

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2076 OF 2021

Sai Agencies	)	
Through its Sole Proprietor Kiran Jagtap	)	
Its office at :	)	
Sangram Nagar, Behind Police Complex	)	
Jalna- 431 203	)	...Petitioner

Versus

- | | | | |
|----|---|---|--|
| 1. | The State of Maharashtra |) | |
| | Mantralaya, Mumbai |) | |
| 2. | Pimpri Chinchwad Municipal Corporation, through |) | |
| | Municipal Commissioner, |) | |
| | Mumbai – Pune Road, |) | |
| | Pimpri – 411 018 |) | |

And	)	
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- | | | | |
|----|---------------------------------------|---|--|
| | Yashwantrao Chavan Rose Garden |) | |
| | Nehru Nagar, Bhosari – 411 026 |) | |
| 3. | Guruji Infrastructure Private Limited |) | |
| | 33, Suraj Plaza, Chandulwadi |) | |
| | Opp. Dena Bank, Bhayander (W) |) | |
| | Thane – 401 101 |) | |

- | | | | |
|----|-----------------------------------|---|----------------|
| 4. | Ajit Swayam Rozgar Seva Sahakari) | | |
| | Sanstha Maryadit |) | |
| | Opp. Podar School, |) | |
| | Kakde Park Chowk |) | |
| | Chinchwad, Pune – 411 033 |) | ...Respondents |

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Mr. Shriram Kulkarni i/b. Mr. Pranjal Khatavkar for the Petitioner.
 Mrs. R.M. Shinde, AGP for the Respondent -State.
 Mr. G.H. Keluskar for Respondent No.2.
 Mr. Ashok Dhanuka a/w. Mr.Ashish Jain and Ms. Vidhi Karia for
 Respondent Nos. 3 and 4.

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CORAM : A.A.SAYED & S.G.DIGE, JJ.
RESERVED ON : 18th AUGUST, 2021.
PRONOUNCED ON : 13th SEPTEMBER,2021.

JUDGMENT : (PER : S.G.DIGE, J.)

1. The Petitioner, a sole proprietorship firm, is essentially objecting to rejection of its tender at technical bid level and allotment of tenders to the Respondent No. 3 -Guruji Infrastructure Private Limited and Respondent No. 4- Ajit Swayam Rozgar Seva Sahakari Sanstha Maryadit by Respondent No.2 as successful bidders.

2. The present Petition relates to the Tender floated by Respondent No.2- Pimpri Chinchwad Municipal Corporation (for short, "Respondent No.2") in August, 2019 for maintenance and protection of the gardens (for short, "the said Tender") situated within the jurisdiction of the Respondent No.2.

3. Accordingly, the Petitioner submitted its technical bid as well as financial bid along with all requisite documents for garden works of Serial Nos. 10 to 14 of said Tender. Out of these works, the Petitioner is objecting to allotment of work of two gardens to Respondent Nos. 3 and 4. The Petitioner is also challenging the validity of tender condition No. 3 of said Tender. During pendency of this Petition, the Petitioner has amended the Petition and sought some additional reliefs.

4. The scope of judicial review in the tender matters have been considered by the Hon'ble Apex Court in the matter of **Tata Cellular v. Union of India**¹. It is held that judicial review of Government contracts was permissible in order to prevent arbitrariness or favoritism. In paragraph Nos. 77 and 94 of the said judgment, the Apex Court has observed as under ;

“77. The duty of the court is to confine itself to the question of legality. Its concern should be :

¹ (1994) 6 SCC 651

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in_ R.V Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of

proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

"94. The principles deducible from the above are

(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”.

5. In **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.**², it was held that a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision. 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. 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.

² (2016) 16 SCC 818,

6. In **ACC India Private Limited & Ors. V/s. State of Maharashtra & Ors.**³, the Division Bench of this Court has held that the Court must be satisfied that there is some public interest involved in entertaining such Petition and if the dispute is purely between the two tenderers, the Court must be very careful to see if there is an element of public interest involved in the litigation.

