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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 08.10.2020
Order Delivered on 19-10-2020

WPC No. 2151 of 2020

1. M/s RR Ferro Alloys (P) Ltd., through its Director Sushil Singhal, 65 Transport Nagar, Korba, 495 678, Chhattisgarh.

---- Petitioner

Versus

1. Bhilai Steel Plant, Steel Authority of India Limited, Through The Chief Executive Officer, Bhilai Steel Plant, Police Station Bhilai, District Durg 490021, Chhattisgarh.
2. The General Manager (MM), Bhilai Steel Plant, Steel Authority of India Limited, Police Station Bhilai, District Durg 490021, Chhattisgarh.
3. The Assistant General Manager (Pur-CPA & Imports) Bhilai Steel Plant, Steel Authority of India Limited, Police Station Bhilai, District Durg 490021, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Rishabh Garg, Advocate
For Respondents	:	Mr. Ashish Surana, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

C A V Order

Per Parth Prateem Sahu, J

1. Rejection of bid submitted by the petitioner in pursuance of the Request for Quotation (RFQ) No.5000000100 dated 30.6.2020 for supply of 'Ferro Vanadium', vide email dated 12.8.2020 invoking Clause 2 (c) under eligibility criteria of the RFQ, is subject matter of the writ petition.

2. Case of the petitioner is that petitioner is an enterprise registered under the Micro, Small and Medium Enterprise (Development) Act, 2006 and engaged in manufacturing of 'Ferro Vanadium' since the year1996. Respondent floated tender for purchase of Ferro Vanadium

bearing RFQ No. SAIL/ BSP-CPA /Ferro Vanadium/Jan. '19-Jun" 19/2018 19/002/Re-released dated 27.6.2019. Petitioner submitted bid and upon conclusion of tender proceeding, the petitioner was declared as successful bidder. Letter of Acceptance (LoA) dated 9.9.2019 has been issued in favour of petitioner for supply of 120 MT of Ferro Vanadium to various subsidiaries / steel plants of the Steel Authority of India (for short 'SAIL') including respondent Bhilai Steel Plant ('BSP'). Apart from Bhilai Steel Plant, supply is also to be made to steel plants at Bokaro & Rourkela. Total quantity of 120 MT is bifurcated as per requirement of concerned steel plant, as mentioned in LoA. Pursuant to the LoA, respondent BSP placed purchase order dated 11.11.2019 of 30 MT to the petitioner mentioning delivery schedule as 15 MT of Ferro Vanadium to be supplied by 31.12.2019 and remaining 15 MT by 15.2.2020. The petitioner could not meet out the supply order and could not able to complete second phase of supply of 15 MT of Ferro Vanadium within scheduled period. On the last date of supply, as mentioned in the purchase order, there was backlog of supply of 13.5 MT Ferro Vanadium.

3.Respondent floated another tender i.e. Request for Quotation vide RFQ No.5000000010 dated 30.6.2020 for supply of Ferro Vanadium. Last date of submission of bid was initially fixed as 14.7.2020, which was extended till 25.7.2020. Petitioner in view of Clause 2 (c) of the RFQ was not eligible to participate in the tender proceeding, hence the petitioner requested respondent BSP vide email dated 11.7.2020 to grant extension of delivery period so that the petitioner may become eligible to submit its bid in RFQ dated 30.6.2020. Petitioner made several efforts including approaching the Chief Executive Officer of respondent BSP vide email dated 22.7.2020. Petitioner submitted its bid on 13.7.2020. Respondent BSP has issued an amended purchase order in favour of petitioner to enable it to clear its previous backlog of 13.5MT of Ferro Vanadium, to which the petitioner complied. Thereafter on 6.8.2020 the petitioner requested respondent BSP to consider its bid and to allow the petitioner to participate in the reverse auction. This email was replied by the respondent BSP vide email dated 12.8.2020 in which it is mentioned that petitioner's bid was not found suitable as the petitioner could not qualify eligibility criteria as mentioned in Clause 2 (c) of the RFQ. This made the petitioner to file this writ petition before this Court with following reliefs:-

