

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 26.02.2020****Judgment Delivered on : 23.03.2020****Writ Petition (C) No. 3757 of 2019**

- M/s. Kalyan Toll Infrastructure Ltd. registered under the relevant provisions of Companies Act, 1956 having its registered office at Vidya Deep, 15/3 Manorama Ganj, Indore, M.P., Through its Authorized Representative (DGM Procurement) namely Pavan Shrivastava, S/o Kishore Shrivastava, aged about 34 years, R/o 174 Jamadar Mohalla, Nisarpur, Dhar (M.P.)

---- Petitioner**Versus**

1. U.P. State Construction and Infrastructure Development Corporation Limited, Through - Managing Director, T.C.-46, V- Vibhutipkhand, Gomti Nagar, Lucknow - 226010.
2. Executive Engineer, U.P. State Construction & Infrastructure Development Corporation Ltd. S.J.-5, Shashtri Nagar, Ghaziabad (U.P.) 201002
3. Kendriya Vidyalaya Sangathan 8, Shaheed Jeet Singh Marg NRPC Colony, Block B, Qutab Institutional Area, New Delhi, Delhi 110016

---- Respondents**WPC No. 3736 of 2019**

- M/s. Kalyan Toll Infrastructure Ltd. registered under the relevant provisions of Companies Act, 1956 having its registered office at Vidya Deep, 15/3 Manorama Ganj, Indore, M.P., Through its Authorized Representative (DGM Procurement) namely Pavan Shrivastava, S/o Kishore Shrivastava, aged about 34 years, R/o 174 Jamadar Mohalla, Nisarpur, Dhar (M.P.)

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1. U.P. State Construction and Infrastructure Development Corporation Limited, Through - Managing Director, T.C.-46, V- Vibhutipkhand, Gomti Nagar, Lucknow - 226010.
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3. Kendriya Vidyalaya Sangathan 8, Shaheed Jeet Singh Marg NRPC Colony, Block B, Qutab Institutional Area, New Delhi, Delhi 110016

---- Respondents**WPC No. 3743 of 2019**

- M/s. Kalyan Toll Infrastructure Ltd. registered under the relevant provisions of Companies Act, 1956 having its registered office at Vidya Deep, 15/3 Manorama Ganj, Indore, M.P., Through its Authorized Representative (DGM Procurement) namely Pavan Shrivastava, S/o Kishore Shrivastava, aged about 34 years, R/o 174 Jamadar Mohalla, Nisarpur, Dhar (M.P.)

---- Petitioner**Versus**

1. U.P. State Construction and Infrastructure Development Corporation Limited, Through - Managing Director, T.C.-46, V- Vibhutikhand, Gomti Nagar, Lucknow - 226010.
2. Executive Engineer, U.P. State Construction & Infrastructure Development Corporation Ltd. S.J.-5, Shashtri Nagar, Ghaziabad (U.P.) 201002
3. Kendriya Vidyalaya Sangathan 8, Shaheed Jeet Singh Marg NRPC Colony, Block B, Qutab Institutional Area, New Delhi, Delhi 110016

---- Respondents

WPC No. 3744 of 2019

- M/s Shree Balaji Engicons Pvt. Ltd., Registered under the relevant provisions of Companies Act, 1956 having its registered office at Belpahar (R.S.) District Jharsugda (Odisha) through its Authorized Director namely Shri Vinay Kumar Agrawal, S/o Late Arun Kumar Agrawal, aged about 30 Years, R/o Belpahar, Jharsugda (Odisha)

---- Petitioner

Versus

1. U.P. State Construction and Infrastructure Development Corporation Limited, Through - Managing Director, T.C.-46, V- Vibhutikhand, Gomti Nagar, Lucknow - 226010.
2. Executive Engineer, U.P. State Construction & Infrastructure Development Corporation Ltd. S.J.-5, Shashtri Nagar, Ghaziabad (U.P.) 201002
3. Kendriya Vidyalaya Sangathan 8, Shaheed Jeet Singh Marg NRPC Colony, Block B, Qutab Institutional Area, New Delhi, Delhi 110016

---- Respondents

WPC No. 3746 of 2019

- M/s Shree Balaji Engicons Pvt. Ltd., Registered under the relevant provisions of Companies Act, 1956 having its registered office at Belpahar (R.S.) District Jharsugda (Odisha) through its Authorized Director namely Shri Vinay Kumar Agrawal, S/o Late Arun Kumar Agrawal, aged about 30 Years, R/o Belpahar, Jharsugda (Odisha)