7. The principles emanating from the above judgments are that the Courts shall not ordinarily test the opinion of the experts unless their decision is totally arbitrary or unreasonable. The Courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. Considering these principles, we proceed to examine matter at hand.

8. In the said tender, one of the condition was with respect to the submission of the experience certificate from any Government, Semi-Government authorities, having experience in the work relating to garden, road dividers, tree plantation and conservation. The contractor should have completed at least one

3WRIT PETITION (L) NO. 2321 OF 2018 DATED 30 JULY 2018

work in last five years having 30% of the Tender value. Accordingly, the Petitioner while submitting the bid, also submitted all documents including the experience certificate issued by the Maharashtra Agro Industries Development Corporation Limited (for short, “ the MAIDCL”). According to the Petitioner, the Respondent No.2 again demanded the experience certificate, although one experience certificate was already submitted by the Petitioner. In order to comply with the requisition, the Petitioner again submitted the experience certificate dated 8th November, 2019 issued by the MAIDCL that the Petitioner has successfully completed the work with respect to the garden maintenance etc., of amount of Rs. 2,95,29,911/- (Rupees Two Crores Ninety Five Lakhs Twenty Nine Thousand Nine Hundred and Eleven only).

9. The Respondent No.2 thereafter addressed a letter dated 22nd November, 2019 to the MAIDCL to confirm the issuance of certificate by them. As per the request of the Respondent No.2, MAIDCL confirmed about issuance of certificate

to the Petitioner vide its letter dated 16th December, 2019. The Respondent No.2 again sent letter dated 17th December 2019 to MAIDCL and requested to send work order and photocopy of the bills within two days. It is stated that although the MAIDCL had confirmed the work done by the Petitioner vide its certificates dated 8th November, 2019 and 16th December, 2019 the Respondent No.2 again asked the information about work, however, the MAIDCL refused to give the work order and bills being their internal documents.

10. It is contended that inspite of submitting the experience certificate as contemplated in the terms and conditions of the said Tender to Respondent No.2, the Petitioner was not held eligible to participate in financial bid of Tender. The list of eligible and ineligible bidders was published on 28th January, 2020. By the letter dated 29th January, 2020, the Petitioner brought to the notice of the Municipal Commissioner of Respondent No.2 the alleged malafide action of the Respondent No.2 in the allotment of work under the said Tender. However, neither any action is taken

by the Municipal Commissioner nor the letter was replied.

11. It is further contended that the entire procedure of allotting the aforesaid Tender was bogus and carried out only in order to support the few bidders i.e. Respondent Nos. 3 and 4. There were complaints against these bidders. As per the Tender condition, the bidder should have experience of completion of atleast one work having 30% of the said Tender value in last five years. The Respondent No.4 has submitted the certificate for the duration of the year 2012 to 2018. As per condition No. 2 (a), the bidder must have in last 5 years turnover of 75% of the Tender value. The documents in order to satisfy the aforesaid condition submitted by the Respondent No.4 shows that the same is not 75% of the Tender value. As far as the Respondent No.3 is concerned, to satisfy the condition No.2, it has submitted the work order issued by Mira-Bhayandar Municipal Corporation (for short, "Mira-Bhayander Corporation") which shows that the work undertaken was not a single work but it was done in different wards of Mira-Bhayander Corporation.

12. It is further contended that the condition No. 12.3 of the said Tender states that the bidder will have to submit the performance guarantee in terms of the said condition. Both the above bidders have failed to submit the same. However, the Respondent No.2, inspite of the aforesaid lacuna, held the Respondent Nos. 3 and 4 as eligible. Respondent No.2 opened the technical bid on 28th January, 2020 without giving any opportunity to cure such discrepancies/ doubts to the bidders in whose documents there was discrepancy/ doubt. Respondent No.2 opened the financial bid on very same day within a period of two hours. The aforesaid act of Respondent No.2 is contrary to the Government Resolution dated 17th September, 2019 and CVC Guidelines. The Respondent No.2 was under an obligation to open the bids in front of the bidders, however, without calling any of the bidder, the Respondent No.2 hurriedly opened the technical as well as financial bid. It shows that the Respondent No.2 has not followed the procedure laid down by law.

