IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06/02/2020

DATED : 27.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.31109 of 2018
And
W.M.P.Nos. 36294 & 36298 of 2019

M.Janardhanan .. Petitioner

Versus

1. Divisional Railway Manager
Southern Railway
Chennai division
Chennai - 600 003.

2. The Senior Divisional Commercial Manager
Southern Railway
Chennai Division
Chennai - 600 003.

3. M/s. ASM Roadways
No.66, Pillaiyar Koil Street,
Kattor,
Coimbatore - 641 009. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the second respondent No. M/C.441/PHC/MS/Tender Document/18 dated 07.11.2018 in respect of the parcel handling tender for Egmore, Railway Station, Chennai and to quash the same and direct the respondents to float a fresh tender as per the direction given by the Kerala High Court.

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For Petitioner :: Mr. Prof.M.Udaya Bhanu

For RR 1 & 2 :: Mr. P.T.Ramkumar
Standing Counsel for
Railway

For R3 :: Mr.V.Anand

ORDER

The Writ Petition had been filed in the nature of Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the second respondent, Senior Divisional Commercial Manager, Southern Railway, Chennai, No. M/C.441/PHC/MS/Tender Document/18 dated 07.11.2018 and set aside the same and direct the respondents to float a fresh tender as per the direction given by the Kerala High Court.

2. In the affidavit filed in support of the Writ Petition, the writ petitioner M.Janardhanan/Prop., J.A. Logistics, Chennai, had stated that he had applied for a tender in Southern Division in tender No. M/C.441/PHC/M/Ten.doc/18 for the contract of parcel handling using battery operated cargo vehicles at Chennai Egmore Railway Station, for a period of three years. The Financial bid was opened on 10.08.2018 and the petitioner was Least 3. The third respondent A.S.M. Roadways, Coimbatore, was declared to be the Least 1. Another firm called Noble Cargo, Coimbatore was Least 2.

3. The petitioner claimed that for handling of hard parcels and perishables per metric tonne the rate would be Rs.102/- and for handling of Animals and birds, two wheelers, three wheelers, cash chest including GST per number the rate would be Rs.16/-. These are the maximum rates fixed by the Railways. The total amount for 1 year would be Rs.1.04.052/- and for 3 years and the total amount would be Rs.1,12,09,656/-. The third respondent had quoted an amount less than the said price at Rs.14/- for hard parcels and perishable and Rs.2.40/- per number for handling animals, birds and two wheelers, three wheelers and cash chest. The petitioner claimed that the rate quoted by the third respondent was not at all feasible. It was stated that the third respondent would extract money unlawfully other than the money payable by them to Railways towards handling of parcels.

4. In the affidavit filed in support of the Writ Petition, a calculation of the tender as projected by the petitioner had also been given.

"1,04,052 Metric tonnes for three years (365 X 3 = 1095 days)

Per day	=	1,04,052 x 1095
	=	95.02 Metric tonnes
Amount per day	=	Rs.9,690 00/-

37,272 Nos. For Three years (365 X 3 = 1095)

Per day	=	37272 + 1095
	=	34 x 16
	=	Rs.544.00/-
Railways Maximum Amount		
Per day	=	Rs.9,690.00 +544.00
Total amount per day		
By Railway	=	Rs.10,234/-
	=	100%
The L1 has quoted per day	=	Rs.1,330+81.6
Total amount per day by L1	=	1412/-
	=	14%

Labour Charges

Minimum 20 persona to deploy for three shifts with ESI and Plaintiff for an employ is Rs.425/- that is Rs.425 x 20 = Rs.8500/-

Battery Trolley operators 2 nos.	=	2 x 425 - Rs.850/-
Total Labour Charges occurs with ESI and PF	=	Rs.9,350/-"

5. It was stated that the rate quoted by the third respondent is Rs.1412/- is not viable and would lead to malpractice. It is stated that a similar case was filed in the Kerala High Court and in W.A.No. 2201 of 2012 in W.P.(C).No. 37792/2013 in the order passed on 09.01.2013. The Kerala High Court had held as follows:-

> "Para 10"
>
> The Counter affidavit filed by Railways refers to the observations made by the Vigilance Wing of Railways, which is also placed on record as per Exhibit 2nd Respondent(c). Recommendations 4 and 5 at Exhibit 2nd Respondent(c) read as under:
>
> "(4) A reasonable clause may be introduced in the tender conditions and it may be kept confidential by which tenders quoting the unreasonably lowest rate for loading, unloading and transshipment of parcels, which cannot be possible by any means of yardstick may be prohibited from participating in the

tendering process. Thereby unscrupulous contractors entering in to the system and then indulging in litigations may be avoided.

