IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 12.11.2019

Order pronounced on : 13.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.s 31078, 31223 & 34053 of 2017
and
W.M.P.s 34077, 34283 & 37779 of 2017

W.P. 31078 of 2017

S.Shahul Hameed,
Proprietor, S.R. Cabs ... Petitioner

Vs

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

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

3. M/s.Lakshmi Travels,
1, Vassantha Garden Street,
Ayanavaram,
Chennai-600 023.

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

5. M/s.Karthikeyan Travels,
28-C, Banadurai Pathukattu Street,
Kumbakonam-612 001.

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

7. M/s.Joe Transport,
    rep. by Muruganandam,
    Proprietor,
    2/34, North Street,
    Poravacherry,
    Sikkal (PO),
    Nagapattinam-611 108.

(R7 impleaded as per order
dated 24.04.2018 in W.M.P.
2159 of 2018) ... Respondents

PRAYER in W.P. 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.V16SC 17013 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.

W.P. 31223 of 2017

Ayyappan ... Petitioner

Vs

1. Oil and Natural Gas Commission Limited,
    rep. by its General Manager,
    Incharge-Materials Management,
    Materials Management Department
    Cauvery Asset,
    Neravy Complex, Karaikal,
    Puducherry.

2. The Asset Manager,
    Oil and Natural Gas Corporation Limited,
    Cauvery Asset, Neravy Compex,
    Karaikal, Puducherry.

3. M/s.Lakshmi Travels,
    by its Proprietor,
    Meerashi Basakaran,
    No.1, 3rd Street, Vasantha Garden,
    Ayanavaram,
    Chennai-600 23.

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

5. M/s.Karthikeyan Travels,
28-C, Banadurai Pathukattu Street,
Kumbakonam-612 001.

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

7. M/s.Joe Transport,
rep. by Muruganandam,
Proprietor,
2/34, North Street,
Poravacherry,
Sikkal (PO),
Nagapattinam-611 108.

(R7 impleaded as per order
dated 20.02.2018 in W.M.P.
2160 of 2018) ... Respondents

PRAYER in W.P. 31223 of 2017 : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the contract awarded by respondents 1 and 2 to respondents 3 to 6 in respect of Tender No.V16SC17013 opended on 03.07.2017 pursuant to tender notification No.KKL/MM/F/60/Light Vehicles/16-17, dated 06.06.2017 as null and void and consequently direct the respondents 1 and 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.

W.P. 34053 of 2017

S.Shahul Hameed,
Proprietor, S.R. Cabs ... Petitioner

Vs

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

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

3. M/s.Lakshmi Travels,
1, Vasantha Garden Street,
Ayanavaram, Chennai-600 023.

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. M/s.Joe Transport,
2/34, North Street,
Poravacherry,
Sikkal, Nagapattinam-611 108. ... Respondents

PRAYER in W.P. 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 Petitioner in W.P. 31078 & 34053/2017 : Mr.V.T.Gopalan, Senior Adv. for S.Radha Gopalan

For Petitioner in W.P. 31223/2017 : Mr.N.A.Nissar Ahmed

For Respondents 1 & 2 in all W.P.s : Mr.P.N.Radhakrishnan

For Respondents 3 to 6 in W.P. 31078 & 31223/2017 : Mr.R.Ravi
Respondent 3 to 5 in WP No.34053/2017
For 7th respondent in W.P. 31078/2017 and for 6th respondent in W.P. 34053/2017 : Mr.K.R.Ramesh Kumar

COMMON ORDER

All these Writ Petitions have been filed against awarding of contract in favour of respondents 3 to 6 herein, by respondents 1 and 2, for hiring 133 numbers of light motor vehicles on regular monthly basis.

2. The brief facts leading to the filing of these Writ Petitions are as follows :-

The 1st respondent herein viz. Oil and Natural Gas Commission Limited, called for tenders for hiring of 133 nos. of light motor vehicles on a regular monthly basis for a period of three years, in Cauvery Asset, at Karaikal, for transportation of its personnel authorised by ONGC, Cavuery Asset to different worksites and / or any other purpose based at Karaikal. The 133 nos. of light motor vehicles have been grouped into six groups as follows :-

Group A - Sumo/Bolero (9 hrs. duty) - 49 Nos.

Group B - Sumo/Bolero (9 hrs. duty) - 34 Nos.

Group C - Innova (9 hrs. duty) - 01 Nos.

Group D - Tata Xenon/Bolero Camper (9 hrs. duty) - 18 Nos.