---- Petitioner

Versus

1. U.P. State Construction and Infrastructure Development Corporation Limited, Through - Managing Director, T.C.-46, V- Vibhutikhand, Gomti Nagar, Lucknow - 226010.
2. Executive Engineer, U.P. State Construction & Infrastructure Development Corporation Ltd. S.J.-5, Shashtri Nagar, Ghaziabad (U.P.) 201002
3. Kendriya Vidyalaya Sangathan 8, Shaheed Jeet Singh Marg NRPC Colony, Block B, Qutab Institutional Area, New Delhi, Delhi 110016

---- Respondents

WPC No. 3763 of 2019

- M/s. Kalyan Toll Infrastructure Ltd. registered under the relevant provisions of Companies Act, 1956 having its registered office at Vidya Deep, 15/3 Manorama Ganj, Indore, M.P., Through its Authorized Representative (DGM Procurement) namely Pavan Shrivastava, S/o Kishore Shrivastava, aged about 34 years, R/o 174 Jamadar Mohalla, Nisarpur, Dhar (M.P.)

---- Petitioner**Versus**

1. U.P. State Construction and Infrastructure Development Corporation Limited, Through - Managing Director, T.C.-46, V- Vibhutikhand, Gomti Nagar, Lucknow - 226010.
2. Executive Engineer, U.P. State Construction & Infrastructure Development Corporation Ltd. S.J.-5, Shashtri Nagar, Ghaziabad (U.P.) 201002
3. Kendriya Vidyalaya Sangathan 8, Shaheed Jeet Singh Marg NRPC Colony, Block B, Qutab Institutional Area, New Delhi, Delhi 110016

---- Respondents

For Petitioners	: Shri Manoj Paranjpe, Shri Ashok Mishra and Shri Bharat Sharma, Advocates
For Respondent No.1	: Shri Anuj Kudesia and Shri Rajeev Shrivastava, Advocates
For Respondent No.3	: Ms. Deepali Pandey, Advocate

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

1. The challenge involved in all these cases and the relief sought for are almost similar and hence, they are taken up and heard together as agreed by both the sides. WPC No.3757 of 2019 is treated as the lead case and parties and proceedings are referred to as given therein, except where it is separately adverted to based on the context.
2. Cancellation of Annexure-P/3 tender dated 27.06.2019 and Annexure-P/5 Letter of Intent ('LOI', for short), as per Annexure-P/1 dated 27.09.2019

issued by the 2nd Respondent Executive Engineer of the 1st Respondent Corporation and Annexure-P/2 re-tender issued by the 1st Respondent at the Headquarters level are put to challenge in this writ petition by the Petitioner, who was identified as L-1 bidder in the earlier proceedings, leading to issuance of Annexure-P/5 LOI. The Petitioner also seeks to permit the Petitioner to carry out the work awarded pursuant to Annexure-P/5 – LOI dated 14.08.2019.

3. Heard Shri Manoj Paranjpe, the learned counsel appearing for the Petitioners, Shri Anuj Kudesia, the learned counsel appearing for the 1st Respondent-Corporation (who disowns the 2nd Respondent Executive Engineer, having been suspended from the service pending enquiry for the alleged misdeeds in connection with the very same tender) and Ms. Deepali Pandey, the learned counsel appearing for the 3rd Respondent.
4. The 3rd Respondent is an Organization under the Ministry of Human Resources Department of the Central Government, who assigned the task of construction of Schools / Residential Buildings in 11 different sites in the State of Madhya Pradesh and also State of Chhattisgarh to the 1st Respondent. The 1st Respondent–Corporation, who is a State Government Entity having head office in the State of Uttar Pradesh, issued Annexure-P/3 Tender Notification (Tender value of Rs.1652.22 lacs, with the period of completion as 18 months), pursuant to which the Petitioner participated in the same. The Technical Bid was opened on 26.07.2019 and out of the 05 tenderers, only the Petitioner and another establishment by name M/s.Shree Balaji Engicons (P) Ltd. came to be