(5) "Responsibility for Railways staff may be fixed / defined for fleecing of customers by the parcel handling contracts or by his works."

Para 11
The stand of Railway is, there is reason of explanation why a condition like Clause 5 in the tendering process and Exhibit R2 (b) came to be introduced. Apparently, it is because of recommendations (4) and (5) by the Vigilance Officer for Chief Vigilance Officer, Railways as noticed above. Recommendations (4) and (5) at Exhibit R2(c) clearly indicate that there was unhealthy practice, whereby the contractors were trying to extract money other than the money payable by them to Railways towards handling of parcels, therefore, a responsibility to the Railway staff required to be fixed to see that the customers, who approached with their parcels are not meddled with extracting money by the contractors. So far as the tender as such and the continuation of the contract by the contractors, a caution was made to see that whatever tender process conducted by Railways must be to see that the price quoted by them should not be unviable price, so that the tender would not leave the contract in the middle. For this reason, Clause No.5 in the tender process came to be made. The question is whether this clause 5 is clear enough to give an indication that the option of varying the tender price is reserved with the department. Reading of Clause 5 clearly indicates that whatever reserve price quoted by the tender must be viable. This would indicate that if it is not viable, the tender could be rejected. When a reserve price is fixed in a tender of this nature, the tender is not excepted to quote more than the reserve price and he is expected to quote a price, which is below the reserve price so as to allow the tender to be given

to a person, who quotes the least. But, however, care should be taken to seek that the least price quoted is viable. This exercise can be done by the contractor and it has to be done only by Railways.

Para 12

The question is whether there is transparency. Through the words or Clause No. 5 is not happily worded regarding consequences, we are of the opinion, there is implied caution that reserve price quoted by the tender must be one, which would be viable price in the eyes of the department.

Para 13

In the present case, as explained by learned Standing Counsel for the Department, they have taken 50% of the reserve price as the benchmark and all the tenders, which were below 50% of the reserve price as the bench mark and all the tenders, which were below 50% are discarded and they have taken into consideration the price offered above 50% of the reserve price, ie., the lowest, just above the 50% of the reserve price. Through this exercise of accepting tender is not explained in the tendering sections, we are of the opinion, the exercise undertaken by Railways is transparent enough to discard the tenders where viable price is not quoted and to accept only the viable price, therefore, they need not re-tender again and again, which incurs public time and also public money.

Para 14

We have gone through the judgement referred to above. In the case quoted above, tender notice did not even say that after receiving tenders, the Commissioner/Government would first determine the viability range and would then call upon the lowest eligible tendered to make a counter offer.

Para 15

> In the above case in the tender notice, question of viability as not at all referred to or indicated. Therefore, their Lordship said, the process undertaken in this case was not justifiable, as there was no such indication in the tender notice. In the present case, as already stated above, though Clause 5 of the tender process is not happily worded, still there is an indication that the price quoted by the tender must be viable price. With this observation, we decline to interfere. There is yet another reason for us to decline to interfere with the contract, as the contract handled by the fifth respondent is almost coming to an end. Therefore, at this stage, if we aside the entire process directing, the Railways to re-do the same exercise, it would only amount to waste of public money.
>
> With the above observation, we dismiss the Writ Appeal. However, we make it clear that in future, the department must be more clear in saying what they exactly intended to do.
>
> But however, case should be taken to see that least price quoted is viable. This exercise cannot be done by the contractor and it has to be done by Railways.
>
> With the above observations, we dismiss the Writ Appeal. However, we make it clear that in future the department must be more clear in saying what they exactly intend to do."

6. The petitioner stated that the observation that the Railways department must be more clear on saying what they exactly intend to do is binding on the respondents herein. It is alleged that the respondent Railways are practising unethical and illegal methods in floating the tender. It is claimed that they are adopting one stand in Kerala and another stand in Tamilnadu. Questioning these facts, the Writ Petition has been filed.

