IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 25.08.2020

Reserved On : 27.08.2020

Delivered On : 11.09.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal Nos.246, 247 and 656 of 2020
and
CMP.Nos.4178 and 4187 of 2020

W.A.No.246 of 2020

S.Shahul Hameed ... Appellant/Petitioner

vs.

1.Officer-in-charge,
Materials Management Division
Cauvery Asset Oil and Natural Gas Commission Ltd.,
Neravy, Karaikal - 609 604.

2.The Asset Manager
Cauvery Asset, Neravy Complex,
Karaikal - 609 604.

3.M/s.Lakshmi Travels
No.1, Vasantha Garden Street,
Ayanavaram, Chennai - 600 231.

4.M/s.Ravi Transport
Serukalathur Post,
Sengalipuram(Via)
Kodavasal Taluk,
Tiruvarur District.

5.M/s.Karthikeyan Travels
No.28-C, Banadural Pathukattu Street,
Kumbakonam - 612 001.

6.M/s.Sundhararaman Transport,
9/1001, Perumal South Street,
Nagapattinam - 611 001.

7.Joe Transport
Rep. by Muruganandam, Proprietor,
2/34. North Street, Poravachery, Sikkal (PO)
Nagapattinam - 611 108. ... Respondents/Respondents

W.A.No.247 of 2020

S,Shahul Hameed ... Appellant/Petitioner

vs.

1.Officer-in-charge,
Materials Management Division
Cauvery Asset Oil and Natural Gas Commission Ltd,
Neravy, Karaikal - 609 604.

2.The Asset Manager
Cauvery Asset, Neravy Complex,
Karaikal - 609 604.

3.M/s.Lakshmi Travels
No.1, Vasantha Garden Street,
Ayanavaram, Chennai - 600 231.

4.M/s.Ravi Transport
Serukalathur Post,
Sengalipuram(Via)
Kodavasal Taluk,
Tiruvarur District.

5.M/s.Sundhararaman Transport,
9/1001, Perumal South Street,
Nagapattinam - 611 001.

6.Joe Transport
Rep. by Muruganandam, Proprietor,
2/34. North Street, Poravachery, Sikkal (PO)
Nagapattinam - 611 108. ... Respondents/Respondents

W.A.No.656 of 2020

Ayyappan ... Appellant/Petitioner

vs.

1.Oil and Natural Gas Commission Ltd
Rep. by its General Manager,
Incharge - Materials Management,
Materials Management Division,
Cauvery Asset, Neravy Complex,
Karaikkal, Puducherry.

2.The Asset Manager,
Oil and Natural Gas Commission Ltd
Cauvery Asset, Neravy Complex,
Karaikkal, Puducherry.

3.M/s.Lakshmi Travels
No.1, Vasantha Garden Street,
Ayanavaram, Chennai - 600 231.

4.M/s.Ravi Transport
Serukalathur Post,
Sengalipuram(Via)
Kodavasal Taluk,
Tiruvarur District.

5.M/s.Karthikeyan Travels
No.28-C, Banadural Pathukattu Street,
Kumbakonam - 612 001.

6.M/s.Sundhararaman Transport,
9/1001, Perumal South Street,
Nagapattinam - 611 001.

7.Joe Transport
Rep. by Muruganandam, Proprietor,
2/34. North Street, Poravachery, Sikkal (PO)
Nagapattinam - 611 108. ... Respondents/Respondents

PRAYER IN W.A.NO.246 OF 2020: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order of the learned Judge dated 13.01.2020 made in W.P.No.31078 of 2017.

PRAYER IN W.A.NO.247 OF 2020: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order of the learned Judge dated 13.01.2020 made in W.P.No.34053 of 2017.

PRAYER IN W.A.NO.656 OF 2020: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 13.01.2020 and made in W.P.No.31223 of 2017 by this Court.