13. It is further contended that the condition No.3 of the

said Tender restricts the successful bidder from getting more than one work with respect to the work mentioned at serial Nos. 1 to 9 in the said Tender, though the said Tender list is of 14 gardens for which the bids were invited. However, with respect to the gardens mentioned at serial Nos.1 to 9, one bidder was entitled to get only one work out of the work mentioned at serial Nos. 1 to 9. The said restriction is not only unreasonable, arbitrary but also contrary to the Government Resolution dated 17th September, 2019. The aforesaid conduct of Respondent No.2 is brought to the notice of the Municipal Commissioner but he has neither cancelled the Tender nor granted stay on the further procedure of allotment of the said Tender. The act of Respondent No. 2 is arbitrary, unreasonable, restrictive and violative to the provisions of Article 14 of the Constitution of India and also violative to the provisions of Article 19 (1) (g).

14. An Affidavit in Reply has been filed by the Respondent No.2. In Affidavit in Reply, the Respondent No.2 has contended that the technical bid was opened on 27th September, 2019 and

financial bid was opened on 28th January, 2020. After opening technical bid, the Respondent No.2 scrutinized the documents of the Petitioner and other bidders. Shortfall was found in the documents of Respondent Nos. 3 and 4 as well as the Petitioner. Accordingly, the Respondent No.2 had informed the concerned bidders about the shortfall of documents and requested them to comply with the same on or before 10th November, 2019. In response thereto, the Petitioner furnished experience certificate dated 8th November, 2019. The Tender Committee examined the said certificate dated 8th November, 2019 when they found that there is a discrepancy in respect of amount in earlier certificates dated 27th August, 2019 and 8th November, 2019. Therefore, by letter dated 22nd November, 2019 forwarded both certificates for verification to MAIDCL.

15. On 16th December, 2019, the MAIDCL submitted a copy of the “opinion letter” on whatsapp of one of the members of the Tender Committee. Plain reading of the said “Opinion letter”

shows that the contract of the Petitioner is “not completed” but it is “ongoing” which was not as per Condition No.2 of said contract.

16. It is further contended that the Tender was published in August, 2019 and Petitioner’s experience shown in the said “Opinion letter” was from November, 2018 to October, 2019 which was not as per Tender condition. The MAIDCL has not given reply to the Respondent No.2’s letter dated 17th December, 2019 in respect of the experience certificate of the Petitioner hence Petitioner was rightly held ineligible by the Tender Committee.

17. It is contended that Respondent No.4 submitted its experience certificate and turnover for the period from 16th July, 2013 to 31st January, 2018. As per the certificate, the total period of work is four years and 5.5 months and the yearly cost of the work was Rs. 17,19,804/- (Rupees Seventeen Lakhs Nineteen Thousand Eight Hundred Four only) which indicates monthly cost of the work was Rs. 1,43,317/- (Rupees One Lakh Forty Three Thousand Three Hundred Seventeen Only). Their experience was

counted from August 2014 to January 2018, total 42 months. So the total work done was Rs. 60,19,314/- (Rupees Sixty Lakhs Nineteen Thousand Three Hundred Fourteen only) ($1,43,317 * 42$ months). As per Tender condition No.2, the work experience required was 30% of Tender cost i.e. Rs. 49,41,863/- (Rupees Forty Nine Lakhs Forty One Thousand Eight Hundred Sixty Three only). The work done amount fulfills the Tender condition.

