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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 4311 of 2021**

M/s Shreejikrupa Project Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Krishna Complex – 2, Near Jaipark Nana Mava Main Road, Rajkot 360001 (Gujarat) and its branch office at 289, Sunder Nagar, Behind CSEB Office, Raipur 492013 (Chhattisgarh) through its Managing Director Karsanbhai Bachubhai Varsani.

---- Petitioner**Versus**

1. NMDC Limited (A Government of India Enterprise), 10-3-311/A, Khanij Bhavan, Castle Hills, Masab Tak, Hyderabad – 500028, Telangana.
2. The General Manager (Contracts), NMDC Limited, 10-3-311/A, Khanij Bhavan, Castle Hills, Masab Tank, Hydrabbad – 500028, Telangana.
3. The Executive Director, BIOM Kirandul Complex, NMDC Limited, P.O. Kirandul – 494556, Datewada (South Bastar), Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Mr. Rishabh Garg, Advocate.
For Respondents	:	Mr. Vaibhav Shukla, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Goutam Bhaduri, Judge****Order on Board****Per Arup Kumar Goswami, Chief Justice****27.10.2021**

Heard Mr. Rishabh Garg, learned counsel for the petitioner. Also heard Mr. Vaibhav Shukla, learned counsel appearing for the respondents.

2. An e-Tender notification bearing Tender Enquiry No. HO(Contracts) / Engg / KDL / Res Towers / 2020 / 233 dated 20.09.2021 was floated by National Mineral Development Corporation (NMDC), a Government of India Enterprise, inviting prospective bidders to submit their bids for “Construction of Residential Towers at BIOM, Kirandul Complex, Dantewada District, Chhattisgarh”. The period of completion mentioned in the tender document is 24 months from the 30th date of issue of the Letter of Award of Contract, inclusive of monsoon period. The tender document consists of two volumes: Volume – I of the tender document is titled as 'Techno-Commercial' and Volume – II is styled as 'Technical specification'. The last date of submission of tender is 10.11.2021

3. Having regard to the challenge made in this petition regarding technical requirements, it is appropriate to extract the eligibility criteria, as indicated in Clause 18 as well as technical requirements, as laid down in Clause 19.1. A note is appended to Clause 19.1, but for the purpose of this case, it is not necessary to refer to the said note and therefore, the same is not extracted.

“18 Eligibility Criteria:-

Tenderers should meet technical and financial requirements as given herein below:

19.1 Technical Requirements -

Experience: Bidder should have experience of having successfully completed similar work(s) satisfying the following criteria (I) & (II) during the last seven (7) years ending last day of the month previous to the one in which tenders are invited:

(I) One similar work costing not less than Rs. 12966.00 Lakhs

OR

Two similar works each costing not less than **Rs. 7564.00 Lakhs**

OR

Three similar works each costing not less than **Rs. 5403.00 Lakhs**

(III) At least any one work of the above at (I) should have at least one building of minimum 7(Seven) stories with monolithic structure (Shear wall technology) using aluminium formwork.

Similar work means “Completed Building(s) of RCC frame structure”.

4. The financial requirements are laid out in Clause 19.3. Clause 19.3(a) indicates that average annual financial turnover of the bidder during the last 3 years, ending 31st March, 2020 should be at least Rs. 6483.00 Lakhs.
5. The writ petition is filed questioning the technical requirement of having at least “one building of minimum 7 (seven) stories with monolithic structure (Shear wall technology) using aluminium formwork”.
6. Mr. Rishabh Garg submits that the aforesaid stipulation is not only redundant, but is also restrictive and that many eligible tenderers are ousted from participating in the tender process at the threshold. He has submitted that such a stipulation is wholly uncalled for as experience of “Completed Building(s) of RCC frame structure” is also a requisite qualification and that any contractor having experience of constructing buildings of RCC frame structure is capable of executing monolithic structure (Shear wall technology) using aluminium formwork. To substantiate his argument that this Court can interfere with the terms of the tender, learned counsel places reliance on the decision of the

Hon'ble Supreme Court in the case of ***Monarch Infrastructure (P) Ltd. vs Commissioner, Ulhasnagar Municipal Corporation & Others***, reported in ***(2000) 5 SCC 287***, with particular reference to paragraphs 10 and 11, to contend that the technical requirement under challenge has no nexus to the purpose for which the tender was called for.