PRAYER IN W.A.NO.31078 OF 2017: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, forbearing the respondents 1 and 2 from proceeding any further with the letter of Award given to Respondents 3 to 6 pursuant to the Tender No. V16SC17013 for hiring 133 Nos. Light Vehicles on regular monthly basis for a period of three years in Cauvery Asset Karaikal in so far as Group D and E are concerned.

PRAYER IN W.A.NO.31223 OF 2017: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, declaring the contract awarded by respondents 1 & 2 to respondents 3 to 6 in respect of Tender No.V16SC17013 opened on 03.07.2017 pursuant to tender notification No.KKL/MM/ F/60/Light Vehicles/ 16-17 dt 06.06.2017 as null and void and consequently direct the respondents 1 & 2 to issue retender for hiring 133 numbers of light vehicles on regular monthly basis for three years in Cauvery Asset in accordance with law.

PRAYER IN W.A.NO.34053 OF 2017: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, forbearing the respondents 1 and 2 from proceeding any further with the Letter of Award given to respondents 3 to 5 pursuant to the Tender No.V16SC17013 for hiring 133 Nos. Light Vehicles on regular monthly basis for a period of three years in Cauvery Asset Karaikal in so far as Group A is concerned.

For Appellant : M/s.Radha Gopalan
(in W.A.Nos.246 & 247 of 2020

Mr.N.A.Nissar Ahmed
(in W.A.No.656 of 2020)

For Respondents : Mr.R.Ravi
(R3 to R6 in W.A.No.246 of 2020)
(R3 to R5 in W.A.No.247 of 2020)
(R3 to R6 in W.A.No.656 of 2020)

Mr.P.N.Radhakrishnan
(for R1 and R2 in All appeals)

Mr.K.R.Ramesh Kumar
(for R7 in W.A.No.246 of 2020 & WA 656 of 2020)
for R6 W.A.No.247 of 2020

COMMON JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

These three Writ Appeals arise out of a common order dated 13.01.2020 rejecting the challenge to the acceptance of the bids and the subsequent award of contracts to Respondents 3-7 in the tender floated by the first and second Respondents for hiring light vehicles on a regular monthly basis for a period of three years. Because all the writ petitions were disposed of by a common order, the Writ Appeals arising therefrom were heard jointly and are disposed of by this common judgment.

2.As stated earlier, the Respondents 1 and 2 floated a tender bearing Tender No.V16SC17013 for hiring 133 light vehicles on regular monthly basis for a period of three years for the Cauvery Assets site of Respondents 1 and 2 at Karaikal. The invitation to bid was published on 06.06.2017. As is evident from the bid evaluation criteria (pages 164 and 165 of the typed set in W.A. Nos. 246 and 247 of 2020), the tender consisted of the following six groups of vehicles, which were classified as Groups A to F, and a minimum quantity was prescribed:

	Tender Qty	Minimum Qty
Group A – Sumo/Bolero	: 49 Nos.	10 Nos.
Group B – Sumo/Bolero	: 34 Nos.	07 Nos.
Group C- Innova	: 1 No.	1 No.
Group D- Tata Xenon/Bolero Campe	: 18 Nos.	04 Nos.
Group E- Tata Indica or equivalent	: 10 Nos.	02 Nos.
Group F- Shift vehicles	: 21 Nos.	04 Nos.

The tender provided for a two part bid consisting of a techno-commercial and price bid. A pre-bid meeting was not held. The last date for submission of the techno-commercial bids was originally fixed as 3rd July 2017. This date was subsequently extended up to 24.07.2017. A clarification meeting was held on 24.8.2017 and the last date for submission of the price bid was 01.09.2017. The price bids were opened on 24.10.2017. Because a bidder could offer the specified minimum number of vehicles, the contract was awarded not only to L1 but to other bidders in sequence (i.e. L2, L3 and so on) so as to ensure that the tendered quantity of vehicles is available. The Appellant in W.A. Nos. 246 and 247 of 2020 was one of the successful bidders as regards Group B and F as evidenced by the letters of award in this regard (pages 236 and 239 of the typed set in W.A. Nos.246 and 247 of 2020). The challenge by the said Appellant is to the award of contracts as regards Groups A, D and E. The Appellant in W.A. No.656 of 2020 was unsuccessful as regards all groups and challenges the award across all groups.