18. It is further contended that the total Tender cost of work in said tender was Rs.1,64,72,878/- (Rupees One Crore Sixty Four Lakhs Seventy Two Thousand Eight Hundred Seventy Eight only). The period for the said Tender was for two years, hence the yearly cost was Rs. 82,36,439/-. As per Tender condition No.2, the yearly turnover of the bidder must be 75% of Tender cost. The turnover certificate of the Respondent No.4 was duly signed by the Chartered Accountant. The amount fulfills the Tender condition. As per the experience certificate submitted by Respondent No.3, the work done in 2016-2017 was Rs. 3.12 Crores and in 2017-2018 it was Rs. 8.88 Crores. The amount

mentioned in certificate fulfills the Tender condition. As per Tender condition No. 12, after opening an envelope No.2 (Financial Bid), the successful bidder must submit additional performance security deposit in eight days to the Respondent No.2. There was controversy in respect of tender condition Nos. 12 and 13 hence the Tender Committee decided to go with Tender condition No. 12. For further Tender, this condition will be included with proper correction with the consent of concerned authority.

19. It is contended that the Respondent No.3 submitted certificate for work undertaken by them with Mira Bhayandar Corporation. This Respondent had enquired with Mira Bhayandar Corporation about issuance of certificate, by letter dated 3rd December, 2019, the concerned authority informed Respondent No.2 that the letter submitted by the Respondent No.3 is correct and the same was issued by them.

20. It is further contended that the Government Resolution dated 27th September, 2019 would not be applicable to present case because said Tender was published on 5th August, 2019. Due to administrative reasons, the Respondent No.2 cancelled works mentioned at Serial Nos. 1 to 9 of the said Tender.

21. In Affidavit in Reply, Respondent No.4 contended that the Petitioner failed to qualify in the technical bid on the ground of false certificate. Therefore, the Petitioner cannot seek any kind of equitable reliefs. The Respondent Nos. 3 and 4 are held qualified after complying all the formalities of bid and after competing with various other eligible bidders.

22. It is contended that the Petitioner has suppressed various facts from this Court including that the Tender process for Garden Nos. 1 to 9 was cancelled by the Respondent No.2 and the condition No.3 was only applicable to garden Nos. 1 to 9. Therefore, the Petitioner has made an attempt to mislead this Court.

23. It is further contended that as per Tender Conditions, the Respondent No.4 submitted required certificates to Respondent No.2, after opening of the technical and financial bids and after competing with the other eligible bidders, the bid of Respondent No.4 was declared as lowest quoted bid at the less quoted percentage of -23.77% at Rs. 1,25,57,274.90 (Rupees One Crore Twenty Five Lakhs Fifty Seven Thousand Two Hundred Seventy Four and Ninety paise only) as compared to the other bidders whose bids were at a higher price.

24. We have heard learned Counsel for the respective parties.

25. Considering the facts and circumstances of the case, two fold questions arise for our consideration :

(i) Whether the Petitioner had the requisite experience certificate and that the allotment of bids to Respondent Nos. 3 and 4 are not proper?

(ii) Whether Petitioner has suppressed material facts?

26. So far as first question is concerned, we have considered the documentary material on record as well as submissions of learned Counsels. According to Petitioner, its bid is rejected at technical bid level without giving an opportunity to submit a requisite experience certificate as per condition No.2 of the said tender and though the certificates provided by Petitioner are proper, they were not considered. Whereas Respondents state that the Petitioner was not possessing requisite certificate as per tender condition No. 2 hence Petitioner was not qualified for financial bid. There were discrepancies in the experience certificates submitted by Petitioner.

27. It would be appropriate, at this stage, to refer condition No. 2 of the said Tender and qualification criteria provided for it which reads as under :

“2) For the present work it is necessary to have experience of completing minimum one work of

30% amount of the Tender amount during last five years. It is necessary that during the said work contractor/ firm should have completed maintenance and protection works about gardens/ road divider/ tree plantation and tree conservation of Government Semi Government organization/ Civil Local bodies (excluding Grampanchayat and School). The independent works about the gardens/ road divider / tree cultivation and tree conservation protection and maintenance and renovation shall be considered valid.

A) The annual turnover during the last five years is required to be 75% of annual expenditure of the tender. It is necessary to submit certificate of Chartered Accountant.

