IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on :23.2.2021
Delivered on : 24.3.2021
CORAM
THE HON'BLE MR.JUSTICE B.PUGALENDHI
W.P.No.3447 of 2021
and
W.M.P.Nos.3949 and 4998 of 2021

M/s.Trigyn Technologies Limited 27,
rep. by its Company Secretary,
Mukesh Tank,
SDF-I, SEEPZ-SEZ,
Andheri East,
Mumbai 400 096. Petitioner

vs.

1. The Commissioner,
Erode City Municipal Corporation,
894 Brough Road, Erode 638 001.

2. The Chief Engineer,
Erode City Municipal Corporation,
894 Brough Road, Erode 638 001.

3. Assistant Executive Engineer,
Erode City Municipal Corporation,
Zone-2, 894 Brough Road,
Erode 638 001.

4. City Engineer,
Erode City Municipal Corporation,
894 Brough Road, Erode 638 001.

5. Erode Smart City Limited,
Registered office: Erode Corporation Building,
246, Meenachi Sundaranar Salai,
Erode 638 001.

6. M/s.Bharat Electronics Ltd.,
Kotdwara 246 149.
Uttarkhand.

7. M/s.SS Tech Commercials (P) Ltd.,
14, Arulmigu Sugavenswara
Kovil Complex, Cherry Road,
Salem 636 001.

8. M/s.Lantra Soft Pvt. Ltd.,
998, J.M.Building,
Avanashi Road,
Coimbatore 641 018.

9. M/s.Lookman Electroplast Industries,
15, Old No.9, First Floor,
II Street Extension,
III Main Road, CIT Nagar,
Nandanam, Chennai 600 035. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to the impugned Minutes of the meeting held on 29.1.2021 at 3.30 pm in Conference Hall of the Erode City Municipal Corporation rejecting the petitioner's bid as non responsive and not eligible for further evaluation, digitally signed by the third respondent on behalf of the first respondent, Tender Inviting and Tender Accepting Authority, quash the same as illegal, incompetent and unconstitutional and further pass an order directing the respondents to restart the tender process.

For Petitioner : Mr.Kumarpal Chopra

For R1 to R5 : Mr.S.R.Rajagopal,
Additional Advocate General assisted by
Mr.Raja Mathivanan, Standing Counsel

ORDER

This petition has been filed challenging the impugned Minutes of the Meeting of the respondent Corporation dated 29.1.2021 rejecting the petitioner's bid as non responsive and not eligible for evaluation.

2. The Erode City has been selected as one of the cities under the Government of India Smart City Mission 2015. As a part of Smart City Initiative, the respondent Corporation intended to set up an Integrated Command Control Centre to bring all necessary data under one roof. For the said purpose, the respondent Corporation invited tenders from System Integrators to design, supply, Operate and manage the said Integrated Command Control Centre in Erode City.

3. The petitioner, a Public Limited Company submitted its Tender in consortium with M/s.Kerala State Electronics Development Corporation Limited. the petitioner has also enclosed Earnest Money Deposit amount in the form of a Demand Draft for a sum of Rs.10,25,000/-. The technical bids were opened on 29.1.2021 and the Technical Evaluation Committee disqualified the petitioner company that they failed to meet the qualification criteria for technical bid on two counts that the Power of Attorney of the lead bidder (Trigyn) signed by the

Consortium Member (KELTRON) does not contain the date or signature of the Lead bidder and as per the Tender condition No.4, the documentary proof of consortium agreement on the roles and responsibilities of each Member, the responsibility of the lead bidder and the maximum stake held by the lead bidder were not mentioned in the Agreement and therefore, the petitioner's bid was rejected as not satisfactory. The said Minutes of the Meeting of the Technical Evaluation Committee dated 29.1.2021 is under challenge in this writ petition.

4. Mr.Kumarpal Chopra, learned counsel appearing for the petitioner submits that the defects which have been pointed out by the Technical Evaluation Committee are small clerical errors that were crept in due to inadvertence which can easily be rectified and they cannot be treated as technical errors for rejection of the bid itself and defining the role and responsibilities for the lead and consumption partner in consortium agreement is not a term of instructions to the bidders and it is not an essential condition. He would further submit that the condition No.2 of the Tender document requires a submission of a letter of authorization authorizing the tender signatory and such a condition is only an ancillary condition and it is not an essential condition and the respondent has disqualified the petitioner's bid in a partisan manner where as another bidder, who has not complied with the same condition on the mentioning of the stake of the lead bidder in the consortium agreement has been qualified and therefore, the rejection of the petitioner's bid has been made intentionally to eliminate the petitioner and it is a pure act of bias when they have taken a stand otherwise in respect of M/s.SS Tech Commercials (P) Ltd on the same mistake. According to the learned counsel for the petitioner, the reasoning given for rejecting the petitioner's bid is a hostile discrimination and unfavorable treatment and it is unjust and unfair and therefore the entire tender process raises a serious doubt on the evaluation and rejection and therefore, it warrants interference of this court.