3. The two contentious issues relate to fulfillment of financial criteria by the successful bidders. The first of these pertains to the working capital requirement and the genesis and outline of the dispute is as follows. The financial criteria are specified at clause 5 of the bid evaluation criteria. With regard to turnover, the requirement is that it should be not less than 50% of the annualised bid value. As regards working capital, it should be not less than 15% of the annualised bid value. Both net worth and annualised bid value are required to be computed on the basis of the latest audited financial statements of the bidder concerned. Note (iv) to clause 5 provided as follows as regards working capital:

> "(iv) Working capital shall mean " current assets minus current liabilities" as per the latest

year's audited consolidated annual financial statements.

If the bidder's working capital is inadequate in meeting the tender requirements, then the bidder can make good this shortfall through a line of credit confirming the availability of unutilised line of credit for meeting the shortfall from his banker, through a letter specifically mentioning the tender number. The line of credit should be from Scheduled Commercial Bank working in India or foreign bank in India”

A meeting was scheduled on 24.08.2017 for addressing any clarification questions from the bidders. At the clarification meeting, the tendering authority pointed out that bidders who do not satisfy the working capital requirements may submit a line of credit certificate from their bank so as to ensure that they meet the working capital requirements. A letter is stated to have been issued to this effect by the tendering authority to the bidders stating that such line of credit certificate should be submitted on or before 01.09.2017, which was the last date for submission of the price bid. A copy of such letter to S.R. Cabs, the Appellant in W.A. Nos.246 and 247 of 2020, is on record. Three of the successful bidders, namely, Ravi Transport, Karthikeyan Transport and Sundhararaman Transport, utilised this opportunity and submitted certificates from their banks offering specific unutilised line of credit so as to make good the shortfall in working capital. These certificates were accepted by the tendering authority and the respective bids were accepted on that basis. The Appellant in W.A. Nos.246 & 247 of 2020 challenges the award of contract to the successful bidders on the basis that the successful bidders did not satisfy the financial criteria relating to working capital as on the date of submission of the techno-commercial bid.

4. The other contentious issue relates to fulfilment of the prescribed turnover criterion. The bidders were required to offer a specific numbers of vehicles in each group in respect of which bids were submitted by them. The bidding document also specified the minimum number of vehicles that should be offered in each group. A financial criterion was stipulated that the turnover of the bidders should be not less than 50% of the annualised bid value. Pursuant to the clarification meeting on 24.08.2017, one of the bidders, Lakshmi Travels, reduced the number of vehicles that were offered by them. By way of illustration, 25 vehicles were offered in the techno-commercial bid, as regards Group B by Lakshmi Travels but the offer was reduced to 10 vehicles, i.e. the minimum number in that group, while submitting the price bid on 01.09.2017. By doing so and as a consequence thereof, the bid value reduced and it was ensured that the turnover was not less than 50% of the annualised bid value. However, the Appellant in W.A. No.656 of 2020, namely, Ayyappan, offered the same number of vehicles both in the techno-commercial bid

and the price bid. As a result, his bid was rejected on the basis that his turnover is less than 50% of his annualised bid value. The said unsuccessful bidder challenges the award of contract on the basis that he should also have been provided the option of reducing the number of vehicles offered in the price bid. If such offer was extended to him, he would have fulfilled the turnover criteria. To put it differently, the contention is that certain bidders were permitted to reduce the number of vehicles offered at the price bid stage, whereas others, such as the Appellant in W.A.No.656 of 2020, were not provided such opportunity. He also contends that Ravi Transport, Karthikeyan Travels and Sundhararaman Transport did not satisfy the working capital requirement and, therefore, their bids should have been rejected. The writ petitions were filed in these facts and circumstances and the dismissal of the writ petitions is under challenge herein.