B) It shall be compulsory for contractor/ firm to submit the certificate of Department head stating that the work giving complete details of work and expenditure of Government/ Semi Government/ Civil Local is completed satisfactorily.

C) It is necessary for the contractor/ firm to submit bid capacity certificate for tender filing of Chartered Accountant. The formula about the same is as

follows :

$(A \times N \times 2) - B$

Where A= maximum turnover of last five years.

N= Period of work awarded

B= The cost of work in hand (during the work awarded)”.

28. Perusal of condition No.2 of the said Tender shows that the requirement is two-fold;

(1) Work Experience and

(2) Financial Capacity.

29. Thus, two certificates were required to be submitted to the Respondent No.2, viz.

(1) Experience Certificate inter-alia to show experience of at least one work of the amount equal to amount of 30% of the present tender amount being completed in the last five years.

(2) Turnover Certificate to show the financial capacity of the bidder inter-alia by showing that the

annual turnover during the last five years shall be 75% of the annual tender cost of the tender.

30. Our attention was invited to the experience certificates dated 27th August, 2019, 8th November, 2019 and 16th December, 2019 submitted by the Petitioner.

31. The experience certificate dated 27th August, 2019 shows that during period November, 2018 to July 2019 the Petitioner had been supplying manpower and carrying out the gardening work and house keeping work in the Head Office, Mumbai of MAIDCL and in its 13 regional offices and nine factories and amount of Rs. 3,85,18,634/- (Rupees Three Crores Eighty Five Lakhs Eighteen Thousand Six Hundred Thirty Four only) has been paid to Petitioner.

32. The experience certificate dated 8th November, 2019 shows that during the period November, 2018 to October, 2019, the Petitioner had completed the gardening work in the Head

Office, Mumbai of MAIDCL and the amount of Rs. 2,95,29,911/- (Rupees Two Crores Ninety Five Lakhs Twenty Nine Thousand Nine Hundred Eleven only) has been paid to the Petitioner.

33. In response to letter dated 22nd November, 2019 sent by Respondent No.2, MAIDCL sent “opinion letter” dated 16th December, 2019 and the said “opinion letter” shows that during period November, 2018 to October 2019, the Petitioner’s agency has been supplying man power in the Head Office of MAIDCL and in its 13 regional offices and nine factories and it included data entry operator, assistant, assistant manager, peon, helper, driver and Gardner, totaling 313 officers/ employees working on a contract basis. It appears to us, on perusal of certificates dated 27th August, 2019 and 8th November, 2019, that the work period of certificate dated 27th August, 2019 shows November, 2018 to July 2019 and the work period of 8th November, 2019 certificate shows November, 2018 to October 2019. It shows major discrepancy in work period. The certificate dated 8th November, 2019 is not as per Tender condition No.2 as Tender was published in August,

2019 whereas work period shows October, 2019, which is after the tender period. Certificate dated 27th August, 2019 shows work period from November, 2018 to July 2019, but the period was not of a complete one year. Whereas “opinion letter” dated 16th December, 2019 shows work period November 2018 to October 2019, which is ‘after’ Tender period as well as this letter shows that work is ‘ongoing’. As per tender condition No.2, work should be completed work.

34. There are discrepancies in the amount mentioned in these certificates. Certificate dated 27th August, 2019 shows work amount more than Rs. 3 Crores whereas 8th November, 2019 certificate shows work amount more than Rs. 2 Crores. We do not find merit in contention of learned Counsel for the Petitioner that in certificate dated 27th August, 2019 the amount was in respect of house keeping and gardening work, whereas in certificate dated 8th November, 2019 the amount was given in respect of only gardening work. There is no mention of any amount in the “opinion letter” dated 16th December, 2019 given by MAIDCL. Had

these amounts been given for different works, it would have been mentioned in these certificates by mentioning separate works. So it was not possible for Respondent No.2 to calculate 30% amount of tender amount as there were different amounts mentioned in two certificates whereas in “opinion letter” dated 16th December 2019 no amount is mentioned. We are therefore of the view that certificates submitted by Petitioner were not proper and were not as per tender condition No.2 of said Tender. Hence, Petitioner was rightly held ineligible for financial bid. The Government Resolution dated 17th September, 2019 would not be applicable retrospectively as tender was published in August, 2019.