5. The learned counsel for the petitioner has also relied upon the following judgments in support of his contentions:-

(i) Poddar Steel Corporation v. Ganesh Engineering Works and Others [(1991) 3 SCC 273]

(ii) Bakshi Security and Personnel Services Pvt. Ltd. v. Devkishan Computed Pvt. Ltd. and Ors., (2016) 8 SCC 446

(iii) B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd., (2006) 11 SCC 548]

(iv) Om Prakash Sharma vs Ramesh Chand Prashar & Ors (Civil

Appeal No.5101 of 2016 dated 13.5.2016)

(v) Kanhaiyalal Agarwal v. Union of India & Ors. [(2002) 6 SCC 315

(vi) W.B. State Electricity Board vs. Patel Engineering Co. (2001 (2) SCC 451)

(vii) G.J. Fernandez v. State of Karnataka and Others [(1990) 2 SCC 488]

(viii) lvrcl Infrastructures & Projects vs NHAI in WP (C) No.235 of 2011

(ix) Ramunia Fabricators SDN BHD & Ors. Vs. Oil and Natural Gas Corpn. Ltd. & Ors., 150 (2008) DLT 1

(x) Kapsch Metro JV Vs. Union of India & Anr., 140 (2007) DLT 378.

6. Mr S.R.Rajagopal, learned Additional Advocate General assisted by Mr.Rajamathivanan, learned Standing Counsel appearing for Respondents 1 to 5 would submit that the Technical Evaluation Committee has made their evaluation as per class 3.2 of and 3.5 of the Request For Proposal (RFP) and the verification of document is part of the work assigned to the Technical Evaluation Committee and the selection process for bidders is mentioned in clause 3 of the Tender document as processing of Earnest Money Deposit (EMD), Technical Bid and (c) Commercial Bid. The Technical Evaluation Committee is expected to examine the bids by determining whether they are complete, whether the documents are properly signed and whether the bids are in order. As per clause 3.2, the petitioner's Tender document was submitted without the letter of authorization (Power of Attorney). The bidders can participate either as a sole bidder or by consortium. If it is a consortium bid, the lead bidder shall be a registered entity and they must enclose a documentary proof such as Incorporation Certificate and the Consortium Agreement and must state (i) Roles and responsibilities of each member. (ii) The Lead Bidder shall have maximum Stake in the consortium. (iii) The Lead Bidder shall be responsible and jointly & severally liable under this RfP.

7. The petitioner has filed with the power of attorney unsigned and without any attestation on each page. The petitioner has also admitted the same as a clerical error inadvertently made. Similarly, the petitioner has not furnished the details as to the roles and responsibilities of the members of consortium and the maximum stake held by the lead bidder as per class 3.5 of the Tender document and therefore the Technical Evaluation Committee has rightly rejected the petitioner’s bid.

The learned Additional Advocate General would further submit that in fact another Company by name S.S.Tech, Salem which also applied on consortium did not mention the stake of the lead bidder in the tender document, however it was annexed along with the bid document though it was not mentioned in the agreement and therefore, the bid document of S.S. Tech, Salem was treated as satisfactory on its evaluation, but the bid was not allotted to the said S.S.Tech, Salem. According to the learned Additional Advocate General, the work was awarded in favor of the 8th respondent M/s.Lantra Soft Pvt. Ltd. and the letter of acceptance has been issued to the 8th respondent in Roc.E1/3945/2020 dated 16.2.2021 and the work order has also been issued on 17.2.2021. It is further submitted that the 8th respondent has also commenced the execution of the work.

8. The learned Additional Advocate General submits that the Rules and procedures contemplated under the Tamil Nadu Transparency in Tenders Acts and Rules were strictly adhered to and there is no violation of the Acts and Rules and the petitioner has not pointed out any procedural lapse in his pleadings. Further, no mala fide is pleaded by the petitioner as against the respondent. The letter of authorisation and consortium agreement are essential conditions and the petitioner has not stated the roles and responsibilities of each Member and that of the lead bidder. The petitioner cannot interpret that it is not an essential condition and if any relaxation is provided to the petitioner, then it would amount to bias and favouritism. He would further submit that the delay in execution of the work would cause great prejudice to the general public and it would be against the public interest and requested to dismiss the writ petition.