5. We heard Mrs.Radha Gopalan, the learned counsel for the Appellant in W.A.Nos.246 and 247 of 2020; Mr.N.A.Nissar Ahmed, the learned counsel for the Appellant in W.A.No.656 of 2020; Mr.R.Ravi, the learned counsel for Respondents 3 to 5 in W.A.No.246 of 2020, Respondents 3 to 5 in W.A. No.247 of 2020 and Respondent 6 in W.A.No.656 of 2020; Mr.P.N.Radhakrishnan, the learned counsel for the Respondents 1 and 2 in all appeals; and Mr.K.R.Ramesh Kumar, the learned counsel for Respondent 7 in W.A.No.246 of 2020.

6. The first contention of Mrs.Radha Gopalan is that the invitation to bid specifies that no deviations to any of the provisions of the bidding documents shall be entertained after the techno-commercial bid is opened. In this case, three of the successful bidders admittedly submitted the line of credit certificates after the opening of the techno-commercial bids. Therefore, their bids should have been rejected. She relied upon a clause from the invitation to bid, which is as under:

> "Deviations/exceptions, if any to the provisions of the bidding documents shall not be entertained after opening of techno commercial bids. Bids shall be evaluated based on the information/documents submitted in the bid. Bids not complying with the requirements of the bidding documents shall be rejected.
>
> Hence, bidders are advised to ensure that they submit appropriate and relevant supporting documents along with the bid in the first instance itself."

In order to substantiate the contention that the successful bidders did not satisfy the financial criteria, she referred to the bid evaluation criteria of the tender documents and, in particular, to Clause 5 thereof (at page 170 of the typed set of documents of the Appellant in W.A. No.246 and 247 of 2020) which deals with the financial criteria. In particular, she pointed out that the working capital of the bidder is required to be not less than 15% of the annualised bid value. Working capital is defined, in Note (iv) to Clause 5, as "current assets - current liabilities as per the latest year's audited consolidated annual financial statements." Although the tender conditions enable a bidder to make good the shortfall in working capital through a line of credit from the bidder's bank confirming the availability of unutilised credit for meeting the shortfall, the learned counsel contended that such line of credit certificate should have been submitted along with the techno- commercial bid. In other words, this clause enables the bidder to obtain such letter from its bank to make good the shortfall in the working capital provided such letter is obtained and submitted at the time of submission of the techno-commercial bid. She further pointed out that the successful bidders submitted undated certificates from their banks offering a line of credit. For this purpose, she referred to the documents at pages 274 to 276 of the typed set of papers filed by her. She contended that all these documents were produced after the date of submission of the techno- commercial bid. Consequently, the bids submitted by these three bidders should have been rejected for failure to comply with the financial criterion pertaining to working capital.

7. Mr.N.A.Nissar Ahmed made submissions on behalf of the Appellant in W.A.No.656 of 2020. He contended that his client offered a certain number of vehicles in the techno-commercial bid. While Lakshmi Travels was called upon to reduce the number of vehicles during the clarification meeting, such an offer was not extended to his client. Thereafter, the bid submitted by his client was rejected on the basis that the turnover of his client was less than 50% of the annualised bid value. If a similar offer had been extended to his client, he would have reduced the number of vehicles offered by him to the minimum number of vehicles in that group, and thereby he would have satisfied the turnover criteria. In effect, his contention is that the tendering authority treated the parties unequally by favouring some bidders and discriminating against others. Therefore, the award of contract to Lakshmi Travels is vitiated.