> "10.1. This Hon'ble Court may kindly be pleased to call for the records pertaining to the subject tender for the kind perusal of this Hon'ble Court; and
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> 10.2.This Hon'ble Court may further be pleased to issue such writ/orders/direction quashing and setting aside the impugned e-mail communication dated 25.08.2020 (Annexure P1) passed by the respondent authorities rejecting the offer of the petitioner; and
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> 10.3. The Hon'ble Court may kindly be pleased to issue such writ/orders/direction directing the respondent authorities to allow the petitioner to participate in the reverse auction to be conducted in the RFQ dated 30.06.2020 (Annexure P-12) and suitably give effect to ; and
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> 10.4 The Hon'ble Court may further, in the interim, kindly be pleased to issue such writ/ orders/ direction restraining the respondent authorities from conducting the reverse auction in the RFQ dated 30.06.2020 (Annexure P-12) till the pendency of this proceeding, in the facts and circumstances of the case; and/or

10.5. Cost of the petition may also be granted to the petitioner; and/or

10.6. Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner, in the interest of justice;"

4.Mr. Rishabh Garg, learned counsel for the petitioner submits that due to unprecedented global pandemic 'Covid-19' the petitioner could not be able to procure raw material from the international market which is used in manufacture of Ferro Vanadium as a result supply of full quantity of 15 MT of Ferro Vanadium pursuant to purchase order dated 11.11.2019 could not be made by 15.2.2020. He submits that Clause 4.5 of RFQ/tender prescribes for extension of delivery period, petitioner invoking this Clause 4.5 has forwarded letter vide email dated 15.5.2020 requesting respondent BSP to extend delivery period for supply of balance quantity of 13.5 MT ferro vanadium against the purchase order dated 11.11.2019. Upon considering letter dated 15.5.2020 respondent vide email dated 19.5.2020 asked the petitioner to bring down price to which the petitioner vide email dated 20.5.2020 has refused initially but subsequently the petitioner accepted offer vide email dated 22.6.2020 and agreed to supply balance quantity of 13.5 MT of Ferro Vanadium with match price of current discovered price of RFX No.5000000086 dated 13.4.2020 and requested for extension of delivery period for one month. He submits that the petitioner's offer letter dated 22.6.2020 was accepted vide email dated 24.6.2020 but no formal amended purchase letter was issued. Respondent BSP floated new NIT for supply of Ferro Vanadium on 30.6.2020 on the basis of price discovery cycle. Petitioner finding himself to be ineligible in view of Clause 2 (c) of the tender document sent letter dated

11.7.2020 through email for grant of order for extension of delivery period as early as possible and also to extend bid submission date in pursuance of the NIT dated 30.6.2020 for a further period of 14 days. Respondents have though extended period of last date for submission of bid from 12-14/7/2020 to 25.7.2020, they did not issue any order extending delivery period of earlier purchase order dated 11.11.2019. Action of respondent authorities in sitting over the application submitted by petitioner for extension of delivery period since 22.6.2020 for about 45 days is an arbitrary exercise of powers. He submits that act of non-issuing order of extension of delivery period has deprived the petitioner from competing in tender proceeding which is violative to Article 19 (1) (g) of the Constitution of India. He points out that the respondents have issued the order of extension of delivery period on 3.8.2020 and petitioner within 48 hours of the said order has supplied the entire backlog of 13.5 MT of Ferro Vanadium. There is no fault on the part of the petitioner particularly looking to pandemic ‘Covid-19’ period, non-availability of raw material and delay in issuance of extension order of delivery period by respondent BSP. He submits that respondent authority did not consider request / letter of issuance of extension of delivery period of purchase order dated 11.11.2019 even after giving assurance vide email dated 24.6.2020, kept it pending for long period and during that period floated a new tender and also finalized it. Aforementioned action of respondents is *per se* illegal and arbitrary. Respondent authorities ought to have acted fairly, more so when respondents come within the purview of State. He argued that purchase order has not been issued, hence a direction may be issued for considering the bid submitted by the petitioner.