7. The second respondent, Senior Divisional Commercial Manager, Southern Railway, Chennai, had filed a counter affidavit. The allegations set out in the affidavit filed in support of the Writ Petition were denied. It was stated that the tender notification dated 09.07.2018 was issued by the Railway Administration for the work of parcel handling at

Chennai Egmore Railway Station using battery operated platform vehicles for a period of three years. The tender was opened on 10.08.2018. It is stated that after following due procedure, the documents submitted by the third respondent was considered as Least-1 and Letter of Acceptance was also issued on 07.11.2018. It was stated that the tender proceedings were conducted in a fair and transparent manner. A committee consisting of Assistant Commercial Manager and Senior Section Officer, Accounts, made an assessment of all the documents submitted by the tenderers and only thereafter the contract was awarded to the third respondent. It is stated that the third respondent had already commenced work. The petitioner is an unsuccessful tenderer. It is claimed that the judgement of the Kerala High Court referred to by the writ petitioner is not applicable for the facts of this case. It is stated that Clause 5 of the tender notification referred in the said judgement does not form part of the present tender notification. It is further stated that the respondent had followed the guidelines issued by Railway Board. It is also stated that no instructions have been issued by the Vigilance Department to the Chennai Department. It is also stated that judicial review in tender process and interference in decision taken by the administration shall be only in exceptional case. In view of these reasons, it was claimed that the Writ Petition should be dismissed.

8. The third respondent also filed a counter affidavit. In the counter affidavit, it was stated that the third respondent was the successful bidder. He has mobilised 13 porters to work and also has kept sources open for more hands whenever needed by the respondents 1 and 2. It is stated that the third respondent engaged the porters at the rate of Rs.520/-. Whether there is work or not, it is claimed that they have paid the amount regularly from 24.11.2018. The averment by the petitioner that minimum wages would not be payable to the porters was denied. It was also stated that battery driven vehicles are used and 8 tonnes of parcels comprising of hard parcels, vegetable and fruits, animals and birds and valuable boxes are being transported. It is also stated that no unlawful methods are being adopted and money is not taken from the customers. It is stated that the allegations in the affidavit filed in support of the writ petition are all false and that the Writ Petition should be dismissed.

9. The second respondent filed an affidavit in pursuance of the directions by the Court on 20.09.2019. In the affidavit, the calculation details for rate per tonne in the case of hard parcels and rate per number in the case of animals/birds/two-three wheelers/cash chest were furnished. They are as follows;

A. Hard parcels including perishables.

Tonnage per day	96 tonnes
No of labourers required	12
Drivers for 2 battery operated vehicles for 3 shifts (2 x 3 shifts)	6
Total	18
Labour cost at Rs.536/- x 18 labourers	Rs.9648/-
Rate per tone (Rs.9648 / 96 tonnes)	Rs.100.50/-
Rounded off to	Rs.100/-

B. Depreciation for battery operated vehicles (at least 2 nos.)

Approx cost per vehicle	no. of units	Total cost	Depreciation % p.a.,	Depreciation p.a.	Depreciation p.m	Depreciation per day	Depreciation per tonne
35,000	2	700000	10	70000	5833	194	Rs.2*

(*194/96)

C. Animals/birds/two-three wheelers/cash chests.

Nos. handled per day	34
No. of labourer	1
Labour cost at Rs.536/- per day	Rs.536/-
Rate per parcel (Rs.536/34)	Rs.15.76/-
Rounded off to	Rs.16

Tender rates.

ITEM	Unit	Rate/tonne/no. (Rs.)	Parcel Tonne (3 years)	Work Value for three years Rs.
Hard parcels including perishables (A+B)	Tonne	102	104052	10613304 (1,04,052X102)

ITEM	Unit	Rate/tonne/no. (Rs.)	Parcel Tonne (3 years)	Work Value for three years Rs.
Animals/birds /two-three wheelers/cash chest (C)	Nos.	16	37272	596352 (37,272 x 16)

Total - 11209656

10. It was stated that the tender rates have been derived on the above basis only. It was further stated that the Writ Petition should be dismissed.

11. Heard arguments advanced.

12. The second respondent had invited tender on 09.07.2018 for the work of parcel handling at Chennai Egmore Railway Station using battery operated cargo vehicles, for a period of three years. The approximate cost of the contract was Rs.1,12,09,656. The last date of submission of tender was 10.08.2018. The date of opening of tender was 10.08.2018. The validity of tender was 90 days. The amount of deposit was Rs.2,06,050/-. The period of the contract was 36 months. The tenders were opened and the rates quoted by each of the 7 tenderers were as follows:-