9. The learned Additional Advocate General has also relied upon the following decisions in support of his contention:-

(i) Jagadish Mandal v. State of Orissa (2007 (14) SCC 517

(ii) Silppi Constructions Contractors v. Union of India, (2019 SCC OnLine SC 1133)

(iii) Michigan Rubber India Limited v. State of Karnataka and others (2012 (8) SCC 216)

(iv) Afcons Infastructure Limited v. Nagpur Metro Rail Corporation Limited and another (2016 (16) SCC 818)

(v) Municipal Corpn, Ujjain v. BVG India Ltd., (2018) 5 SCC 462].

10. This court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

11. The respondent Corporation invited tenders for selection of System Integrators to design, supply, implement, operate and manage the Integrated Command and Control Centre in Erode City under the Erode Smart City Scheme. The Tender Notification was published in newspapers both in vernacular and also in the State Tender Bulletin dated 3.12.2020. Along with the petitioner, five other companies have submitted their Request For Proposal (RFP). The petitioner Company M/s.Trigyn Technologies Limited submitted its bid in consortium with M/s.Kerala State Electronics Development Corporation Limited. The selection process is of verification of EMD, Technical Bid and Commercial Bid. The technical bids were opened in the presence of all the representatives of the petitioners by the Technical Evaluation Committee on 22.12.2020. The Technical Evaluation Committee declared the petitioners bid as non responsive since the petitioner did not satisfy class 3.2 of the RFP and for non furnishing of the required data as per clause 3.5 of RFP.

12. Clause 3.2 of the RFP is extracted hereunder:-

> "3.2 Preliminary Examination of Bids
> ERODE CITY CORPORATION/ ERODE SMART CITY LIMITED shall examine the bids to determine whether they are complete, whether the documents have been properly signed and whether the bids are generally in order. Any bids found to be nonresponsive for any reason or not meeting any criteria specified in the RfP, shall be rejected by ERODE CITY CORPORATION/ ERODE SMART CITY LIMITED and shall not be included for further consideration.
>
> Initial Bid scrutiny shall be held and bids will be treated as non-responsive, it bids are:
>
> a. Not submitted in format as specified in the RfP document.
>
> b. Received without the Letter of Authorization (Power of Attorney).
>
> c. With incomplete information, subjective, conditional offers and partial otters submitted.
>
> d. Submitted without the documents requested.
>
> e. Non-compliant to any of the clauses mentioned in the RfP.
>
> f. With lesser validity period
>
> g. Signature of Authorized personnel on all pages both on Hard & Copy of the bid."

13. As per the terms of RFP, the initial bid scrutiny shall be made as per clause 3.2 and if any bid is found to be incomplete not properly signed and not in order be treated as non responsive and will be rejected as per the said clause. The letter of authorization (power of attorney) is one of the clauses mentioned as requirement as per clause 3.2.

14. In this case, the petitioner is said to have submitted a letter of authorization (power of attorney) whereas it has been signed by the consortium member and not by the lead bidder. Further, in the consortium agreement the roles and responsibilities of the lead bidder and consortium member was not mentioned and the maximum stake held by the lead bidder was also not mentioned.

15. The petitioner has not denied the same and in fact he has mentioned that it is only a clerical error inadvertently made which can be easily rectifiable and according to the petitioner, it is not an essential condition and it is a curable one.

16. In clause 3.5, the eligibility criteria is mentioned in the case of consortium bid as under:-

> "For Consortium bids :
>
> Consortium Agreement clearly stating the
>
> i. Roles and responsibilities of each member.
>
> ii. The Lead Bidder shall have maximum Stake in the consortium.
>
> iii. The Lead Bidder shall be responsible and jointly & severally liable under this RfP."

17. Therefore, on the basis of the conditions of RFP, the Technical Evaluation Committee, in its Minutes of meeting dated 29.1.2021, declared the petitioner's bid as non responsive.

18. The relevant portions of the decisions relied upon by the learned counsel appearing for the petitioner are extracted hereunder:-

(i) In Poddar Steel Corporation v. Ganesh Engineering Works and Others [(1991) 3 SCC 273] it was held thus:

> "6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question

is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition, it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance; The requirements in a tender notice can be classified into two categories those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the erst case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases."