declared as eligible, having scored more than the cut off mark of 70%. Annexure-P/8 is the Minutes of the Tender Committee held on 26.07.2019 regarding the opening of the Technical Bid. Between the two technically qualified bidders, the Petitioner was identified as the L-1 bidder, having ultimately quoted 15.50 above the Bid value shown. The said proceeding was pursuant to consideration of the Price Bid by the Tender Committee on 07.08.2019, Minutes of which is produced by the Petitioner as Annexure-P/4. This was followed by Annexure-P/5–LOI asking the Petitioner to satisfy the performance guarantee within 15 days and also to execute an agreement. According to the Petitioner, performance guarantee has been given by furnishing Bank Guarantee to the tune of Rs.95.42 lacs, which was communicated to the 2nd Respondent, vide the letter dated 03.09.2019. It is stated by the Petitioner that, as per the letter dated 27.09.2019, the Petitioner had informed the 2nd Respondent that the Petitioner had completed all the formalities with reference to Annexure-P/5-LOI, for signing the agreement and had also done the '*Bhumi Pujan*' and started the subject work, in turn, requesting to take further steps for signing the agreement at the earliest.

5. As contended by the Petitioner, the reasons for cancellation of the tender, as shown in Annexure-P/1, are to the following effect :

"(a) In minimum qualifications of bidder i - condition of EPF registration is optional and can be obtained at the time of allotment of work, whereas, under Prequalification instructions - condition EPF registration and submission of latest EPF challan is mandatory.

(b) That, the respondent no. 3 vide its letter dated

04.09.2019 has made it clear that there will be no escalation, however, in the clause 10C and 10CA there is clause for variation for prices of wages."

According to the Petitioner, the right to cancel the entire bidding process is with reference to Clause - 'P' of the NIT, relevant portion of which is reproduced below :

"P. Award of Contract :

Employer's Right to accept any Bid and to reject any or all Bids

(a) The employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action."

6. The Petitioner contends that cancellation of the tender is arbitrary, since Clause - 'P' confers the power to cancel the tender process only "prior to the award of contract". Since the terms "Award of the Contract" are clearly explained in the next clause, with reference to issuance of "Letter of Acceptance", it is a concluded contract; more so since the Petitioner has already furnished the performance guarantee and has complied with all the conditions of the LOI. After conclusion of the contract as above, if the tender is to be foreclosed or abandoned (as provided under Clause-12 of the tender conditions), it can be done only after giving notice to the successful bidder and any expenditure suffered by the bidder has to be made good, which does not stand satisfied in the instant case. It is also pointed out that since the tender proceedings have been finalized by the 2nd Respondent as per Annexure-P/4 Minutes dated 07.08.2019, leading to issuance of Annexure-P/5 LOI dated 14.08.2019, the Tender

Committee has become 'functus officio' and as such, the Tender Committee constituted by the 1st Respondent was to have no valid existence to recommend for cancellation of the tender proceedings, leading to Annexure-P/1 dated 27.09.2019.

7. It is contended by the Petitioner that in respect of the 1st ground for cancellation of the tender with reference to EPF registration, nobody has been disqualified for the 'sole reason' for not submitting EPF challan and as such, the discrepancy noted in the tender condition is of no consequence. Similarly, in respect of the 2nd ground for cancellation of the tender with reference to non-mentioning of any escalation clause, while incorporating clause 10C and 10CA (which wrongly provided for escalation), it is pointed out that the Petitioner is ready to do the work without any escalation and that, this would have been clarified, had it been informed before cancelling the entire tender process. Various rulings of the Apex Court are also cited in support of the contentions as mentioned above.
8. The 1st Respondent has filed a counter dated 14.11.2019, pointing out that the Annexure-P/3 Tender had to be cancelled because of the 'admitted glaring mistakes' in the relevant clauses pertaining to EPF registration and for not incorporating the 'No - escalation clause', but for wrongly incorporating 'escalation clause' (instead of specifying that no claim for price escalation will be entertained). It is also pointed out that there is no territorial jurisdiction for this Court to have the matter entertained, as the tender was issued from the State of Uttar Pradesh and that no cause of action had arisen either in whole or in part in the