5. Mr. Ashish Surana, learned counsel for respondents submits that RFP has not been issued by the BSP exclusively but respondent BSP has been made as a Central Procurement Agency (CPA) for purchase of Ferro Vanadium for other Steel Plants also under the SAIL. He points out that RFP / tender was floated by the CPA and it is members of the CPA, who consider bid submitted by tenderers. The CPA committee is constituted of members, officers of the Unit where Unit is situated. The CPA after the price discovery, floats tender for purchase of specified quantity of Ferro Vanadium on the basis of request submitted by individual steel plant. The final evaluation of bid is done by the Sourcing Team Committee comprising of officers of all Units. After evaluation, Sourcing Team issues LoA to successful bidder. The supply order is to be made by individual plant to the identified supplier as per their requirement. Period of supply/ delivery of product is to be fixed by the purchase unit/plant independently looking to their requirement and need. The CPA and the Section placing purchase order are two different sections of BSP which operates in their respective area. The authority that has to grant extension order is different authority than who floated tender dated 30.6.2020. He submits that submission of learned counsel for the petitioner that at one hand respondent authority kept pending extension of delivery period in pursuance of purchase order dated 11.11.2019 and at the another hand, floated new NIT and opened the bids pending consideration application for extension of time of the petitioner for

about 45 days, is not correct. As per purchase order issued in favour of the petitioner on 11.11.2019, the period was expired much prior to declaration of lock-down in the country due to pandemic Covid-19 i.e. on 12.2.2020 itself, whereas lock-down has been declared only on 24.3.2020. Petitioner has not moved any application invoking Clause 4.5 of tender document for grant of extension of supply period during currency of supply period or immediately after expiry of period as per purchase order dated 11.11.2019. Respondents have floated another NIT for purchase of Ferro Vanadium in the month of April, 2020 i.e. on 13.4.2020, in which the petitioner participated and was declared ineligible in view of Clause 2 (c) of the tender document. After rejection of bid in earlier NIT, for the first time, the petitioner submitted application for extension of delivery period on 15.5.2020 i.e. after about 3 months from the date of expiry of supply period fixed vide purchase order dated 11.11.2019. Petitioner's letter through email was replied vide email dated 19.5.2020 asking petitioner to reduce price of product, but the petitioner refused to do so. He submits that price discovery is a continuous process and price quoted for delivery/ supply of Ferro Vanadium exists for that period only and looking to continuous change in price, the award of contract is restricted to quantity required by a plant for a particular period and upto the specified delivery period only. Tender issuing authority/body is different than the authority/body which places purchase order and having discretion and authority for granting extension of delivery / supply period of the period, as mentioned in the purchase order issued by it. Submission of the petitioner that NIT has been issued by