(ii) In Bakshi Security and Personnel Services Pvt. Ltd. v. Devkishan Computed Pvt. Ltd. and Ors., (2016) 8 SCC 446, this Court held:

"14. The law is settled that an essential condition of a tender has to be strictly complied with. In Poddar Steel Corpn. v Ganesh Engg. Works (1991) 3 SCC 273] this Court held as under: (SCC p. 276, para 6)

"6. ... The requirements in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.

....

16. We also agree with the contention of Shri.Raval that the writ jurisdiction cannot be utilised to make a fresh bargain between parties."

(iii) In B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd., (2006) 11

SCC 548] this Court held as under: (SCC pp. 571-72, para 66)

> "(i) if there are essential conditions, the same must be adhered to;
>
> (ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;
>
> (iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;
>
> (iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;
>
> (v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;..."

(iv) The Apex Court in Om Prakash Sharma vs Ramesh Chand Prashar & Ors (Civil Appeal No.5101 of 2016 dated 13.5.2016) reiterating Poddar Steel Corpn. v Ganesh Engg. Work held thus

> "In the Present case the site in question was to be sold on outright sale basis. The advertisement or the stipulations therein did not contemplate creation and or continuation of any relationship between the parties calling for continued existence of any particular level of financial parameters on part of the bidder except the ability to Pay the price as per his bid. The Condition was not an essential Condition at all but was merely ancillary to achieve the main object that was to ensure that the bid amount was paid Promptly. The advertisement contemplated payment of bid amount whereafter the Sale Deed

> would be executed and not a relationship which would have continued for considerable period warranting an assurance of continued ability on part of the bidder to fulfil his obligations under the arrangement. Nor was this condition aimed at ensuring a particular level of financial ability on part of the bidder, for example in cases where the benefit is designed to be given to a person coming from a particular financial segment, in which case the condition could well be termed essential. The idea was pure and clear sale simplicitor. As a matter of fact, the appellant did pay the entire bid amount within the prescribed period and the Sale Deed was also executed in his favor. In the circumstances the relevant condition in the advertisement would not fall in the first category of cases as dealt with by this Court in Poddar Steel Corporation (supra). The authorities could therefore validly deviate from and not insist upon strict literal compliance. The discretion so exercised by the authorities could not have therefore been faulted. Thus, the assessment made by the High Court that the condition in question was an essential condition for non-compliance of which, the bid furnished by the appellant was required to be rejected, in our view was not correct."

(v) The Apex Court once again in the case of Kanhaiyalal Agarwal v. Union of India & Ors. [(2002) 6 SCC 315 held that if the bid submitted by the bidder substantially complies with the purport and object for which the essential conditions were laid down in the tender document, such bid should not be rejected or disqualified for non-compliance/ a deviation with regard to a non-essential and / or ancillary condition.

(vi) In W.B. State Electricity Board vs. Patel Engineering Co. (2001 (2) SCC 451) it has been held as under:-

> ”23. The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of computer termed as "a repetitive systematic computer typographical transmission failure". It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of respondents 1 to 4 to correct the same before submission of the bid.

Had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided. Further correction of such mistakes after one-and-a-half months of opening of the bids will also be violative of clauses 24.1, 24.3 and 29.1 of the ITB."

(vii) This aspect was examined by this Court in G.J. Fernandez v. State of Karnataka a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. In G.J. Fernandez v. State of Karnataka and Others [(1990) 2 SCC 488] wherein this Court observed :

"15. Thirdly, the conditions and stipulations in a tender notice like this have two types of consequences, The first is that the party issuing the tender has the right to punctiliously and rigidly enforce them. Thus, if a party does not strictly comply with the requirements of para III, V or VI of the NIT, it is open to the KPC to decline to consider the party for the contract and if a party comes to court saying that the KPC should be stopped from doing so, the court will decline relief. The second consequence, indicated by this Court in earlier decisions, is not that the KPC cannot deviate from these guidelines at all in any situation but that any deviation, if made, should not result in arbitrariness or discrimination. It comes in for application where the nonconformity with, or relaxation from, the prescribed standards results in some substantial prejudice or injustice to any of the parties involved or to public interest in general. For example, in this very case, the KPC made some changes in the time frame originally prescribed. These changes affected all intending applicants alike and were not objectionable. In the same way, changes or relaxations in other directions would be unobjectionable unless the benefit of those changes or relaxations were extended to some but denied to others. The fact that a document was belatedly entertained from one of the applicants will cause substantial prejudice to another party who wanted, likewise, an extension of time for filing a similar certificate or document but was declined the benefit. It may perhaps be said to cause prejudice also to a party which can show that it had refrained from applying for the tender documents only because it thought it would not be able to produce the document by the time stipulated but would have applied had it known that the rule was likely to be relaxed."