Group E - Tata Indica or equivelent (9 hrs. duty) - 10 Nos.

Group F - Shift vehicles (18 hrs. duty) - 21 Nos.

-133 Nos.

The minimum number of vehicles to be offered by the bidders in each category was as follows :-

Group A - Sumo/Bolero (9 hrs. duty) - 10 Nos.

Group B - Sumo/Bolero (9 hrs. duty) - 07 Nos.

Group C - Innova (9 hrs. duty) - 01 Nos.

Group D - Tata Xenon/Bolero Camper (9 hrs. duty) - 04 Nos.

Group E - Tata Indica or equivelent (9 hrs. duty) - 02 Nos.

Group F - Shift vehicles (18 hrs. duty) - 04 Nos.

3. The tender consists of two bid system viz., Techno Commercial bid and Price bid. The last date for submission of tender was 02.00 p.m. on 03.07.2017 and Techno Commercial Bid opening was on the same date at 03.00 p.m. However, the last date for submission of tender was extended to 24.07.2017 with respective times.

4. The grievance of the petitioner in W.P.s 31078 & 34053 of 2017 is that, he has submitted a tender for Group A (13 vehicles), Group 'B' (7 vehicles), Group 'D' (4 vehicles), Group 'E' (2 vehicles), and Group 'F' (4 vehicles). According to the petitioner, the 3rd respondent herein has submitted his technical bid offering for 25 vehicles, but produced documents only for 10 vehicles instead of 25 vehicles. Hence, the bid submitted by the 3rd respondent is not in conformity with the terms and conditions of the tender.

5. So far as respondents 4 to 6 are concerned, they are not possessing necessary financial parameters to satisfy the technical bid. Hence, for want of financial criteria, their tenders ought to have been rejected. As per the tender conditions, the turnover of the bidder should be 50% of the annualised bid value or more, Net worth of the bidder should be 15% of the annualised bid value or more, and working capital should be 15% of the annualised bid value or more. But, the respondents 4 to 6 did not satisfy the finncial criteria. Hence, their tenders should also be rejected.

6. So far as Group 'A' is concerned, the 7th respondent M/s.Joe Transport was declared as L1, one Vinolia Tourist Cabs was declared as L2, 6th respondent was declared as L3, 3rd respondent was declared as L4, and 4th respondent was declared as L5. The petitioner was declared as L7. If the tenders of other respondents 3, 4 and 6 are rejected, the petitioner will become as L3, and he will be eligible for awarding of contract.

7. So far as Group 'D' is concerned, the 3rd respondent was declared as L1, 7th respondent was declared as L2, 6th respondent was declared as L3 and the petitioner was declared as L5. If the tenders of other tenderers are rejected, the petitioner will get the contract. Likewise, in Group 'E', the 5th respondent was declared as L1, 6th respondent was declared as L2, and the petitioner was declared as L4. If the tenders of respondents 5 and 6 are rejected, the petitioner will get the tender. According to the petitioner, so far as Group 'A' and 'D' are concerned, the respondents 1 and 2 have already awarded contract. So far as Group 'E' is concerned, the 3rd and 6th respondents did not produce the purchase receipts of all the vehicles, on that ground, their tenders are liable to be rejected. Both Groups 'D' and 'E', after granting letter of award, the petitioner was called to match their offer, for which he has also given a consent, however, the petitioner was not given the letter of award. Since the respondents 3 to 6 did not satisfy the essential condition of tender, i.e. non-production of vehicle purchase documents, and the financial criteria, they are not qualified to participate in the tender. Hence, their tenders are liable to be rejected.

8. The petitioner in W.P. 31223 of 2017 has challenged the tender, on the ground that, the respondents 3 to 6 did not satisfy the financial criteria, and the tenders are liable to be rejected. The respondents 4 to 6 did not possess the required working capital, but they were declared qualified on the basis of a line of credit submitted by them from their banker subsequent to the opening of price bid, which is not acceptable. According to the petitioner, on the date of finalisation of tender, the respondents 3 to 6 did not possess the required working capital, based on the subsequent line of credit submitted by them, they were found qualified, which is not permissible under law.

9. The 1st and 2nd respondents have filed their counter affidavit inter alia stating that, these Writ Petitions have been filed with a malafide intention only to sabotage the tender process. The petitioner has been declared as L2 in respect of Group 'B', and L1 in respect of Group 'F', for which, the letter of awards have been granted to the petitioner. Having accepted the award of contract in respect of two groups in the tender, it is unwarranted on the part of the petitioner seeking to restrain the other groups with an intention to usurp the contract in respect of all groups, and monopolise entire contract.