35. In respect of the acceptance of bids of Respondent Nos. 3 and 4, we find that Respondent Nos. 3 and 4 are held eligible after due scrutiny of documents and following proper procedure by Evaluation Committee. As per Evaluation Committee Report, the experience certificate and financial capacity certificates of Respondent Nos. 3 and 4 are as per tender condition No.2. There were other bidders who competed with Respondent Nos. 3 and 4.

Evaluation Committee was consisting of experts persons. When such experts evaluates documents of participant bidders, the Courts would be slow in interfering with the said decision unless it is arbitrary or some favourism is pointed out. The view adopted by experts should be given weightage. As has been held by the Division Bench of this Court in the matter of **Reliance Energy Ltd. V/s. MSRDC Ltd. And Ors.**⁴ that, “....Suffice it to note that even on interpretation of terms, there are divergent views. The treatment to the Items is different at the hands of the officials and outside Experts. Once the divergent views have been noted by the Tendering Authority and it took the final decision after due consideration of the same, we cannot substitute their views with ours and thereafter alter their ultimate decision. That is not permissible and would be beyond the parameters of judicial review.” The Respondent Nos.3 and 4 are held eligible after proper scrutiny of documents by Evaluation Committee. The said decision cannot be said to be manifestly incorrect or arbitrary or malafide. In the circumstances, reconsideration of the decision of

4 (2007) 5 Mah. LJ 768

the Respondent Authority would tantamount to exercise the Appellate powers by this Court and it may not be permissible. Hence, we are of the view that the acceptance of bids of Respondent Nos. 3 and 4 are proper.

36. We may add that Petitioner had participated in tender process of five garden works i.e. Sr. Nos. 10 to 14 of said tender but Petitioner has challenged only tender process of two gardens, which are allotted to Respondent Nos. 3 and 4. The Petitioner is held ineligible in all five tender process on same ground i.e. not possessing required experience certificate. As Petitioner is not challenging other three tender processes, it indicates that Petitioner is accepting that the Petitioner was not eligible for financial bids in other three gardens tender process. When Petitioner claims right of equity, Petitioner should have prayed to allow them in participation of financial bids in all five tender process because in other three tender process, the Petitioner is held ineligible on same ground. Petitioner cannot differentiate challenge of tender process as per their wish.

37. We do not find merit in contention of Petitioner that the

entire tender process was bogus and procedure of bidding was carried in order to support to Respondent Nos. 3 and 4. There were other bidders who had participated in financial bids along with Respondent Nos. 3 and 4. After competing with all bidders, Respondent Nos. 3 and 4 emerged as the successful bidders.

38. Now we examine second question, regarding suppression of material facts by Petitioner. Considering the material on record and submissions of learned Counsel, we deal with it issue wise.

39. (1) **Opportunity**

According to Petitioner, technical bid was opened on 28th January, 2020 and after gap of two hours, financial bid was opened on same day. No opportunity was given to Petitioner to submit requisite experience certificate.

40. It appears to us from the record that the technical bid was opened on 27th September, 2019 and opportunity was given to the Petitioner and other bidders by Respondent No.2 to submit the experience certificate as per Tender condition No.2.

Accordingly, Petitioner submitted certificate dated 8th November, 2019, when shortfall was found in it, Respondent No.2 wrote letter to MAIDCL dated 22nd November, 2019 in response to which MAIDCL sent “Opinion letter” dated 16th December, 2019 and another letter dated 17th December, 2019 was sent by Respondent No.2 seeking more information. This letter shows that copy of it was marked to Petitioner. The letters dated 27th August, 2019, 8th November, 2019 and 16th December, 2019 show that those were given as per request of Petitioner. We thus find that after opening technical bid on 27th September, 2019 opportunity was given to Petitioner, however, the Petitioner has falsely stated that technical bid was opened on 28th January, 2019. Petitioner has referred submission of letters dated 8th November, 2019 and 16th December, 2019 in their Petition but not disclosed that an opportunity was being given to them to cure the deficiency. We find that Petitioner has suppressed these facts. Moreover, Petitioner states that MAIDCL refused to give work order and bills being their internal documents in response to letter dated 17th December, 2019 of Respondent No.2 but according to Respondent No.2, there is no