BSP and supply order is also to be issued by BSP, which is one and the same body and authority, is not correct. Petitioner cannot blame respondents but it is petitioner who himself is liable for the situation which it is facing. Petitioner was fully aware about Clause 4.5 of tender document i.e. extension of delivery period, but petitioner did not choose to move any application prior to 15.5.2020 for extension of delivery period. The offer given to the petitioner based on letter dated 15.5.2020 for effecting supply of balance quantity as per reduced rate was refused twice by the petitioner. The petitioner agreed only on 22.6.2020 for liquidated damages and reducing price as per prevailing rate. Respondent BSP as an individual unit placed the order of purchase on 11.11.2019. After receiving email dated 22.6.2020 by which petitioner agreed to lower down the price and liquidated damages, the said offer of the petitioner was forwarded to the management of respondent BSP for consideration as per procedure prescribed. The Management took decision and issued the order of extension of delivery period on 3.8.2020 without any delay, barring the time required for meeting out administrative requirements and consideration. The NIT dated 30.6.2020 is floated by the CPA and not by respondent BSP. Petitioner has not challenged action of respondent BSP even if there is delay in issuance of any extension order in favour of the petitioner within time. The petitioner has also not challenged the order of rejection of bid on 12.8.2020 nor challenged Clause 2 (c) of tender document. He contended that the petitioner on the basis of same clause has earlier participated in the tender proceeding of RFQ dated 13.4.2020 in which the petitioner has been declared disqualified but even then the petitioner has not accepted to reduce the supply rate. The petitioner participated in tender proceeding by submitting bid on 13.7.2020. After participation, petitioner cannot be permitted to challenge the proceedings. He places his reliance on the decision rendered in cases of **Rohil Ahmed Khan vs. State of CG & ors** reported in AIR 2020 CG 42; **Shobikaa Impex (P) Ltd. Vs. Central Medical Services** reported in **(2016) 16 SCC 233** and **Central Coal Fields Limited & anr Vs. SLL-SML (Joint Venture Consortium) & ors** reported in **(2016) 8 SCC 622** to buttress his submissions.

6. Mr. Garg, learned counsel for petitioner, in reply, submitted that the CPA and respondent BSP are one and the same authority/body as functioning is from the BSP unit only.

7. We have heard learned counsel for both sides and perused the documents annexed with writ petition.

8. Present dispute arises out of RFQ dated 27.6.2019 issued by the CPA, section of respondent BSP. RFQ was issued for procurement of total 210 MT Ferro Vanadium for different steel plants of SAIL as mentioned under Clause (1) of RFQ i.e. Durgapur Steel Plant, Durgapur; Bhilai Steel Plant, Bhilai; Raurkela Steel Plant, Rourkela; Bokaro Steel Plant, Bokaro; Visvesvaraya Iron & Steel Plant, Bhadrawati; Alloys Steel Plant, Durgapur. Under the RFQ after identifying the supplier to supply approximate quantity for rate quoted, LoA is issued by the CPA. Individual plant is required to place purchase order to the identified bidder for supply of quantity of product

as also the duration and period in which quantity of product is to be supplied. The Material and Management Department of respondent BSP has issued purchase order dated 11.11.2019 for purchase of total quantity of 30 MT of Ferro Vanadium in two schedule periods. Under 1st Schedule, 15 MT of Ferro Vanadium is to be supplied by 31.12.2019 and balance of 15 MT was to be supplied by 15.2.2020. Similarly, purchase order was issued by Bokaro Steel Plant, Bokaro for purchase of 17=500 MT.

9. From the above documents available on record, it is apparent that it is the individual unit/steel plant who issues purchase order as per its requirement, but the quantity to be required by them during a particular period is required to be mentioned by it to the CPA. Thus, the quantity and period of supply to be fixed is within the domain of an individual steel plant. Coming to Clause 4.5 of the RFQ dated 27.6.2019 under which the petitioner got purchase order to supply Ferro Vanadium to respondent BSP, reads as under:-

> "4.5. Extension of Delivery Period: Suppliers shall obtain extension of Delivery Period prior to desptach of materials, wherever the delivery period has expired. In case materials are dispatched after expiry of delivery period, without obtaining further extension of Delivery Period, SAIL Plant shall be at liberty not to accept such consignments. This is without prejudice to SAIL PLANT's right to take action as per contract including the Risk Purchase action, wherever the suppliers fail to supply the material as per Purchase Order terms."