10. Totally, 17 bidders have participated in the tender including the petitioner. Out of which, 15 bidders including the petitioner and the respondents 3 to 6 were shortlisted for the price bid opening, and they are bound to comply with the technical criteria. Out of 15 shortlisted bidders, 11 bidders were ultimately found to be eligible as they have fulfilled all the necessary financial criteria against the price bid as well. All the 11 bidders have quoted minimum required quantity in the respective groups, as per the tender conditions, and became eligible for award of contract in respect of the respective groups. The 3rd respondent specified 25 vehicles in their technical bid, but produced documents only for 10 vehicles. However, in the price bid, the 3rd respondent has restricted for 10 vehicles, which is the minimum required as per the tender conditions, for which he has submitted documents. There is no specific condition that, minimum number of vehicles mentioned in the technical bid as well as the price bid have to be the same, the only criteria mandatorily required is that, the minimum number of vehicles specified in the tender conditions have to be offered in the bid documents. In the event of compliance with all the other criteria, the bidder will be granted the contract only for the number of vehicles offered in the price bid and not otherwise. The 3rd respondent's offer was accepted for all groups, except Group 'F', and the 3rd respondent has submitted technical as well as price bid well before the scheduled date and time. As per the tender conditions, the bidders are required to offer minimum number of vehicles against each groups, and there is no

specific condition that, there should not be any mismatch between the number of vehicles offered in the technical bid and the price bid. The vehicles offered by the 3rd respondent in each group are as detailed below :-

Group	No. of vehicles required against each Group as per tender	Minimum no. of vehicles to be quoted against each Group as per tender	No. of vehicles offered in technical bid by 3rd respondent M/s.Lakshmi Travels	Minimum no. of vehicles offered by 3rd respondent M/s.Lakshmi Travels in each group
A	49	10	25	10
B	34	07	25	08
C	01	01	01	00
D	18	04	10	06
E	10	02	10	00
F	21	04	12	04

So far as the financial criteria for respondents 3 to 6 are concerned, they are qualified and the details of their financial criteria are detailed below :-

Sl. No.	Name of the bidder	Annualized bid value		Turnover	Net Worth	Working capital	Financial qualification
1	M/s.Lakshmi Travels	34619982	Eligibility	17309991	5192997	5192997	Qualified
			Actual	158600000	28900000	22100000	
2	M/s.Ravi Transport	9042516	Eligibility	4521258	1356377	1356377	Qualified due to submission of line of credit letter from their bankers
			Actual	5987109	2174156	1023602*	

3	M/s.Karthikeyan Travels	3109428	Eligibility	1554714	466414	466414	Qualified due to submission of line of credit letter from their bankers
			Actual	4578283	894705	0**	
4	M/s.Sundaraaman Transport	42470727.72	Eligibility	21235364	6370609	6370609	Qualified due to submission of line of credit letter from their bankers
			Actual	39146015	8215167	-487228*	

As per tender conditions, bidders, whose financial criteria do not meet the working capital conditions can submit a line of credit letter from their bankers, and such bids can be considered acceptable, if it is not in violation of any of the tender conditions.

11. According to 1st and 2nd respondents, the difference in number of vehicles offered in technical bid and that of price bid cannot be termed as modification of bid for the reason that the technical bid and price bid have been uploaded in e-portal well before the expiry of due date and time indicated. The mismatch with the technical bid as well as the price bid was clarified by the 3rd respondent well before shortlisting of their bid for price bid opening. In fact, the petitioner himself became eligible only after such clarification, and the same is not in violation of tender conditions, and the petitioner cannot have any grievance over the same. So far as awarding contract in respect of Group 'A' is concerned, due to the pendency of the civil suit, the contract could not be awarded earlier, and subsequently, it was awarded to the eligible bidder. Since the respondents 3 to 6 are qualified in both financial and technical bid, letter of award has been granted to them, and there is no illegality in it.