(viii) In lvrcl Infrastructures & Projects vs NHAI in WP (C) No.235 of 2011 it has been held as under:-

"30. There is no doubt about the proposition that the terms & conditions of a tender document must be strictly adhered to. However, the legal position in this behalf is enunciated in Poddar Steel Corporation Vs. Ganesh Engineering Works &Ors. (1991) 3 SCC 273. It was held that deviations from non-essential or ancillary / subsidiary requirement being a minor technical irregularity can be waived. The issue, thus, arises whether the discrepancy in the present case can be stated to be of such minor technical nature."

(ix) In Ramunia Fabricators SDN BHD & Ors. Vs. Oil and Natural Gas Corpn. Ltd. & Ors., 150 (2008) DLT 1, the distinction between essential and non-essential conditions in a contract was emphasized. In the facts of the case, the bids were submitted by a subsidiary on the basis of the documents purchased by another subsidiary of a single parent company. The bid submitted by the petitioner was held to be perfectly in tune with the terms of the bid; The Hon'ble Court observed that whether or not a condition is an essential would depend upon the fact situation of each case and the nature of the conditions while relying upon the judgment in Poddar Steel Corporation"s case (supra).

(x) In Kapsch Metro JV Vs. Union of India & Anr., 140 (2007) DLT 378, it was emphasized that public interest requires a wider participation of bidders to ensure healthy competition especially keeping in mind the dictum laid down in Poddar Steel Corporation's case (supra). The deficiency of 17 days' period in the EMD of 180 days' validity period which too was subsequently altered in order to conform to the prescribed requirement was held to be a technical irregularity of little significance and worthy of being waived.

19. On the other hand, the learned Additional Advocate General has relied upon the following judgments of the honourable Supreme Court and submit that the Tender conditions in question are essential conditions:-

(i) In Jagadish Mandal v. State of Orissa (2007 (14) SCC 517, the Hon'ble Supreme Court has held as under:

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

> Whether the process adopted or decision made is so arbitrary and irrational that the court can say "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached".
>
> ii) Whether public interest is affected.
>
> If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing 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."

(ii) In Silppi Constructions Contractors v. Union of India, (2019 SCC OnLine SC 1133) the Apex Court has held as under:-

> "19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a

magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

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.

....

25. That brings us to the most contentious issue as to whether the learned single judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a state within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway

> in this regard. The Respondent nos. 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done."

(iii) In Michigan Rubber India Limited v. State of Karnataka and others (2012 (8) SCC 216), the Hon'ble Supreme Court has held as under:-

> "23) From the above decisions, the following principles emerge:
>
> (a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
>
> (b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
>
> (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;
>
> (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
>
> (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24) 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"; and (ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226."

(iv) In Afcons Infastructure Limited v. Nagpur Metro Rail Corporation Limited and another (2016 (16) SCC 818), it has been held as follows:-

"11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) it was held by this Court, relying on a host of decisions that the decision making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

12. In Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay it was held that the constitutional Courts are concerned with the decision making process. Tata Cellular v. Union of India went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional Courts can

> interfere if the decision is perverse. However, the constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in Jagdish Mandal v. State of Orissa as mentioned in Central Coalfields.
>
> 13. In other words, 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."

(v) In Municipal Corpn, Ujjain v. BVG India Ltd., (2018) 5 SCC 462], it has been held as under:-

> "45. Evaluating tenders and awarding contracts are essentially commercial transactions/contracts. If the decision relating to award of contract is in public interest, the Courts will not, in exercise of the power of judicial review, interfere even if a procedural aberration or error in awarding the contract is made out. The power of judicial review will not be permitted to be invoked to protect private interest by ignoring public interest. Attempts by unsuccessful bidders with an artificial grievance and to get the purpose defeated by approaching the Court on some technical and procedural lapses, should be handled by Courts with firmness. The exercise of the power of judicial review should be avoided if there is no irrationality or arbitrariness. In the matter on hand, we do not find any illegality, arbitrariness, irrationality or unreasonableness on the part of the expert body while in action. So also, we do not find any bias or mala fides either on the part of the corporation or on the part of the technical expert while taking the decision. Moreover, the decision is taken keeping in mind the public interest and the work experience of the successful bidder.
>
> 46. As held in Tata Cellular (supra), the