8. Mr.Ravi, the learned counsel for the Respondents 3 to 5 in W.A.Nos.246 and 247 of 2020 and R-6 in W.A.No.656 of 2020, made submissions to the contrary. He opened his submissions by pointing out that this tender was on the basis of a two bid system consisting of an un-priced techno-commercial bid and a price bid. As is evident from the above, he pointed out that the techno-commercial bid did not contain the price offered by the bidder. Therefore, the tender conditions permit bidders who do not fulfill the financial criteria to seek clarifications from the tendering authority at the meeting convened for that purpose and, on the basis of clarifications received from the tendering authority, make

good any deficiency on or before the submission of the price bid. In this case, the techno-commercial bid was submitted on 24.07.2017. The clarificatory meeting was held on 24.08.2017. The last date for submission of the price bid was on 01.09.2019. During the one week interval between the clarification meeting and the date of submission of the price bid, all bidders were provided with the opportunity of making good deficiencies as regards the financial criteria by taking necessary steps in that regard. In support of this contention, the learned counsel referred to the communication dated 24.08.2017 from the first and second Respondents. He pointed out that this communication was sent to all the bidders. By this communication, bidders were called upon to submit various documents in respect of financial criteria such as the certificate from a chartered accountant providing clarification with regard to depreciation, working capital calculation, turnover, etc. Parties were also provided an opportunity to submit a certificate of compliance with regard to the financial parameters of the bidders and also to provide a letter confirming the availability of unutilised line of credit. Pursuant to the receipt of this letter, he pointed out that bidders were permitted to take necessary measures to produce letters from their banks with regard to availability of unutilised line of credit. Some of the bidders reduced the number of vehicles offered in the price bid so as to ensure that they satisfied the turnover criteria. Even the Appellants submitted the certificate from their Chartered Accountant with regard to the working capital and turnover calculations. Therefore, he contended that the successful bidders duly satisfied the requirements on or before the date of submission of the price bid. Hence, the award of contract is not liable to be interfered with as rightly concluded by the Writ Court.

9. Mr.P.N.Radhakrishnan made submissions next on behalf of the Respondents 1 and 2. He pointed out that Clause 24.2.1 of the tender documents enables the tendering authority to ask for deficient documents. Similarly, the bid evaluation criteria expressly enable the tendering authority to ask the bidder for clarifications/confirmations/deficient documents during the evaluation of bids. Based on such request, the bidders were permitted to make good the deficiency within the prescribed time, namely, before opening the price bid. In this case, the offer to make good such deficiency was extended to all the bidders by issuing substantially similar letters to all the bidders. Whenever bidders responded to such request by providing the requisite letter confirming the availability of an unutilised line of credit or by taking other measures to ensure that they satisfy the turnover criteria by reducing the number of vehicles offered in the price bid, such bids were considered. With regard to the reduction of the number of vehicles, he pointed out that the tender documents enabled bidders to restrict such number to not less than the specified minimum number of vehicles in each group. As long as the

bidder restricted the number of vehicles at the price bid stage to not less than the specified minimum number, the price bid was accepted because there was compliance with tender conditions. He also pointed out that groups - A, B and E have not been operated and that a fresh tender was floated subject to the outcome of these proceedings. For all these reasons, he submit that there was no arbitrariness in bid evaluation and therefore no interference is warranted.

10. Mr.K.R.Ramesh Kumar, the learned counsel for Respondent 7, pointed out that no allegations have been made in respect of the contract awarded to his client. Therefore, he contended that his client has suffered for no fault merely because these legal proceedings were initiated.