	Bidder Name	Offered value in Rs.	Position
1/7	ASM Roadways	1546180.80	L1
2/7	C.S.P.Logistics	11209656.00	L6
3/7	J.A. Logistics	8775249.00	L3
4/7	Mathi Transport	9016800.00	L4
5/7	Murali and Company	11209656.00	L6
6/7	Noble Cargo Carrier	5604828.00	L2
7/7	R.K.Shanmugam	10771752.60	L5

13. It is seen that the work involves handling of parcel at Chennai Egmore Railway Station using battery operated cargo, for a period of three years. It was stated that previously, the parcels and luggages were being moved by the departmental staff, by manual labour in hand push trolleys from various platforms to the parcel sheds and vice versa at Chennai Egmore Railway Station. The tender was called for in accordance with the

advice of the Vigilance Branch, Traffic, Head quarters/ MAS vide letter No. VO/T/System Imp/2013-02 dated 28.03.2012. It was stated that usage of battery operated cargo vehicles would reduce establishment expenses in Group-D staff, increase transparency in payment of handling charges for loading and unloading of parcels, mechanized handling of parcels, increasing efficiency and in turn improve customer satisfaction. It has been stated that there had been completed transparency in the award of the contract to the third respondent.

14. As a matter of fact, the petitioner had not challenged the determination that the third respondent was L1. The petitioner had admitted that the rate quoted by the petitioner was L3. The only challenge to the award of the contract to the third respondent is that the rate quoted by the third respondent was impractical and at the rate quoted, the works cannot be performed. It was therefore presumed that the third respondent would demand additional money from the customers. In this connection, the learned counsel for the petitioner placed reliance on the decision of the Kerala High Court, wherein it had been observed that the Railways should be more exact in the tender statements. The relevant portions of the said Judgment had been extracted in the affidavit filed in support of the Writ Petition.

15. In that case, originally W.P.No. 37792 of 2010 had been filed by S.Mathi, M.Ramdas and C.Somasundaram with respect to awarding contract for handling parcels by the Railways and the fifth respondent C.Raveendran was declared to be the successful bidder since the price offered by him was below the reserve price of the Railways. The contention of the Writ Petitioners were that having fixed the reserve price, the railways were not entitled to change the rules of the game and accept the price quoted by a tenderer which was less than the reserve price. It is under those circumstances that the learned Single Judge examined the viability of the price offered by the fifth respondent C.Raveendran but thereafter stating that the contract itself was for a period of three years which has almost come to an end had declined to interfere with the award of contract to the fifth respondent. As against the said order, the writ petitioners filed W.A.No. 2201 of 2012. The Appellate Court examined Clause-5 of the tender document which stated that the tenderers can quote the least amount at which they can execute the contract. It was also stated that the amount should be financially viable for the tenderer and quoting a nominal amount which is likely to affect performance will not be considered.

16. The Railways in their counter affidavit in that case has clarified that the tenderers 1 to 6 had quoted below up normal rates, less than 50% of the reserve price and therefore, they were not at taken up for evaluation. The opinion of

Vigilance was that if abnormally low rate is fixed, then unscrupulous contractors would enter into the system. The Division Bench while examining the Writ Appeal also stated that in view of Clause 5, which implied that the price quoted should be viable, issued a direction that the Railways must be more clear in saying what they exactly intended to do. But however, once again holding that the contract with the fifth respondent had almost come to an end, they did not interfere in the award of the contract.

17. In the instant case, there was no such clause as Clause 5 relating to viability. It was the onus of the successful bidder to work out his calculations, quote the price and execute the contract at the price quoted.

18. With respect to the third respondent, the discussion by the tender committee on the offer is as follows:-

"8.0 Discussion on the offer:

M/s.ASM Roadways (1/7), the L1 tenderer, met the eligibility conditions for the subject tender. Rates quoted by M/s. ASM Roadways work out to Rs.15,46,180,80/- or 14% of the amount estimated by Railways. As the rates offered are the lowest among the tenderers and beneficial to Railways, the Convenor considers the rate of M/s. ASM Roadways, for deliberation.

		Rly Offer	M/s. ASM Roadways		% variation
	Approx quantity	Rate per Unit	Rate per Unit after rebate	Amount	From Rly Offer
Handling Hard Parcels and Perishables	1,04,052	102.00	14.00	1456728.00	-86.27
Handling Animals and Birds, 2 and 3 wheelers and Cash Chest	37,272	16.00	2.40	89452.80	-85.00%

M/s. ASM Roadways (1/7), the L1 tenderer meet the eligibility conditions. Further, "Orders received from Government organizations or from reputed companies in original or copy attested by a Gazetted officer shall only be accepted as proof of experience", M/s. ASM Roadways has uploaded the scanned copies of orders received from SA Division with regard to lease of Parcel Space. Also include ESI, EPF, GST, Aadhar, Affidavit and PAN. Since this is an e-tender, the hence the Convenor considers the rate of M/s. ASM Roadways, is acceptable and offers of other bidders are not deliberated upon.