reply to said letter. Petitioner has not produced reply of MAIDCL on record. It indicates that Petitioner has falsely stated that there was a reply given by MAIDCL in response to letter dated 17th December, 2019.

41. (2)**Validity**

Petitioner has challenged the validity of condition No. 3 of said Tender. Petitioner states that this condition restricts the successful bidder from getting more than one work with respect to work Nos. 1 to 9 of said tender. After examining the material on record, we find that condition No.3 was applicable to tender Nos. 1 to 9 and those tenders were cancelled by Respondent No.2 in its meeting dated 20th August, 2019. Thereafter, Petitioner submitted tender for tender work Nos. 10 to 14. It indicates that Petitioner was aware about cancellation of tender Nos. 1 to 9. The Petitioner has suppressed this fact. Even otherwise, it is well settled law that a bidder who has participated in a tender cannot turn around and challenge the terms and conditions of the tender and Tender conditions are immune from judicial review.

42. (3) **Condition No.2 of New tender.**

Petitioner has filed Additional Affidavit in which Petitioner has raised issue of acceptance of tender of some bidders in a new tender process. According to Petitioner, Respondent No.2 has published new tender in the year 2020 mentioning condition No.2 similar to earlier tender of 2019 which is subject matter of this Petition. As per this condition, the work should have been completed, but in new tender, Respondent No.2 has accepted tender of some bidders whose works are on going, whereas Petitioner's tenders were rejected on same ground in tender of 2019 which demonstrates malafides on part of Respondent No.2. The Petitioner has submitted the documents to show that in new tender process of 2020, the tender of bidders have been accepted whose works are ongoing.

43. It appears to us from record that Respondent No.2 vide Corrigendum No.1 dated 2nd January, 2020 modified tender Condition No. 2 of new tender to the extent of including even the "ongoing work". It indicates that by said Corrigendum, Respondent No.2 had permitted the bidders to participate in

tender process whose work was ongoing. Petitioner has submitted the documents of the successful bidder along with their additional Affidavit. It indicates that the Petitioner was aware of this fact but Petitioner has suppressed this fact from this Court. We may add that each tender is an independent contract in itself. If the Respondent No.2 has chosen to lay down terms and conditions of each tender with intent to achieve their objectives, then it is not open for the Petitioner to pick and choose terms and conditions from another tender to suit their convenience. We are therefore of the view that Petitioner has suppressed above material facts from this Court.

44. It is well settled that in exercising extraordinary jurisdiction, a writ court must bear in mind the conduct of the party who is invoking such jurisdiction and if the Petitioner does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The Hon'ble Apex Court in the matter of the **Silppi Constructions Contractors Versus**

Union of India and Another⁵ has held that, “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 interference, 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”.

45. Needless to state that in present case the Petitioner has approached this Court to invoke writ jurisdiction under Article 226 of Constitution of India. Petitioner claims justice and equity, but while claiming so the Petitioner has suppressed material facts and has not come with clean hands. The person who claims justice and equity must come with clean hands. We are of the view that, the Petitioner was rightly held ineligible by Respondent No.2. Tender of Respondent Nos. 3 and 4 were accepted after scrutiny of

⁵ (2020) 16 SCC 489

documents and by adopting proper procedure.

46. For the reasons recorded above, the Petition is devoid of merit and is accordingly dismissed. No order as to cost.

47. On the request of learned Counsel for the Petitioner, we direct that the ad-interim order of status quo shall continue to operate for a period of four weeks from the date this order is uploaded.

(S.G.DIGE,J.)

(A.A.SAYED, J.)