11. We considered the submissions of the learned counsel for the respective parties and examined the records.

12. Two issues arise for consideration in these appeals. The first of these issues is whether the bids of persons - who provided letters from their bank confirming the availability of an unutilised line of credit after submitting the techno-commercial bid - are liable to be rejected. On this issue, the learned counsel for the Appellant in W.A.Nos.246 and 247 of 2020 relied upon the stipulation in the invitation to bid to the effect that no deviations to any of the provisions of the bidding documents shall be entertained after the opening of the techno-commercial bids. The learned counsel also relied upon the stipulation in the bid evaluation criteria to the effect that bidders are advised not to take any exception/deviation to the bid documents. In addition, the learned counsel referred to the stipulation in the bid evaluation criteria that a certificate of compliance should be provided to the effect that the financial parameters of the bidders are equal to or more than the required value and that the bids would be rejected if it is found later that the certificate of compliance is incorrect. Upon perusal of the letters submitted by Ravi Transports and Karthikeyan Travels, as regards the availability of unutilised line of credit, it is clear that the letters from the bank are undated. As regards the letter submitted by Sundhararaman Transport, it is dated 31.09.2017. This is clearly subsequent to the last date for submission of the techno-commercial bid, namely, 24.07.2017. In fact, Mr.Ravi, the learned counsel for the above mentioned three successful bidders, does not dispute the fact that these letters were obtained from their banks and submitted during the interval between the clarification meeting and the last date for submission of the price bid. However, his contention and that of the learned counsel for the tendering authority is that this is permissible under the tender conditions. Clause 24.2.1 is relevant, in this regard, and the said Clause is as under:

"24.2.1 During evaluation of bids, purchaser may at its discretion ask the Bidder for clarifications / confirmations / deficient documents of its bid. The request for clarification and the response shall be in writing and no change in the price of substance of the bid shall be sought or permitted."

On this issue, it is also relevant to refer to the evaluation matrix, wherein it is specified as under:

"Bidders are advised not to take any exception/deviations to the bid document. Exceptions / deviations, if any, should be brought out during the Pre-bid conference. In case, pre-bid conference is not held, the exceptions/deviations along with suggested change are to be communicated to ONGC within the date specified in the NIT and bid document. ONGC after processing such suggestions may, through an addendum to the bid document communicate to the bidders the change in its bid document, if any.

However, during evaluation of bids, ONGC, may ask the Bidder for Clarifications / confirmations / deficient documents of its bid. The request for clarification and the response shall be in writing and no change in the price or substance of the bid shall be sought or permitted. If the bidder still maintains exceptions/deviations in the bid, such conditional/non-confirming bids shall not be considered and may be rejected."

13. By relying heavily on the above clauses, the learned counsel for Respondents 1 and 2 contended that the tendering authority was entitled to permit bidders to submit letters from their bank confirming the availability of unutilised line of credit before price bid submission. As regards this tender, there was no pre-bid conference; instead a clarification meeting was held on 24.08.2017. Pursuant thereto, it is stated that a letter was addressed on 24.08.2017 to all the bidders. A copy of the letter addressed to S.R. Cabs, the Appellant in W.A. Nos. 246 and 247 of 2020, is on record and the said letter is as under:

"SUB: Confirmation/deficient documents-Reg.
REF: (i) Tender No.V16SC17013 for "Hiring of 133 Nos. of Light Vehicles on regular monthly basis"
(ii) Your offer dt.24.07.2017 against tender under ref(i).
With reference to your offer against the tender given vide ref (i), you are hereby requested to submit the following confirmations/deficient documents.
Technical:

The addresses of the owner in the RC books are different from that of the Bidder, Pleas clarify the same as per BEC Clause B1.2.
Commercial:
1. Please submit the undertaking on the company's letter head and duly signed by the signatory of the bid that the bidder shall comply with the Fair Wage Policy adopted by ONGC and abide by the terms and conditions for implementing the said policy in letter and spirit:
2. Please submit the following with respect to financial criteria:
2.1 A certificate from the chartered accountant clarifying, why depreciation not taken in the profit and loss statement.
2.2 A certificate from the chartered accountant showing the working capital calculation, by clearly indicating the various current asset as per financial statement submitted.
2.3 A certificate from the chartered accountant clearly certifying the turnover for last two years and Net worth and working capital for the latest financial year, based on the audited financial statement submitted.
2.4 Bidder statement clearly showing the turnover for last two years and Net worth and working capital for the latest financial year, based on the audited financial statement submitted.
2.5 A certificate of compliance to the effect that the financial parameters of the bidder are equal or more than the required value as applicable. In case the information contained in the "certificate of compliance", is found to be incorrect later on after opening of price bids, then their bids will be rejected in case the bidder is not actually meeting the required financial criteria.
2.6 If the bidder's considers his working capital is inadequate in meeting the tender requirements, then the bidder can make good this shortfall through a line of credit confirming the availability of unutilized line of credit for meeting the shortfall from his banker, through a letter specifically mentioning the tender No V16SC17013. The line of credit should be from scheduled commercial Bank working in India or foreign Bank in India.
Your response to the above should reach this office on or before 01.09.2017."