State of Chhattisgarh. It is pointed out that no agreement has been executed and no contract has been concluded, by virtue of which no right is conferred or derived by the Petitioner from Annexure-P/3 tender, which came to be cancelled as per Annexure-P/1 issued by the 2nd Respondent himself. It is also pointed out that, immediately after issuance of Annexure-P/5 – LOI, the 3rd Respondent, vide Annexure-C/5, informed the 1st Respondent as to a complaint preferred by a participant in the tender who was disqualified, as to certain irregularities committed in the tender proceedings, which was enquired into. Accordingly, the Superintending Engineer at Gaziabad was required to submit a report and after enquiry, Annexure-C/6 report was submitted by the Superintending Engineer on 07.09.2019, pointing out the glaring anomalies, inconsistencies, discrepancies and the irregularities committed by the 2nd Respondent-Executive Engineer in finalizing the bid. This made the 1st Respondent to have the matter considered by the Tender Committee, constituted at the Headquarters level at Lucknow, who submitted its report vide Annexure-C/7 on 04.10.2019 to the Managing Director, highlighting the irregularities and infirmities in finalizing the tender at the level of the 2nd Respondent-Executive Engineer, recommending for cancellation of the tender. Pursuant to the said report, further steps were sought to be pursued and in the meanwhile, the 2nd Respondent himself, under the fear of serious consequences, cancelled the tender proceedings vide Annexure-P/1, which made the Petitioner to approach this Court.

9. The learned counsel for the 1st Respondent points out with reference to

the materials brought on record, that material alteration has been made by the Petitioner with regard to the contents of the Bank Guarantee, virtually effecting changes by way of deletion / addition / modification of the relevant terms. It is also pointed out that the validity period of the Bank Guarantee has been substantially reduced and despite pointing out the specific instance of alteration/ modification/ addition/ deletion in the counter dated 14.11.2019 and the supplementary counter dated 18.02.2020, the factual position has not been denied and no explanation is forth coming from the part of the Petitioner. It is further pointed out by the learned counsel for the 1st Respondent that the Tenders, in respect of which the Petitioner was identified as L-1 in connection with construction of Schools / Residential Buildings in the State of Madhya Pradesh, have also been cancelled, when the Petitioner had moved the High Court of Madhya Pradesh by filing three separate writ petitions. It is stated that all the said writ petitions have been dismissed in *limine*. The learned counsel for the 1st Respondent points out that the version of the Petitioner as put-forth in Annexure-P/7 letter dated 27.09.2019 and the submission made across the bar that the Petitioner had already conducted the '*Bhumi Pujan*' and started the work (to make it appear that the contract has become complete) is far from the track of truth. It is stated that the land, where the construction is to be effected, is still to be handed over by the 3rd Respondent to the 1st Respondent, so as to have it given to the Petitioner for effecting the construction.

10. Taking note of the serious deeds and misdeeds committed by the 2nd Respondent – Executive Engineer in connection with the tender, it is

stated that a show-cause notice was issued to him and he has been suspended from the service pending disciplinary proceedings, as borne by Annexures-C/11 and C-12 dated 04.10.2019 and 05.11.2019 respectively. It is also pointed out by the 1st Respondent that, in the enquiry, it was found that the other firms, who have been declared as disqualified i.e., M/s. Ashok Kumar Mittal and M/s. Shreeji Krupa Project Ltd. could actually be declared as qualified, in which case, their price bids could have been opened to assess the competitive bids; but they have been wrongly excluded by the 2nd Respondent. The 1st Respondent points out that the particulars collected revealed that the Petitioner, who has been declared as qualified, does not fulfil the criteria mentioned in Condition No. 1 of the NIT for not mentioning the turnover of 2018-19, which was a mandatory condition and further, the Petitioner has not satisfied the Condition No.4 of the NIT as well. In the overall assessment, it was found that the Petitioner's firm was entitled to get only '61.50 marks'; though it was given '72.82 marks', to make it above the cut off level of 70% of marks, by the manipulated exercise done by the 2nd Respondent. Even though it is stated that the Petitioner is ready to forego 'price escalation', the chance to take a U-turn, if the matter is proceed further, contending that it was only under compelling circumstances and under influence of the 1st Respondent that the price escalation was waived off cannot be ruled out in view of the clear stipulation in the Tender Notification. This would lead to further disputes, which would be detrimental to the rights and interest of the Respondents No.1 & 3. Various judgments rendered by the Apex Court have been

referred to with reference to lack of territorial jurisdiction and also as to the limited judicial scrutiny possible in the field of contract. Reliance is placed on the verdict passed by the Apex Court in ***Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust and others***¹ to contend that issuance of LOI does not amount of conclusion of the contract / awarding of the contract; more so when admittedly no agreement has been executed between the Petitioner and the 1st Respondent. The 1st Respondent also makes specific reference to the various rulings cited by the Petitioner, pointing out as to how they are not applicable.