10. From bare perusal of language used in Clause 4.5 of RFQ dated 27.6.2019, it is crystal clear that the word used is "SAIL Plant'. Extension of period has to be issued by the Steel Plant and not by the CPA. This also mentions that "without prejudice to SAIL Plant's right

to take action as per contract". There is no dispute that even after existence of this clause i.e. Clause 4.5, the petitioner has not chosen to file application invoking Clause 4.5 to get extension of delivery period which was ended on 12.2.2020 within the currency of period or immediately thereafter. On 15.5.2020 the petitioner for the first time moved an application for extension of delivery period of supply of Ferro Vanadium in pursuance of the purchase order dated 11.11.2019 ended on 15.2.2020. Request of petitioner was considered, the respondent BSP vide email dated 19.5.2020 asked the petitioner to reduce price as per new price discovered. Petitioner did not agree to lower down the price and refused to accept proposal of respondent BSP. Petitioner has twice refused to supply material as per current rate by reducing price by written letter. The petitioner was well aware that as per Clause 2 (c) of the tender document a tenderer will not be eligible for consideration against whom there is backlog of delivery/supply of product on the date of submission of bid. Petitioner participated in the tender proceeding dated 13.4.2020 and petitioner's bid came to be rejected in view of Clause 2 (c). Clause 2 (c) is extracted below;-

> "(c) If the tenderer is a past supplier of Ferro Vanadium to SAIL, they shall be considered as eligible if on the latest due date of submission of tender, the tenderer does not have a backlog of more than 10% of final ordered quantity of Ferro Vanadium against any purchase order placed on them on or after 1.1.2015, by individual SAIL plants against LOA issued by SAIL CPA plant and the scheduled delivery period for the ordered quantity against that purchase order (s) has expired."

11. Despite having knowledge about the terms & conditions and action to

be taken, the petitioner refused to accept proposal. It is only on 22.6.2020 i.e. after four months of the expiry of delivery period mentioned in purchase order dated 11.11.2019, petitioner agreed to accept for the match of discovered price. Period of delivery under the purchase order was expired on 15.2.2020, at that time no lock-down was ordered by the Central Government, it came into force only after more than one month of the last date of the purchase order i.e. on 24.3.2020. The petitioner cannot take benefit of Covid-19 pandemic which affected the activities much after the expiry of period mentioned in the purchase order. Extension period as mentioned in Clause 4.5 of tender document is on the discretion of purchaser plant and it clearly mentions that this would be without prejudice to the Steel Plant's right to take action as per contract including risk purchase action. As per RFQ Dated 13.4.2020, successful bidders have offered to supply product/material with much more lesser price than the price mentioned in purchase order dated 11.11.2019 is not disputed, therefore, respondent was justified in accepting application for grant of extension of delivery period, but on the prevailing rates. This action of respondent authorities cannot be termed as arbitrary action. Clause 4.5 of tender document cannot be invoked as a matter of right that the period of supply is to be extended mandatorily for the said quantity and with the agreed rate itself even after expiry of delivery period.

12. Petitioner, for the first time, on 22.6.2020 agreed to supply balance quantity on matching price on the date of the order of extension with liquidated damages. Email of respondent dated 24.6.2020 is not an acceptance of extension of period but it only mentions that offer of the

petitioner can be considered by the management and thereafter the offer of petitioner was forwarded to the Management through proper channel. Tender proceeding, which is under challenge in this writ petition, is floated on 30.6.2020 and after extended period, the last date for submission of bid was 25.7.2020. Petitioner submitted its bid on 13.7.2020. Admittedly, on the last date of submission of bid, the petitioner was having outstanding of supply of purchase order issued in its favour on 11.11.2019. The bid submitted by the petitioner has not been found to be suitable on account of having backlog of more than 10% of purchase order executed earlier in its favour. The action of rejection of bid by the CPA in the opinion of this Court cannot be said to be arbitrary, more so, when the petitioner failed to controvert submission made by learned counsel for the respondents that the CPA is a different body floating tenders for purchase of Ferro Vanadium for subsidiaries steel plants of the SAIL. In the process, on the basis of request made by individual steel plant of the SAIL of their requirement of Ferro Vanadium, the CPA issues RFQ for total quantity, identifies the supplier, issues LoA and make known to steel plant, who in turn, issues individual purchase order fixing therein the period of supply according to its individual requirement. This being the position, submission made by learned counsel for the petitioner that respondent BSP and the CPA is one and the same is not correct. Though the heading has been made as Central Procurement Agency, BSP, but submission made by learned counsel for the respondents in absence of any rebuttal or material placed before this Court by learned counsel for the petitioner that the CPA and final bid evaluation