14. In light of the aforesaid, the question that arises for consideration is whether the tendering authority was entitled to accept the letters from the banks of the respective bidders after the date of opening of the techno-commercial bids. The answer to these questions would turn on an interpretation of Clause 24.2.1 of the tender documents and the evaluation matrix, which are reproduced supra. These

clauses are intended for the purposes of enabling the tendering authority to obtain clarifications / confirmations / deficient documents. The contention of Mrs. Radha Gopalan was that recourse may be taken to such a clause only for the purpose of obtaining clarifications in respect of bids and the documents enclosed in support thereof and not to enable bidders to submit documents that had not been submitted earlier. It was further contended that this position becomes clear when the said clause is analysed in the overall context of the tender document, which also provided that a bid should be submitted along with all appendices and documents, and that the un-priced techno-commercial bid should be submitted along with a certificate of compliance to the effect that the financial parameters of the bidders are equal to or more than the required value. The above contentions certainly merit close scrutiny by drawing reference to the law on interference in judicial review in such matters.

15. In the case at hand, it appears that there was no pre-bid conference; instead a meeting was held on 24.08.2017 for purposes of clarifying the queries of the bidders. After this meeting, a letter dated 24.08.2017(reproduced supra) was certainly issued to the Appellant and is said to have been issued to all the bidders informing them that they may produce certificates from their chartered accountant in respect of working capital and net worth calculation and, in case the bidder is of the view that working capital may be insufficient, obtain and submit a letter from their bank in respect of the availability of an unutilised line of credit. Pursuant thereto, some of the bidders submitted the letters which are available at pages 274 to 276 of the typed set of papers filed in W.A.Nos.246 & 247 of 2020. The learned counsel for the Appellant contends that the document at page 278 of the typed set of papers establishes that three bidders, namely, Ravi Transport, Karthikeyan Travels and Sundhararaman Transports did not satisfy the financial criteria and, in particular, the working capital criteria. However, the said document is signed by the Manager (F & A) of the first and second Respondents and not by the tendering authority. Although one cannot draw definitive conclusions, it also appears that the said document was executed prior to the submission of the letters at pages 274 to 276.

16. Turning to the law on the subject, it is pertinent to bear in mind that the tendering authority is provided considerable latitude in the matter of bid evaluation, and the scope for interference in judicial review is limited. In a nutshell, interference is warranted only if the decision of the tendering authority was mala fide or biased or so arbitrary and unreasonable that no reasonable person could have taken such decision. By way of illustration, reference may be made to the judgment in Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517 at page 531, paragraph 22, which was

also cited and quoted by the learned single Judge, where it was held as under:

''22. . .Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) 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";
>
> (ii) Whether public interest is affected.
>
> If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.''