11. The learned counsel for the Petitioner submits that, cancellation of the tender being only for the 'two grounds' mentioned in Annexure-P/1, it cannot be widened by the 1st Respondent by adding more grounds in the counter and the supplementary counter in view of the law declared by the Apex Court in ***Mohinder Singh Gill & Another v. The Chief Election Commissioner, New Delhi & Others***². This is sought to be rebutted by the learned counsel for the 1st Respondent pointing out that Annexure-P/1 was issued by the 2nd Respondent who now stands suspended from the service for the misdeeds committed by him in connection with the tender. As a matter of fact, it is a case involving fraud; the details of which had to be brought to the notice of this Court, the 3rd Respondent, being a Central Government organization and transparency in the tender process has to be maintained all through out.

12. On filing rejoinder by the Petitioner with reference to the averments in the

¹ (2015) 13 SCC 233

² AIR 1978 SC 851

counter, a supplementary counter affidavit dated 18.02.2020 has been filed along with I.A. No. 4 of 2020 by the 1st Respondent. The 3rd Respondent has filed a separate reply, referring to the complaint received as to the irregularities committed in finalizing the tender process, which in turn was communicated to the 1st Respondent for enquiry, finally culminating in cancellation of the tender. The adverse consequence resulted because of the delay in construction of Schools due to the irregularities committed in the tender process (the 3rd Respondent being the beneficiary) have been pointed out, stating that the answering Respondent would be constrained to renew its present contract with the 1st Respondent-Company and for granting the same in future.

13. With regard to the territorial jurisdiction, it is true that no agreement has been executed between the Petitioner and the 1st Respondent and the fact remains that Annexure-P/3 NIT was issued from Gaziabad in Uttar Pradesh. The head office of the 1st Respondent is also situated in the State of Uttar Pradesh, but as pointed out by the Petitioner, it is in connection with the construction of Schools / Residential Buildings in the State of Chhattisgarh, that the tender was floated. This has been widely published in the Newspapers in the State of Chhattisgarh. Observations of the Apex Court in **A.B.C. Laminart Pvt. Ltd. & Another v. A.P. Agencies, Salem;** (1989) 2 SCC 163 are relevant in this context. Paragraph 15 of the said verdict reads as follows :

“15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of, its breach, so that the

suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In case of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid, such part of cause of action disappears. The above are some of the connecting factors.”

On submitting the bid by the Petitioner, the Technical Bid was evaluated on 26.07.2019, followed by evaluation of the Financial Bid on 07.08.2019 as per Annexure-P/4; in turn leading to issuance of Annexure-P/5 – LOI on 14.08.2019. It also remains a fact that, on issuance of Annexure-P/5–LOI, the Petitioner furnished the Bank Guarantee on 03.09.2019, as borne by Annexure-P/6, for a sum of Rs. 95.42 lacs. This shows that, pursuant to the proceedings issued by the Respondent-Corporation, it was acted upon and the Petitioner has furnished the Bank Guarantee, pursuant to the 'LOI' issued to them. As it stands so, part of the cause of

action has arisen in the State of Chhattisgarh. This being the position, the contention of the 1st Respondent that no cause of action, either whole or in part has arisen in the State of Chhattisgarh, is only to be rejected and it is ordered accordingly.

14. Incorrect disqualification of some of the participants has been conceded as effected in the matter; in which higher rating has been stated as given to the Petitioner by the 2nd Respondent; despite the worth much below the cut off marks. In view of the non-satisfaction of various requirements, according to the 1st Respondent, the Petitioner was to be declared as 'unqualified' and it is pointed out that it is an instance of fraud. If there is involvement of any fraud, by virtue of the law declared by the Apex Court in ***United India Insurance Co. Ltd. v. Rajendra Singh & Others***³, fraud and justice do not co-exist and hence no relief can be expected by the Petitioner; more so when the material alteration with regard to the validity period of the Bank Guarantee and such other aspects as pleaded by the 1st Respondent have not been rebutted by the Petitioner.
15. Even going by the admitted version of the Petitioner, Annexure-P/3 tender proceedings have been cancelled vide Annexure-P/1 with reference to the two specific instances; (i) in relation to the EPF registration and (ii) mentioning of price escalation under Clauses 10C and 10CA (instead of stipulating that there will not be any price escalation). This is contrary to the stipulations/requirements actually intended by the Respondents No.1 and 3 and as such, the Tender Notification is defective. If the Tender Notification is defective, it is always open for the party who floated