Committee is not a constitution of members of different steel plants of the SAIL and it is said body or committee who is authorized to float tender, evaluate bids and declare successful bidder for supply of material / product, but it is done by the BSP is not sustainable. Respondent BSP in its individual capacity as a steel plant of SAIL has no authority to float the tender for purchase of Ferro Vanadium in present scheme.

13. Proceeding of finalization of tender issued by RFQ is an independent and separate proceeding drawn and concluded by a separate body i.e. Committee constituted including member of all SAIL plants', whereas application for extension of supply period is pending before a separate authority of respondent BSP i.e. individual SAIL's plant. In view of above it cannot be said that the authority who is to grant extension is the same who initiated and concluded the tender proceeding.

14. Petitioner has not challenged the information given to him through email dated 12.8.2020 regarding rejection of bid nor there is challenge to Clause 2 (c) of NIT on any of the grounds. The petitioner has only pleaded that as the petitioner has been declared ineligible on account of non-issuance of order of extension of delivery period, bid of petitioner may be considered for RFQ dated 30.6.2020.

15. From the aforementioned discussions it is clear that issuance of tender vide FRQ dated 30.6.2020 and passing of order of extension of delivery period are two different, distinct and separate proceedings to be considered by two different authorities or bodies. Proceeding of

RFQ to be considered by the CPA and extension of delivery period is to be considered by the authorities of Bhilai Steel Plant. Even the petitioner has not approached this Court before the last date of submission of bid as per tender notification dated 30.6.2020 for getting his application for extension of delivery period to be considered and decided or ordered to be issued at the earliest or before 25.7.2020 as per proposal given by the petitioner.

16. In the tender proceedings while exercising the powers of judicial review under Article 226 of the Constitution of India the Court is having very limited jurisdiction to interfere with the tender proceeding. It is to be seen whether the 'decision making process' is correct or not. Hon'ble Supreme Court in number of cases has considered the dispute with regard to acceptance or rejection of bid in tender proceeding and observed as to under what circumstances proceedings of tender initiated by government or authority can be interfered with.

17. The Hon'ble Supreme Court in the case of **Sterling Computers Limited & ors Vs. M&N Publications Ltd & ors** reported in **(1993) 1 SCC 445** has held thus:-

> "While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the decision making process the courts can certain examine whether 'decision making process' was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution."

18. In case of **Tata Cellular vs. Union of India** reported in **(1994) 6 SCC 651** the Hon'ble Supreme Court has held thus:-

"(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. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6)Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

19. In **Association of Registration Plates Vs. Union of India (UOI) & ors** reported in **(2005) 1 SCC 679** Hon'ble Supreme Court has held thus:-

"....Article 14 of the Constitution prohibits government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contracts. At the same time, no person can claim a fundamental right to carry in business with the government. All that he can claim is that in completing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest...."

20. In **B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. & ors** reported in **(2006) 11 SCC 548** the Hon'ble Supreme Court observed as under:-

"It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge therefor; the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record."

21. In **Michigan Rubber (India) Ltd. Vs. State of Karnataka** reported in **(2012) 8 SCC 216** the Hon'ble Supreme Court has held thus:-

22. "24.Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and (ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226."