Similarly, the question as to whether deviations from tender conditions are permissible and, if so, whether it can extend to essential conditions and, in what manner, was considered by the Supreme Court in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622. In this decision, the Court moved away from the earlier rule of not permitting deviations from essential, as opposed to non-essential, conditions of a tender and concluded that even such deviations may be made provided it is done in a non-discriminatory manner. It was held as under in paragraph 48 thereof:

> ''48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v.International Airport Authority of India, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot''

17. The above principles should be applied to test whether the decision of the tendering authority to accept the bids of those who submitted the letter from the bank after submitting the techno-commercial bid warrants interference. Clause 24.2.1 of the tender documents and the evaluation

matrix were relied upon by the tendering authority to justify the acceptance of the letters from the bank. These clauses confer discretion on the tendering authority to ask for clarifications/confirmations/deficient documents. While it is arguable that these clauses are not intended to call for and receive new documents, this Court is not exercising appellate jurisdiction over the tendering authority and it cannot be said that the said interpretation and the decision to accept the bids on such basis is mala fide, biased or arbitrary. Indeed, the documents on record reflect that a letter calling for such document was also issued to the Appellant in W.A. Nos. 246 and 247 of 2020, and that the said Appellant was one of the successful bidders for Groups B and F. Thus, the Appellant was also provided an opportunity to provide the necessary documents pursuant to the clarification meeting held on 24.08.2017. Consequently, the appellant cannot complain that the playing field was not level, or that the Appellant was discriminated against in any manner. When the facts and the applicable law are viewed in totality, we conclude that the award of contracts to bidders - who submitted a letter from the bank with regard to the unutilised line of credit after the submission of the techno-commercial bid, but before the submission of the price bid - is not liable to be interfered with on judicial review.

18. The last issue for consideration is with regard to the reduction in the number of vehicles by certain bidders at the price bid stage. The tender documents specified the minimum number of the vehicles that should be offered by bidders in respect of each group. The 3rd Respondent in W.A.No.656 of 2020, namely, Lakshmi Travels, offered a larger number of vehicles at the techno-commercial bid stage. Pursuant to the clarification meeting on 24.08.2017, in the price bid, the said bidder reduced the number of vehicles to the minimum number and thereby satisfied the turnover criteria. On the other hand, Ayyappan, the Appellant in W.A.No.656 of 2020, offered the same number of vehicles both at the techno-commercial bid stage and the price bid stage. His contention is that the option of making a reduction in the number of vehicles was not extended to him. We are unable to countenance this contention. If the bidder, Ayyappan, had requested for a clarification or permission to offer a lower number of vehicles and if such clarification/permission was refused while permitting Lakshmi Travels to reduce the number of vehicles, it would have amounted to unjust discrimination. However, there is no evidence at all that the Appellant in W.A.No.656 of 2020 made such a request to the tendering authority. To the contrary, the said Appellant admitted that he did not satisfy the turnover criteria. Hence, the rejection of his bid by the tendering authority is fully justified.

19. With regard to the law on judicial review of tenders, several judgments of the Hon'ble Supreme Court in cases such as (1) Tata Cellular v. Union of India, AIR 1996 SC 11, (2) Air India Ltd v. Cochin International Airport Ltd,

(2000) 1 SCR 505; and (3) Michigan Rubber (India) Ltd v. The State of Karnataka, (2012) 8 SCC 216 were cited by the learned single Judge and reliance was placed on principles laid down therein before concluding that the award of the contract to the successful Respondents was not actuated by mala fide considerations, arbitrariness or unreasonableness. For reasons set out above, the order of the learned single Judge does not suffer from infirmity and interference is not warranted in this intra-court appeal.

20. In the result, the order of the learned single Judge is affirmed and the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

rrg

To

1.The Officer-in-charge,
Materials Management Division
Cauvery Asset Oil and Natural Gas Commission Ltd,
Neravy, Karaikal - 609 605.

2.The Asset Manager
Cauvery Asset, Neravy Complex,
Karaikal - 609 604.

+2cc to Mr.S.Radha Gopalan, Advocate SR.No.29749(28/09/2020)

+3cc to Mr.Ravi, Advocate SR.No.29931

Writ Appeal Nos.246, 247 & 656 of 2020

NR(CO)
GMY(23/09/2020)