terms of the tender are not open to judicial scrutiny as the invitation to tender is a matter of contract. Decisions on the contract are made qualitatively by experts. M/s Eco Save Systems Private Limited [respondent no.2 in Civil Appeal arising from SLP (C) No. 11967/2016] is a project consultant and technical advisor of the Ujjain Municipal Corporation. It provides technical consultancy and advisory services. The documents produced along with the counter affidavit filed by respondent no.2 would show that respondent no.2 is an expert in municipal solid waste management. It is brought to our notice that respondent no.2 has developed a Detailed Project Report (DPR) cum Master Plan of Ujjain City for up-gradation, systematization and abidance of the Municipal Solid Waste Rules, 2000 for the period 2012 to 2042, and the Jawaharlal Nehru National Urban Renewal Mission is stated to have sanctioned 35.88 crores for the purpose. There is no dispute by any of the parties that respondent no.2 is an expert in municipal solid waste management. We also hasten to add that there are no allegations of bias or mala fides against the technical committee, though grounds are taken by BVG India Limited before the High Court that the decision of the expert committee is not proper.

... ...

64. Thus, the questions to be decided in this appeal are answered as follows:

64.1 Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder;

64.2 A bidder who submits a bid expressly declaring that it is submitting the same independently and without any partners, consortium or joint venture, cannot rely upon the technical qualifications of any 3rd Party for its qualification.

64.3 It is not open to the Court to independently evaluate the technical bids and financial bids of the parties as an appellate

> authority for coming to its conclusion inasmuch as unless the thresholds of mala fides, intention to favour someone or bias, arbitrariness, irrationality or perversity are met, where a decision is taken purely on public interest, the Court ordinarily should exercise judicial restraint.
>
> 65. In view of the above, the impugned judgment and order of the High Court cannot be sustained and the same is set aside."

20. In clause 3.2 of the RFP, it has been specifically mentioned that the letter of authorization (power of attorney) is a required document and if it is received without signature, it is a ground for rejection treating it as non responsive. As per clause 3.2(g), the signature of the authorized person on all pages on hard copy of the bid is stated as a requirement for the preliminary examination and if the documents are not properly signed if it is not in order, the RFP would be rejected as non responsive. Similarly, for the consortium bid, the consortium agreement is expected to state the roles and responsibilities and admittedly these two conditions have not been complied with and this cannot be treated as an essential requirement when the tender document specifically mentioned that the requirements as per the aforesaid clause are essential documents.

21. In view of the ratio laid down by the Hon'ble Supreme Court cited supra, the defects as pointed out by the respondents are essential conditions as per the tender document and this court is not inclined to interfere with the impugned minutes of the rejection of the petitioner’s bid. Accordingly, the writ petition is dismissed. No costs. The connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Commissioner,
   Erode City Municipal Corporation,
   894 Brough Road, Erode 638 001.

2. The Chief Engineer,
Erode City Municipal Corporation,
894 Brough Road, Erode 638 001.

3. Assistant Executive Engineer,
Erode City Municipal Corporation,
Zone-2, 894 Brough Road,
Erode 638 001.

4. City Engineer,
Erode City Municipal Corporation,
894 Brough Road, Erode 638 001.

5. Erode Smart City Limited,
Registered office: Erode Corporation Building,
246, Meenachi Sundaranar Salai,
Erode 638 001.

6. M/s.Bharat Electronics Ltd.,
Kotdwara 246 149.
Uttarkhand.

7. M/s.SS Tech Commercials (P) Ltd.,
14, Arulmigu Sugavenswara
Kovil Complex, Cherry Road,
Salem 636 001.

8. M/s.Lantra Soft Pvt. Ltd.,
998, J.M.Building,
Avanashi Road,
Coimbatore 641 018.

9. M/s.Lookman Electroplast Industries,
15, Old No.9, First Floor,
II Street Extension,
III Main Road, CIT Nagar,
Nandanam, Chennai 600 035.

10. M/s.Trigyn Technologies Limited 27,
rep. by its Company Secretary,
Mukesh Tank,
SDF-I, SEEPZ-SEZ,
Andheri East,
Mumbai 400 096.

+1cc to Mr.Raja Mathivanan, Advocate sr.No.18979

P.D. Order in
W.P.No.3447 of 2021

PMK(CO)
NR 19/04/2021