³ (2000) 3 SCC 581

it, to have it either corrected and modified or to proceed by way of re-tender after cancelling the earlier tender, where no vested right can be claimed by any person including the Petitioner; even if the Petitioner agrees that they are ready to forgo any claim for escalation. This is more so since, there is a chance that other better merited parties might not have participated in the bids, though they were qualified, because of the inconsistencies / discrepancies / uncertainties mentioned in the above Clauses. As it stands so, the contention that no bidder has been disqualified 'solely' for the reason with reference to the EPF registration or that the Petitioner is ready to forego any price escalation is not liable to be sustained.

16. Another aspect to be noted is that there is serious dispute with regard to the tender proceedings stated as finalized by the 2nd Respondent on 07.08.2019, Minutes of which have been produced by the Petitioner themselves as Annexure-P/4. According to the 1st Respondent, the Tender Committee actually consisted of '05 persons', which is stated as headed by the Superintending Engineer, but the tender proceedings have been finalized without the involvement of the Superintending Engineer and it was signed only by 'two persons' including the 2nd Respondent. It is also seen that the proceedings were finalized in the office of the 2nd Respondent and if the Superintending Engineer was heading the Tender Committee, would the Superintending Engineer go to the office of the lower authority to have it finalized, may be a matter of relevance to be looked into, while appreciating the rival contentions. Above all, the price bid finalization is stated as effected as per the proceedings of the Tender

Committee held on '**07.08.2019**' as disclosed form Annexure-P/4. But the very same document reveals through the observation in the next page, that some further communications were issued to the Petitioner on **10.08.2019** for providing the market rate analysis of major items by way of e-mail and that reply was furnished by the Petitioner on the same date, in turn leading to the analysis mentioned therein. On the last page, there is a further reference to the negotiation stated as made by the Tender Committee with the Petitioner and that the Petitioner, vide letter dated **12.08.2019**, had given a rebate of 2% more in writing to their quoted rate of 17.50%, thus bringing it further down to 15.50% above the tender value; which is stated as the reason for the Tender Committee to have it recommended for awarding the contract, stating that the Executive Engineer, Gaziabad was authorized to do it. If the meeting of the Tender Committee was held on 07.08.2019, how the proceedings of the subsequent dates of 10.08.2019 and 12.08.2019 could be incorporated as part of the proceedings of the Annexure-P/4 Minutes dated 07.08.2019, casts serious doubts and it remains a matter of mystery.

17. With regard to the contentions of the Petitioner that Clause 'P' of the tender conditions, enables the Respondent-Corporation to cancel the bid, only prior to award of the contract and that issuance of LOI would amount to awarding of the contract; under which circumstance, cancellation of the bid can only be with reference to Clause-12, by issuing a notice and effecting payment of damages/ compensation; these are all questions of facts which have to be proved by adducing evidence. The stipulation in the Clause 'P', as to right of the tenderer to cancel the bid before

awarding of the contract, is with specific reference to the consequence i.e. without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action. It does not say anything with regard to the right of Awarder to cancel the bid in case of any fraud or such other reasons, even if it is to attract payment of liability or compensation to the person to whom the LOI / work has been awarded.

18. Admittedly, since no agreement has been executed between the Petitioners and the 1st Respondent, the serious dispute with regard to the factual sequence and the culmination of the proceedings, it can be resolved only by adducing evidence. This exercise cannot be pursued by this Court invoking the jurisdiction under Article 226 of the Constitution of India. If the Petitioners are aggrieved, in any manner, it is always open for the Petitioners to pursue appropriate remedy before the other appropriate forum, in accordance with the relevant provisions of law. This Court holds that the writ petitions are not maintainable before this Court, to have the merit considered or decided in relation to cancellation of Annexure-P/3 Tender and issuance of AnnexureP/2 re-tender. All the writ petitions stand dismissed accordingly. No cost.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge