedings is well settled by Hon'ble Suprme Court in case of **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651**, in which, Hon'ble Supreme Court has held thus :

> “77. 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 fulfillment 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, Wednesday 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. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* reported in *(1991) 1 AC 696*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention"."

**27.** With regard to fixing of terms and conditions of tender document for eligibility criteria, Hon'ble Supreme Court in case of **Michigan Rubber (India) Limited v. State of Karnataka and others** reported in **(2012) 8 SCC 216** has held thus :

> "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 tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(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 fundamental right to carry on business with the Government."

**28.** If in the light of aforementioned law laid down by Hon'ble Supreme Court, when the facts of present cases are taken into consideration, and also the submission made by learned Advocate General that previous value of work was about Rs.11 Crores and earnest money has been fixed assessing the value of present work at Rs.10 Crores as per Clause 4.7 of the Rules of 2002, in the opinion of this Court, condition of fixing of Rs.30,00000/- as security deposit cannot be said to be arbitrary action on the part of the State. The petitioners themselves have submitted that the tender notification will govern by the Rules of 2002.

**29.** Only because the petitioners are not fulfilling the minimum eligibility criteria as mentioned in the tender document under Clause 2, eligibility criteria fixed by the Awarder cannot be said to be arbitrary and unreasonable and it is for the Awarder floating tender to formulate the conditions of tender document.

**30.** The judgment relied upon by learned counsel for the petitioner in Writ Petition (C) Nos.1727 of 2020 and 1740 of

2020 in **Harminder Singh Arora** (supra) is concerned, in that case, respondent No.2 therein issued tender notices for supply of pure fresh buffalo and cow milk and after opening of the bids, appellant was found to be the lowest bidder. In that case, the tender was only for supply of pure fresh buffalo and cow milk and not for pasteurized milk, but the bid of respondent No.4 was accepted without altering the tender conditions and offering a chance of negotiation to the appellant-lowest bidder. Therefore, in that circumstance, the Hon'ble Supreme Court has held that the High Court was justified in dismissing the writ petition *in limine* by showing that the question relates of contractual obligations and the policy decision cannot be termed as unfair or arbitrary. The Hon'ble Supreme Court in the said judgment has observed that it is open to the State to adopt a policy different from the one in question. But if the authority or the State Government chooses to invite tenders then it must abide by the result of the tender.

**31.** In **Ram and Shyam Company** (supra), the appellant therein has quoted the highest bid, but then, his bid was rejected without giving an opportunity to improve upon his bid. In that case, Hon'ble Supreme Court came to the conclusion that fair treatment was not given to the appellant therein.

**32.** The facts of the case relied upon by the petitioner in **Reliance Energy Ltd.** (supra) are entirely different and the petitioners cannot be benefited from the ruling. The Hon'ble Supreme Court in that case held in very specific terms that when tenders are invited, terms and conditions must indicate with legal certainty, norms and benchmarks.

**33.** The case law relied upon by the learned counsel for the petitioners in **V. Punnen Thomas** (supra) is on different facts and not applicable to the facts of the present cases.

**34.** The petitioners have raised a ground that action on the part of respondent/State is to extend undue benefit to one of the contractors who is engaged since last many years i.e. M/s. Call Me Services, but except the pleadings and submissions made by learned counsel for the petitioners, they have not substantiated the allegation with regard to malafide or bias alleged against the respondents. Merely working of any contractor with the Government will itself not sufficient to prove the allegation of malafide or bias. The allegations of malafide or bias made against the employer is of a serious nature, which requires strict proof by placing material before the Court, in which, the petitioners have failed.

**35.** The Hon'ble Supreme Court in the matter of **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Others** reported in **(2005) 7 SCC 764** has held that burden of proving malafide and bias is only on the person making allegation and held thus :

> “56. …........... It is well-settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". [*vide E.P.*

> *Royappa v. State of T. N., (1974) 4 SCC 3*]. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high decree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800 (SCC p.802, para 2)*; "It *(mala fide)* is the last refuge of a losing litigant".

**36.** As we have discussed in preceding paragraphs that the petitioners do not fulfill the eligibility criteria as mentioned in Clause 2 of the tender document, particularly, Clauses 2.2 and 2.9 and further, considering the entire facts of the cases, we do not find any tenable ground to interfere with the tender proceedings (subject matter of these writ petitions). The writ petitions being sans merit, are hereby dismissed.

| | |
|---|---|
| Sd/- | Sd/- |
| **(P. R. Ramachandra Menon)** | **(Parth Prateem Sahu)** |
| **Chief Justice** | **Judge** |

Yogesh