9.0 Declaration of the Convenor:

In terms of CVC directives, vide No. 005/GCGL/66 dt. 09.12.2005 (Office order No. --12/05) circulated vide Railway Board letter No.2004/V-I/CVC/1/18 dated 02.01.2006, the Convenor certify that he don't have any personal interest in the companies/agencies participating in the tender under process.

10.0 Recommendation by the Convenor:

With the foregoing deliberations, the Convenor recommends to accept the offer of tenderer 1/7, M/s. ASM Roadways for parcel handling at Chennai Egmore Railway Station using battery operated platform vehicles at the following rates, inclusive of GST as applicable from time to time, for a period of three years:

Sl.No.	ITEM	UNIT	Rate per Unit Rs. Paise	Rate Per Unit in Words
1.	Hard Parcels & Persihables	Tonnes	14.00	Rupees Fourteen only
2.	Animals and Birds, Two and Three Wheelers, Cash Chest	Nos	2.40	Rupees Two and Forty paise only

Acceptance/Rejection/Modification of the Tender is within the competence of Sr.DCM/MAS in terms of SOP at F-406.

(R.Sathiya Narayana Hari)
Sr.DCM/MAS"

19. It is thus seen that deliberations have taken place among the officials of the respondents with respect to the amount quoted, the amount estimated and they determined that the variation between the two was -86.27% for handling hard parcel and perishables and -85.00% for handling animals and birds, 2 and 3 wheelers and cash chest.

20. The calculations given by the petitioner in his affidavit, are self serving and this Court cannot in the absence o any proof, accept the same has been correct and execute.

21. In Montecarlo Limited V. National Thermal Power Corporation Limited, (2016) 15 Supreme Court Cases 272, it had been stated as follows:

> "19. In Sterling Computers Ltd. v. M&N Publications Ltd. (1993) 1 SCC 445] , the Court has held that under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. It has also been observed that by way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry.
>
> 20. In Tata Cellular v. Union of India, (1994) 6 SCC 651 a three-Judge Bench after referring to earlier decisions culled out certain principles, namely, (a) the modern trend points to judicial restraint in administrative action, (b) the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made, (c) 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, and (d) the Government must have freedom of contract and that permits a fair play in the joints as a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. Hence, the Court has laid down that the decision must not only be tested by the application of the Wednesbury principle [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
>
> 21. In Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] the Court has held that: (SCC p. 531, para 22)

"22. … 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."

22. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. (2005) 6 SCC 138, it has been ruled that (SCC p. 148, para 15) the State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It has been further held that 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 powers 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.

23. In B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd., (2006) 11 SCC 548] a two-Judge Bench, after referring to series of judgments has culled out certain principles which include the one that where a decision has been taken purely on public interest, the Court ordinarily should apply judicial restraint.

24. In Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216 the Court referred to the earlier judgments and opined that before a court interferes in tender or contractual matters, in exercise of power of judicial review, it should pose to itself the question 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 judicial conscience cannot countenance. The emphasis was laid on the test, that is, whether award of contract is against public interest.

25. Recently in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. (2016) 16 SCC 818 : (2016) 8 Scale 765 a two-Judge Bench eloquently exposited the test which is to the following effect:

> "We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of

perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.

22. In view of the ratio laid, whereby the Hon'ble Supreme Court had clearly held that interference of the Court in contractual matters should be at the very minimum, I am not inclined to interfere with the award of the contract to the third respondent. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. Divisional Railway Manager
Southern Railway, Chennai division,
Chennai - 600 003.

2. The Senior Divisional Commercial Manager
Southern Railway, Chennai Division,
Chennai - 600 003.

3. M/s. ASM Roadways
No.66, Pillaiyar Koil Street,
Kattor, Coimbatore - 641 009.

+1cc to Prof.M.Udaya Bhanu, Advocate sr.17600

+1cc to Mr.P.T.Ram Kumar, Advocate in sr.no.18038 (02.03.2020)

Order made in
W.P.No.31109 of 2018
And
W.M.P.Nos.36294 & 36298 of 2019

sj(co)
nr 28/02/2020
CS/02/03/2020