23. In **State of Rajasthan & ors Vs. Deep Jyoti Company & anr** reported in **(2016) 6 SCC 120** the Hon'ble Supreme Court has held thus:-

"9…... It is trite that for awarding Government work, it can impose and stipulate conditions, eligibility criteria as well as terms and conditions on which the contract would be executed. If any person wants to bid for or undertake the work, such persons have to fulfill those conditions. The only limitation is that conditions so imposed should meet the test of fairness and reasonableness and such conditions should not be arbitrary or contrary to any law. The question, therefore, is as to whether imposition of the condition to obtain short-term permit as provided in circular dated 06.10.2008 is reasonable and not arbitrary."

24. In **Consortium of Titagarh Firema Adler S.P.A.-Titagarh Wagons Ltd. Vs. Nagpur Metro Rail Corporation Ltd.** reported in **(2017) 7 SCC 486** the Hon'ble Supreme Court has held thus:-

"32.In Reliance Telecom Ltd. and another v. Union of

India and another, the Court referred to the authority in Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd. and others wherein it has been observed that; (Reliance Telecom Ltd. Case, SCC p.317, para 58)

> "58......though the principle of judicial review cannot be denied so far as exercise of contractual powers of Government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the court that in the matter of award of a contract power has been exercised for any collateral purpose."

Thereafter, the Court in Reliance Telecom Ltd. (supra) proceeded to state thus:

> "58. … In the instant case, we are unable to perceive any arbitrariness or favouritism or exercise of power for any collateral purpose in the NIA. In the absence of the same, to exercise the power of judicial review is not warranted. In the case at hand, we think, it is a prudent decision once there is increase of revenue and expansion of the range of service."

And again: (SCC p.317, para 59);

> "59. It needs to be stressed that in the matters relating to complex auction procedure having enormous financial ramification, interference by the Courts based upon any perception which is thought to be wise or assumed to be fair can lead to a situation which is not warrantable and may have unforeseen adverse impact. It may have the effect potentiality of creating a situation of fiscal imbalance. In our view, interference in such auction should be on the ground of stricter scrutiny when the decision making process commencing from NIA till the end smacks of obnoxious arbitrariness or any extraneous consideration which is perceivable."

25.In **Central Coalfields Limited & another Vs. SLL-SML (Joint Venture Consortium) & ors** reported in **(2016) 8 SCC 622**, Hon'ble Supreme Court while considering the ground of enforcement of terms & conditions by party floating tender has held thus:-

> "38. In *G.J. Fernandez* v. *State of Karnataka*[6] both

> the principles laid down in *Ramana Dayaram Shetty*[5] were reaffirmed. It was reaffirmed that the party issuing the tender (the employer) "has the right to punctiliously and rigidly" enforce the terms of the tender. If a party approaches a court for an order restraining the employer from strict enforcement of the terms of the tender, the court would decline to do so. It was also reaffirmed that the employer could deviate from the terms and conditions of the tender if the "changes affected all intending applicants alike and were not objectionable". Therefore, deviation from the terms and conditions is permissible so long as the level playing field is maintained and it does not result in any arbitrariness or discrimination in *Ramana Dayaram Shetty*[5] sense.
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> **47.** The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in *Ramana Dayaram Shetty*[5] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in *Tata Cellular*[8] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in *Jagdish Mandal*[9] followed in *Michigan Rubber*[13]."

26. In the case at hand, tender notification dated 30.6.2020 for procurement of Ferro Vanadium has been issued by the Central Procurement Agency of the SAIL, the petitioner could not meet out the eligibility criteria in terms of Clause 2 (c) as he was having more than 10% of backlog of supply of Ferro Vanadium of earlier purchase order given to him by SAIL, which is basis of rejection of petitioner's bid. There is no challenge to Clause 2 (c) of NIT on any grounds. There is

no challenge to the terms and conditions of the RFQ or to the order of rejection of bid on any available grounds. In absence of any challenge to any of the above, no relief can be granted to the petitioner.

27. In view of above facts and law laid down by Hon'ble Supreme Court, we do not find any tenable ground in this writ petition which is liable to be dismissed and is hereby dismissed.

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

Roshan/-