12. The 6th respondent has filed a separate counter affidavit stating that, these Writ Petitions have been filed with a malafide intention as the petitioner has failed to get the contract in respect of three groups. As per Clause 24.2.1 of the tender condition, during evaluation of bids, the purchaser may ask the bidder for clarification / confirmation,

deficient documents of its bid. Based on the above provision, after the techno commercial bid was opened, the 1st respondent has issued clarification calling for documents from the bidders including the petitioner and other respondents to submit documents on or before 01.09.2017. Pursuant to the letter, the 6th respondent submitted documents, and clarified queries raised by the respondents 1 and 2. So far as the eligibility regarding working capital, as per clause (iv) of the terms of evaluation criteria, if the bidders working capital is inadequate in meeting the tenders requirement, 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. Pursuant to the above clause, the 6th respondent has submitted his line of credit, which was accepted by the respondents 1 and 2. According to the 6th respondent, the petitioner being participated in the tender, and awarded with the contract, it is not open to the petitioner to find fault with the tender process, wherein the other respondents got selected. The Court can interfere in tender process only in the event, it is proved that, there is an arbitrariness and unfairness in awarding contract. In the instant case, the tender has been awarded as per law, and there is no allegation of any malafide. In the above circumstances, the petitioner cannot challenge the tender process.

13. Mr.V.T.Gopalan, learned senior counsel appearing for the petitioner in W.P.s 31078 & 34503 of 2017, would submit that, the respondents 3 to 6 are not eligible for participating in the tender. The 3rd respondent though quoted 25 vehicles in its tender form, produced documents only in respect of 10 vehicles, the respondents 1 and 2 have accepted the bid, and awarded the contract. Likewise, the respondents 3 to 6 did not satisfy the financial criteria. Even though they are not having the required working capital, they were permitted to fill up the deficiency by submitting a line of credit, which is not permissible. Even under clause 24.2.1 of the tender conditions, if a tenderer is not qualified at the time of filing the tender, he cannot be permitted to fill up the deficiency subsequently, and the tenderer should not be permitted to file any document after the last date of submission of tender. However, the respondents 3 to 6 were permitted to submit further documents in the guise of seeking clarification, which is totally illegal. He has further submitted that, the essential qualification for participating in the tender cannot be compromised in a later stage. When the respondents 3 to 6 failed to submit qualified documents within the time schedule, they cannot be permitted to fill the gap at later stage. The respondents 1 and 2, in total violation of the tender conditions, now awarded contract to a persons, who were not qualified to participate in the tender process. In support of his contentions, the learned senior counsel has relied upon the judgment of Supreme Court of India in Sorath Builders Vs. Shreejikrupa Buildcon Ltd. and another

reported in 2009 (11) SCC 9.

14. Mr.N.A. Nissar Ahmed, learned counsel appearing for the petitioner in W.P. 31223 of 2017 would contend that, the respondents 1 and 2 have awarded the contract in total violation of tender conditions, and persons, who were not qualified at the pre-tender stage, awarded contract, whereas, the petitioner, who is fully qualified was not selected.

15. Per contra, Mr.P.N.Radhakrishnan, learned counsel appearing for respondents 1 and 2 would contend that, they have strictly followed the tender conditions, and awarded the contract, there is no deviation in the same. Out of 17 bidders, 11 bidders were found eligible for the price bid, and the respondents 3 to 6 submitted all the documents necessary for the technical bid. As per the tender conditions, if the bidder consider his working capital is inadequate in meeting the tender requirements, the bidder can make good this shortfall through a line of credit confirming the availability of unutilised line of credit for meeting the shortfall. Originally, the bidders did not submit line of credit, which was sought by the respondents 1 and 2, thereafter, the petitioners and the respondents 3 to 6 submitted the same before opening of price bid. The petitioner has also submitted the line of credit letters subsequent to the technical bid submission date, while seeking techno commercial clarification. The petitioner in W.P.s 31078 & 34053 of 2017, has originally failed to submit necessary certificates from the chartered accountant in respect of the net worth and turnover along with the techno commercial bid, and they have submitted those documents subsequently, which was accepted by the respondents 1 and 2. Likewise, the petitioner in W.P. 31223 of 2017 had not submitted necessary certificates from the Chartered Accountant in respect of the working capital and turnover along with techno-commercial bid. Those documents were also accepted by the respondents 1 and 2 subsequently. So far as 3rd respondent is concerned, there is no specific condition that, the vehicles offered in techno-commercial bid and price bid are one and the same. Since the 3rd respondent did not specify the offer in each category, a clarification was sought, wherein he has offered 10 vehicles in Group 'A' alone, which is permissible under the tender condition. Hence, there is no violation of terms and conditions. That apart, there is no malafide on the part of the respondents 1 an 2 as alleged by the petitioner in awarding the contract to the other respondents.

16. Mr. R.Ravi, learned counsel appearing for respondents 3 to 6 would contend that, there is no violation of any tender conditions, and they are fully qualified for participating in the tender. Further, these Writ Petitions have been filed with a malafide intention, and these Writ Petitions are not maintainable.

17. I have carefully considered the rival submissions made by the learned counsel appearing for petitioners as well as the learned counsel appearing for respondents and perused the records carefully.

18. The scope of judicial review of administrative decisions, more particularly, exercise of powers in awarding the contract has been well settled by the Hon'ble Supreme Court as well as by this Court in number of pronouncements.

19. In Tata Cellular v. Union of India, AIR 1996 SC 11, the Hon'ble Supreme Court has held as follows:-

> "(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. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. 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.

1. In Air India Ltd v. Cochin International Airport Ltd, (2000) 1 SCR 505, the Hon'ble Supreme Court has held as follows:-
2.

> "The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny.

It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

21. In Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, the Hon'ble Supreme Court has as follows:-

"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."

22. In Michigan Rubber (India) Ltd v. The State of Karnataka, (2012) 8 SCC 216, the Hon'ble Supreme Court has held as follows:-

"35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

23. From the above decisions, it is clear that, while dealing with the decision of awarding tenders, the Court must exercise its discretionary power under Art. 226 of Constitution of India with great caution, and the discretion should be exercised only in furtherance of public interest. Even though the decision is not amenable to the judicial review, the Court can examine the decision making process, and interfere, if it is actuated by malafides, unreasonableness, and arbitrariness. The Court should always keep the larger public interest in mind in order to decide whether its intervention called for or not.

24. The Writ Petitions have been filed seeking for Mandamus restraining the respondents 1 and 2 from proceeding further with the letter of award given to the respondents 3 to 6. The petitioners did not come forward to challenge the letter of award given to the private respondents. However, this Court inclined to consider, whether the letter of award granted to the respondents 3 to 6 is actuated with malafide and arbitrariness and in violation of tender conditions. The main grievance of the petitioners is that, at the pretender stage, the respondents 3 to 6 have not submitted the required documents within the time stipulated in the tender, and the respondents 1 and 2 have received the documents subsequently, and made them qualified. According to the petitioners, the 3rd respondent filed tender for 25 vehicles, but produced documents only for 10 vehicles. The other respondents also did not satisfy the financial criteria in respect of net worth, working capital and turnover as required. On perusal of materials available on record, it could be seen that, as per clause 24.2.1 of the tender conditions, during evaluation process, the respondents 1 and 2 have a discretion to ask for clarification, and deficient documents from the bidders, however, there should not be any change in the price or substance of the bid. According to the respondents 1 and 2, invoking the above provision, they have called for some information from all the bidders including Writ Petitioners. It is also specifically stated in the counter affidavit filed by the respondents 1 and 2 that, the petitioners have also submitted some documents during evaluation as per the above

clause, and their documents were also accepted by the respondents 1 and 2. In the above circumstances, it is not open to the petitioners to contend that, the respondents 1 and 2 have no power to receive the documents after the last date of tender.

25. So far as the financial criteria is concerned, Serial No.(iv) of clause 5 of the financial criteria in the tender conditions provides that, 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. The relevant portion of the clause reads as follows:-

> "(iv).......... 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."

Pursuant to the above tender condition, the respondents 1 and 2 requested the other respondents to submit a line of credit, and after submitting line of credit, they were found eligible for the financial criteria, therefore, I am of the considered view that, there is no illegality in permitting them to submit the line of credit. Now, it is stated that, the petitioner in W.P. 31078 & 34053 of 2017 was granted letter of award in respect of two categories. In the said circumstances, after getting the letter of award, it is not open to the petitioner to challenge the tender conditions. That apart, the petitioner did not allege any malafide against the respondents 1 and 2, in awarding contract, and the petitioners also awarded with contract in respect of two categories.

26. Considering all those circumstances, I am of the considered view that, in absence of any proof of malafides, arbitrariness or unreasonableness, the petitioners cannot maintain a Writ Petition against the letter of award given to the respondents 3 to 6. I find no merit in these Writ Petitions, and all the Writ Petitions deserve to the dismissed. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

rpp

To

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

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

+3cc to Mr.P.N.Radhakrishnan, Advocate SR.No.3798

+1cc to Mr.S.Radha Gopalan, Advocate SR.No.3365

+1cc to Mr.R.Ravi, Advocate SR.No.3034

+1cc to Mr.K.R.Ramesh Kumar, Advocate SR.No.3092

+1cc to Mr.S.Radha Gopalan, Advocate SR.No.3364(07/01/2020)

W.P.s 31078, 31223 &
34053 of 2017
and
W.M.P.s 34077, 34283 &
37779 of 2017

BS(CO)
GMY(04/02/2020)