7. Per contra, Mr. Vaibhav Shukla has submitted that the respondents, having regard to the nature of the buildings to be constructed, have laid down the technical requirements and therefore, no interference is called for in this writ petition. He has placed reliance in the decisions of the Hon'ble Supreme Court in the cases of ***Meerut Development Authority vs Association of Management Studies & Another***, reported in ***(2009) 6 SCC 171***, particularly with reference to paragraph 27, ***Michigan Rubber (India) Limited vs State of Karnataka & Others***, reported in ***(2012) 8 SCC 216***, with reference to paragraph 35, ***Central Coalfields Limited & Another vs SLL-SML (Joint Venture Consortium) & Others***, reported in ***(2016) 8 SCC 622***, with reference to paragraph 47 and ***Silppi Constructions Contractors vs Union of India & Another***, reported in ***(2020) 16 SCC 489***, with reference to paragraph 20.

8. We have considered the submission of the learned counsel for the parties and have perused the materials on record.

9. The scope of work covers execution and completion of construction works of:

“(a) Type-III residential tower cluster: 200 Units, 5 Nos
Towers of stilt + ten upper floors and terrace, 4 units each
floor, 40 units per tower, floor to floor height is 3.0 m.

(b) Type-IV residential tower cluster: 144 Units, 3 Nos
Towers of stilt + eight upper floors and terrace, 6 units

each floor, 48 units per tower, floor to floor height is 3.0 m.

(c) Type-V residential tower cluster: 21 Units, 1 no Tower, stilt + seven upper floors and terrace, 3 units each floor, floor to floor height is 3.20 m.

(d) Each tower is provided with Stilt Floor of ht 3.30 m and Plinth level at 600 mm above formation level. Mumty Room, lift machine rooms, over head water tanks are provided above terrace level.

(e) Central structural steel dome structure with polycarbonate roof sheeting in Type-IV & Type-V towers and Paragolas in Type-III & Type-IV towers.

(f) Cafeteria is a double storey building constructed in Type-III cluster above under ground sumps/pump house with parking at stilt level and cafeteria at first floor.

(g) Fire Fighting systems

(h) Internal & External Electrifications

(i) Provisions of Lifts

(j) Internal & External water supply

(k) Storm water drainage works

(l) Sanitary installations

(m) Drainage works

(n) Under ground water storage sumps and Pumping system for fire fighting and water supply in each cluster.

(o) Rain water harvesting works

(p) External development works for each cluster

(i) Roads & Drains

(ii) Car Parking sheds

(iii) Boundary wall & Gate

(iv) Guard Room"

Note: All towers are to be constructed with monolithic construction system (Shear wall technology)."

10. Having regard to the controversy, it will be appropriate to consider the judgments cited.

(A) In ***Monarch Infrastructure*** (supra), the Hon'ble Supreme Court at paragraphs 10 and 11 observed as follows:

"10. There have been several decisions rendered by this Court on the question of tender process, the award of contract and have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus :

(i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest;

(ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate:

(iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.

11. Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein unless the

Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide."

(B) In ***Meerut Development Authority*** (supra), the Hon'ble Supreme Court at paragraph 27 laid down as follows:

"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

(C) In ***Michigan Rubber (India) Limited*** (supra), the Hon'ble Supreme Court at paragraph 35 stated 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.”

(D) In ***Central Coalfields Limited*** (supra), the Hon'ble Supreme Court at paragraph 47 observed as follows:

“47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in *Ramana Dayaram Shetty v.*

International Airport Authority of India, (1979) 3 SCC 489, the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in *Tata Cellular v. Union of India*, (1994) 6 SCC 651 there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517 followed in *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216.”

(E) In ***Silppi Constructions Contractors*** (supra), the Hon'ble Supreme Court at paragraph 20 held as follows:

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference

should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

10. A perusal of the above judgments goes to show that the government and the instrumentalities of the State must have a free hand in setting terms of the tender. Terms of invitation to tender are in the realm of contract. The bidders participating in the tender process have a limited right to equality and fair treatment in the matters of evaluation of competitive bids. Terms of a tender cannot be ignored as being redundant or superfluous and they must be given a meaning and necessary significance. The authority floating the tender is the best judge of its requirements and, therefore, interference of the Court should be minimal. The Court cannot interfere with the terms of the tender if it feels that some other terms would have been better. A Court may interfere with the terms and conditions of the tender only if such terms are arbitrary, discriminatory, irrational, malafide or intended to favour someone.

11. Since the scope of civil works itself indicates that all towers [some of which are more than 7 (seven) stories] are to be constructed with the monolithic construction system (Shear wall technology), it cannot be said that the technical specification prescribing experience of successfully completing at least one building of minimum 7 (seven) stories with monolithic structure (Shear wall technology) using aluminium formwork cannot be said to be arbitrary, irrational or not having any nexus to or connection with the purpose for which the tender was invited.

12. In view of the above discussion, we are of the considered opinion that no case is made out for interference and accordingly, the writ petition is dismissed. No costs.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge