



\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23.03.2022

+

W.P.(C) 2138/2022 & CMs 6151-52/2022

TELECOMMUNICATIONS CONSULTANTS

INDIA LTD

..... Petitioner

Through: Mr.Nikhilesh Krishnan, Ms.Snigdha
Singh, Advs.

versus

POWER GRID CORPORATION OF

INDIA LIMITED

..... Respondent

Through: Mr.Sudhir Nandrajog, Sr. Advocate
with Mr. Somesh Chandra Jha,
Mr.Rahul Narang, Ms.Mannat
Sandhu, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present petition has been filed by the petitioner challenging the letter dated 25.01.2022 issued by the respondent whereby the respondent has rejected the technical bid of the petitioner as 'non-responsive' alleging that the technical bid of the petitioner did not meet the Specified Technical Experience requirement of QR (Qualification Requirement) (as per clause 2.0 of Annexure – A (BDS), Section – III, Volume – I of the Bidding Documents) of the subject package.
2. The respondent decided to set up, as the Owner, 'Establishment of Lawful Interception and Monitoring System' (in short, 'LIMS') for



providing International Long Distance (in short, ‘ILD’) connectivity’. Accordingly, the respondent issued an Invitation for Bids dated 29.06.2021 for specification No. CC-CS/1096-NR1/TELE-4255/3/G7, inviting bids from eligible bidders for the Package LIMS-ILD under Establishment of Lawful Interception and Monitoring System for providing ILD connectivity on a Domestic Competitive Bidding basis under secure e-procurement procedure.

3. The petitioner duly participated in the above-referred tender along with its Original Equipment Manufacturer (in short, ‘OEM’), M/s Pert Telecom Solutions Pvt. Ltd. (in short, ‘PertSol’), which, the petitioner claims, is a leading India-based lawful interception OEM.

4. The instructions to the bidder laid down, *inter alia* the following Qualification Requirement (in short, ‘QR’).

2.0		Technical Experience
	2.1	<i>The Bidder must have installed and commissioned at least one (01) Lawful Interception and Monitoring System (LIMS)/ one (01) Security Information & Event Management (SIEM) solution / twenty (20) Routers in one (1) MPLS/Internet network within last seven (7) years, which should have been in satisfactory operation# for at least one (01) year, as on the originally scheduled date of bid opening i.e 30/07/2021.</i>
	2.2	<i>The Bidder shall offer LIMS solution for ILD (Lawful Interception and Monitoring System for International Long Distance) from an OEM, whose LIMS solution for ILD must have been deployed for Telecom Service Provider domain in India within last seven (7) years, and which should be in satisfactory operation# for at least one (1) year as on date of bid opening mentioned above. A legally enforceable undertaking jointly by bidder and OEM (as per enclosed format in Section-VI, Vol.-I of bidding document) shall be furnished along with bid to guarantee quality, timely supply, performance and warranty obligations as specified for the equipment(s) and stating that the OEM shall furnish performance guarantee for an amount of 3% of the supply cost of such equipment. This performance guarantee shall be</i>



NEUTRAL CITATION NO: 2022/DHC/001123

		<i>in addition to Contract Performance Guarantee to be submitted by the bidder.</i>
		<i>Satisfactory operation#: 1) Certificate issued by the Employer (an end user) certifying the operation without any adverse remark, AND 2) For foreign OEM, the employer (an end user) shall be located in a country other than the country where product has been manufactured.</i>
		<i>In case bidder is a holding company, the technical experience referred to in clause 2.1 above shall be of that holding company only (i.e excluding its subsidiary/ group companies). In case bidder is a subsidiary of a holding company, the technical experience referred to in clause 2.1 above shall be of that subsidiary company only (i.e excluding its holding company.)”</i>

5. The petitioner asserts that in compliance with the above conditions, the petitioner had submitted the certificates dated 29.01.2021 and 30.07.2021 from the Central Bureau of Investigation (in short, the ‘CBI’), certifying that the petitioner had provided satisfactory maintenance of LIMS installed at CBI, Special Unit, Chennai from 30.06.2020 to 29.06.2021, thereby complying with Clause 2.1 of the QR referred hereinabove.

6. The petitioner further asserts that in compliance with Clause 2.2 of the QR, the petitioner had submitted a Joint Deed of Undertaking executed by itself and the OEM, as also a certificate dated 22.07.2021 issued by the Bharat Sanchar Nigam Limited (in short, the ‘BSNL’), certifying that PertSol, through M/s UTStar India Limited, had deployed its LIMS for lawful interception as a requirement of BSNL ILD interception, NGN¹ C4/C5 network for voice service interception. The said system was

¹ Next Generation Network.



commissioned in March 2020 and since then has been running satisfactorily.

7. Learned counsel for the petitioner asserts that with the above undertaking and certificate, the petitioner had duly complied with Clause 2.2 of the QR.

8. The learned counsel for the petitioner further submits that, in spite of the petitioner having complied with Clause 2 of the QR, the respondent, vide its letter dated 14.10.2021, wrongly observed that, from the certificate of the BSNL, it is not possible to establish the Technical Experience requirement of the QR as per Clause 2.2, and called upon the petitioner to produce a copy of the Purchase Order placed by BSNL containing the detailed scope of work *inter alia*, including technical specifications of LIMS, et cetera deployed against the said PO.

9. The petitioner duly replied to the above letter vide its letter dated 21.10.2021. However, vide letter dated 12.11.2021, the respondent again called upon the petitioner to furnish documents containing the detailed scope of work/purchase order dated 02.06.2017 of BSNL to establish compliance with the QR by the OEM.

10. Learned counsel for the petitioner submits that there was no such requirement in the tender document for submitting the purchase order and, therefore, the respondent was clearly travelling beyond the tender conditions and placing new conditions on the petitioner, for which the petitioner could not have been singled out.

11. Learned counsel for the petitioner further submits that in spite of there being no such requirement in the tender document, PertSol, vide e-mail dated 17.11.2021, requested BSNL to share a copy of the Purchase Order for being forwarded to the respondent. BSNL, however, vide its e-mail dated



18.11.2021, refused to do so, claiming confidentiality. The petitioner, therefore, vide its letters dated 18.11.2021 and 19.11.2021, informed the respondent of the above objection of BSNL and also pointed out that in terms of the tender document, only a certificate was required to be furnished, which has been duly furnished by the petitioner.

12. Learned counsel for the petitioner submits that the respondent, however, vide its letter dated 03.12.2021, required the petitioner to submit yet another new certificate of compliance with TEC GR² No.: GR/IPLC-01/01 July 2007.

13. Learned counsel for the petitioner submits that this again was a new requirement of the respondent and, in any case, was not relevant at the stage of judging the technical responsiveness of the petitioner's bid, and could have been demanded only when the petitioner is awarded the contract. He submits that in spite of this being a new condition, the petitioner duly complied with the same vide its reply dated 07.12.2021, stating therein that the system deployed at BSNL complies with the relevant TEC GRs and ETSI standards. He has further drawn our attention to the list of TEC GRS (Technical Specifications) stated to be forming part of the BSNL tender, and specifically Clause 16 and 17 thereof which read as under:

“

Section 3 Part D

List of TEC GRs (Technical Specifications)

Following is the list of TEC GRs referred in this tender document. The latest edition of these TEC GRs (available at the time of bidding) shall be applicable. Bidder shall submit a compliance statement(s) that it meets all the requirements of the TEC GRs and a 'NIL Deviation' certificate for compliances to the TEC GRs.

² Telecommunication Engineering Centre – Generic Requirement.



<i>Sl.No</i>	<i>NW Element/Item description</i>	<i>Referred TEC GRs/ SRs/ SDs</i>
...	...	...
16	<i>GR for Lawful Interception System for PSTN</i>	<i>TEC/GR/SW/LIS-01/03 JUN 10</i>
17	<i>Monitoring Equipment for lawful interception of PSTN</i>	<i>TEC/GR/SW/LIM-01/03 JAN11</i>

”

14. Learned counsel for the petitioner submits that, therefore, the petitioner not only complied with Clause 2.2 of the QR at the time of submitting its bid, but has also submitted further documents only to satisfy the doubts of the respondent, though there was no such requirement in the tender document to submit such additional documents, nor could have the respondent insisted upon the same. He submits that, therefore, the impugned letter declaring the bid of the petitioner as ‘non-responsive’ is totally arbitrary and cannot be sustained.

15. Placing reliance on the judgment of this Court in ***Orion Security Solutions Pvt. Ltd. v. Govt. of NCT of Delhi & Ors.***³, he submits that in a public contract, the decision is required to be informed decision and should not be arbitrary. Though evaluating tenders and awarding contracts may be a commercial function, the decision cannot be arbitrary or irrational and if so, would be quashed by the Court in the exercise of its powers under Article 226 of the Constitution of India.

16. Further, placing reliance on the judgment of the Supreme Court in ***Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd. & Ors.***⁴, he

³ 2016 SCC OnLine Del 4652.

⁴ (1997) 1 SCC 53.



submits that the respondent cannot add new conditions, which were not specified in the tender document, and seek compliance therewith from the petitioner.

17. He further places reliance on the judgment of this Court in *IVRCL Infrastructures & Projects Ltd. v. National Highways Authority of India*⁵, to submit that even if it is considered that the certificate issued by the BSNL was non-compliant, the same is a minor-technical irregularity which did not deserve an outright rejection of the bid of the petitioner.

18. Learned counsel for the petitioner finally submits that, in fact, the respondent had deputed its officer to BSNL to verify the claim of the petitioner and the petitioner believes that the claim had been duly verified by BSNL. However, in spite of the same, the bid of the petitioner has been declared as non-responsiveness.

19. On the other hand, the learned senior counsel for the respondent submits that the certificate submitted by the petitioner was also for NGN C4/C5 network for voice services interception. As the same created some doubt on the scope of work under the Purchase Order placed by BSNL on PertSol, the petitioner was given an opportunity to clarify the same by producing the Purchase Order issued by BSNL, or otherwise. As the petitioner could not produce the Purchase Order, by letter dated 03.12.2021, the petitioner was called upon to certify that it complied with the TEC GR for the IPLC⁶. However, the petitioner failed to do so, as would be evident from its response dated 07.12.2021. He submits that the tender condition of BSNL relied upon by the petitioner also shows that for BSNL, the TEC GR

⁵ 2011 SCC OnLine Del 1246.

⁶ International Private Leased Circuit.



were not of the IPLC, but for the PSTN. He submits that the same is also evident from the Bid Document of BSNL placed on record by the petitioner as Annexure P-16 (Colly), as it states that the same was “Tender for Procurement of Class 5 NGN (Next Generation Network)”. He further submits that the claim of the petitioner has also been checked by the Independent External Monitor who, vide their report dated 02.03.2022, have *inter alia* opined, as under:

“17. During the hearing TCIL admitted that though the work done by PertSol (OEM of TCIL) for BSNL was complaint with several GRs (the list of which was also read out by TCIL’s representative during the hearing), none of those GRs included the TEC GR No.GR/IPCL/01/01 July 2007 specified in the PGCIL’s tender. This itself shows that TCIL did not meet the specified technical requirement (QR 2.2) of PGCIL’s tender. Indeed, TCIL’s submission of the said Flag A marking the box “yes” against line (b) containing specific query whether the said LIMS of PertSol deployed for BSNL was complaint with the said GR No.GR/IPCL/01/01 July 2007 is misleading, if not outright false.

18. In the light of the foregoing, the conclusion is inescapable that PGCIL was not only justified in seeking additional supporting evidence in respect of the BSNL certificate but was also duly competent/empowered to do so in terms of the provisions of the tender documents itself. Further in the wake of the responses received by PGCIL from TCIL, it cannot be said that the inference drawn by PGCIL to the effect that the TCIL was non-responsive and did not meet the requirement of QR 2.2 was in any way unreasonable, capricious or arbitrary.”

20. He also places reliance on the recent judgment, dated 21.03.2022, passed by the Supreme Court in ***N.G. Projects Ltd. v. Vinod Kumar Jain &***



*Ors.*⁷, to submit that this Court should not interfere in the technical issues, especially when the same have been considered not only by the respondent but also by the Independent External Monitors.

21. We have considered the submissions made by the learned counsels for the respective parties.

22. A reading of Clause 2.2 of the QR reproduced hereinabove clearly shows that the bidder was required to offer LIMS for ILD from an OEM whose LIMS solution for ILD must have been deployed for the Telecom Service Provider domain in India within the last seven years. In purported compliance thereto, the petitioner submitted a certificate dated 22.07.2021 issued by the BSNL, which reads, as under:

“We, M/s Bharat Sanchar Nigam Limited, an Indian Government PSU running various telecom services (cellular telephony/internet services/ILD/NLD) hereby certify that M/s Pert Telecom Solutions Private Limited(PertSol) through M/s UTStar India Limited deployed its Lawful Interception and Monitoring System for Lawful Interception vide Tender no CA/NWP-CFA/NGN/T-546/2016 issued on 21/04/2016, P.O No: SE/PO/001/2017-18/NGN-C5(2.4mn) UTStarcom Dated 02/06/2017 as requirement of BSNL ILD interception, NGN C4/C5 network for Voice services interception. The said system was commissioned in March 2020 and since then it is running satisfactorily.

M/s PertSol’s Lawful Interception and Monitoring System (LIMS) platform (PertSol – iNterceptor) was also integrated with CMS platform for electronic provisioning of targets and delivery of intercepted data. PertSol’s LIMS is extended to LEA terminals for LEA access, analysis and management of the interception content.

The system, deployed by M/s Pert Telecom Solutions

⁷ 2022 SCC OnLine SC 336.



Private Limited, has been working satisfactorily.”
(Emphasis supplied)

23. The above certificate states that the PertSol had deployed its LIMS for a lawful interception as a requirement of ‘*BSNL ILD Interception, NGN C4/C5 network for voice services Interception*’.

24. It appears that the respondent wanted to be certain that the LIMS Solution was deployed for ILD by BSNL, and not any other network and, for this purpose, sought a clarification from the petitioner vide its letter dated 14.10.2021. The respondent further called upon the petitioner to submit a copy of the Purchase Order placed by BSNL containing the detailed scope of work *inter alia*, including Technical Specifications of LIMS deployed against the said purchase order.

25. The petitioner, however, in its reply dated 21.10.2021, merely placed reliance on the BSNL certificate again. The response is reproduced hereinunder:

2.(ix)	Further, for establishing their compliance to the specified technical experience requirement of OEM as specified in clause 2.2 of Annexure-A(BDS), Vol-I of bidding documents, SILVER TOUCH in their bid have furnished certificate dated 22/07/2021 from M/s. BSNL certifying that M/s. Pert Telecom Solutions Private Limited through M/s UTStar India Limited deployed its Lawful Interception and	Tender OEM Eligibility clause (2.2 of Annexure A (BDS): The Bidder shall offer LIMS solution for ILD (Lawful Interception and Monitoring System for International Long Distance) from an OEM, whose LIMS solution for ILD must have been deployed for Telecom Service Provider domain in India within last seven (7) years. TCIL Response: We have offered LIMS solution of PertSol - iNterceptor for ILD, their LIMS solution for ILD has been deployed in Telecom Service Provider domain in India within last seven (7) years. Kindly refer to ‘Reference Certificate’ submitted in our bid to meet this eligibility clause, as per the said reference certificate
--------	---	---



NEUTRAL CITATION NO: 2022/DHC/001123

	<i>Monitoring System for Lawful Interception vide PO No.: SE/PO/001/2017-18/NGN-CS/(2.4mn) UTStar dated 02.06.2017 as requirement of BSNL's ILD interception and NGN C4/ CS network for voice services interception . However, from the said certificate, it is not possible to establish the technical experience requirement of QR as per above said clause.</i>	<i>issued by Bharat Sanchar Nigam Limited (Indian Government PSU, Telecom Service provider and licensed ILD operator in India), it certify that PertSol through UTStar Indian Limited deployed its Lawful Interception and Monitoring System for Lawful Interception as requirement of BSNL ILD Interception. The said system was commissioned in March, 2020, hence it is very explicit that PertSol has deployed its LIMS solution for ILD for Telecom Service provider domain in India within last seven (7) years from the date of bid opening.</i> <i>Tender OEM Eligibility clause (2.2 of Annexure A (BDS):</i> Which should be in satisfactory operation# for at least one (1) year as on date of bid opening mentioned above. <i>TCIL Response:</i> PertSol's LIMS for BSNL ILD Interception is in satisfactory operations for last one (1) + year as on date of bid opening. Kindly refer to 'Reference Certificate' submitted in our bid to meet this eligibility clause, as per the said reference certificate issued by Bharat Sanchar Nigam Limited (Indian Government PSU, Telecom Service provider and licensed ILD operator in India), it certify that PertSol through UTStar Indian Limited deployed its Lawful Interception and Monitoring System for Lawful Interception as requirement of BSNL ILD Interception. The said system was commissioned in March 2020, hence it is very explicit that PertSol LIMS solution for ILD Interception is operational for more than 1 year from date of bid opening. <i>Tender OEM Eligibility clause (2.2 of Annexure A (BDS):</i> A legally enforceable undertaking jointly by bidder and OEM (as per enclosed format in Section-VI, Vol.-I of bidding document) shall be furnished along with bid to guarantee quality, timely supply,
--	---	---



		performance and warranty obligations as specified for the equipment(s) and stating that the OEM shall furnish performance guarantee for an amount of 3% of the supply cost of such equipment. This performance guarantee shall be in addition to Contract Performance Guarantee to be submitted by the bidder. TCIL Response: Kindly refer to the 'Joint Deed of Understanding' submitted by us in our bid with our OEM (M/s PertSol). The JDU has been executed on Rs. 100 Stamp Paper to guarantee quality, timely supply, performance and warranty obligations as specified for the equipment(s) and stating that the OEM (PertSol) shall furnish performance guarantee for an amount of 3% of the supply cost of LIMS equipment. Tender OEM Eligibility clause (2.2 of Annexure A (BDS): Satisfactory operational#: 1) Certificate issued by the Employer (an end user) certifying the operation without any adverse remark, AND 2) For foreign OEM, the employer (an end user) shall be located in a country other than the country where product has been manufactured. TCIL Response: Kindly refer to 'Reference Certificate' dated 22/07/2021 submitted in our bid to meet this eligibility clause, as per the said reference certificate issued by 'end user' i.e. 'Bharat Sanchar Nigam Limited', it's certify that PertSol through UTStar Indian Limited deployed its Lawful Interception and Monitoring System for Lawful Interception as requirement of BSNL ILD Interception. The said system was commissioned in March 2020 and since then it is running satisfactorily.
--	--	--



NEUTRAL CITATION NO: 2022/DHC/001123

26. Not being satisfied with the response, the respondent, vide its letter dated 12.11.2011, again called upon the petitioner to supply the Purchase Order placed by BSNL on PertSol.

27. As the petitioner was not in a position to supply the same to the respondent, there being an objection of confidentiality raised by BSNL, the respondent, vide its letter dated 03.12.2021, requested confirmation of compliance with Clause 2.2 of the QR in form of a self-declaration from the petitioner. The petitioner replied to the same vide its letter dated 07.12.2021. Flag – A, the prescribed proforma and the comment of the petitioner thereon, is reproduced herein below:

Flag-A

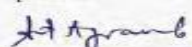
**Confirmation of details against PO no. SE/PO/001/2017-18/NGN-C5(2.4 mn)
UTStarcom dated 02.06.2017 of BSNL.**

Package Name: Package LIMS-ILD under Establishment of Lawful Interception and Monitoring System (LIMS) for providing international Long Distance (ILD) connectivity

Bidder: M/s Telecommunications Consultants India Limited

SI No.	Credentials to be Confirmed	Details/ Confirmation	Comment/Description
a.	Whether the Lawful Interception and monitoring Systems of M/s Pert Telecom Solutions Private Limited executed against PO No. SE/PO/001/2017-18/NGN-C5(2.4mn) UTStarcom dated 02.06.2017 of BSNL is deployed for BSNL's International Long Distance (ILD) network.	Yes: ☒ No: ☐ (Please tick the correct answer)	We request you to kindly refer to reference certificate dated 22-07-2021 issued by BSNL and submitted along-with our bid, the first paragraph clearly mentions that M/s Pert Telecom Solutions Private Limited has deployed its Lawful interception and monitoring system for BSNL ILD interception.
b.	Whether the said Lawful Interception and Monitoring system of M/s Pert Telecom Solutions Private Limited deployed for BSNL's International Long Distance (ILD) network is compliant with TEC GR No. GR/IPLC-01/01 July 2007	Yes: ☒ No: ☐ (Please tick the correct answer)	PertSol Lawful Interception and Monitoring Solution deployed at BSNL for NGN C5 and ILD Interception complies to relevant TEC GRs and ETSI standards.

Further, we would like to mention that as per the Tender's QR criteria for LIMS OEM i.e. clause 2.2, we have already submitted a reference certificate dated 22-07-2021 along with our bid, this reference certificate has been issued by BSNL, a public sector undertaking. The SOW i.e. ILD interception, is explicitly mentioned in this certificate. Moreover, the certificate also confirms that the system was commissioned in March 2020 and has been working satisfactorily since then. Hence, the furnished reference certificate fully meets the OEM eligibility criteria as per Tender's Clause 2.2 of QR. We are re-enclosing BSNL Client certificate herewith this response for your kind perusal.

Signature: 
Name: Amit Kumar Agrawal
Designation: Joint General Manager (IT & BD)
Date: 07-12-2021
Seal: 
For and on behalf of M/s. Telecommunications Consultants India Limited



28. A reading of the above would show that the petitioner has stated that the LIMS deployed at BSNL *‘for NGN C/5 and ILD interception complies with relevant TEC GRs and ETSI Standards’*.

29. Learned counsel for the petitioner has submitted that these Standards were prescribed in the tender documents issued by the BSNL at Serial No(s). 16 and 17 of Section 3, Part D, ‘List of TEC GRs (Technical Specifications)’, as reproduced hereinabove.

30. On the other hand, the learned senior counsel for the respondent, has placed reliance on Clause 1.10 of Volume II – Technical Specification for Package LIMS – ILD forming part of the Invitation to Bid floated by the respondent, to submit that the bidder was required to comply with a particular Telecommunications Engineering Centre (‘TEC’) Quality Regulation and the amendment thereto, and the same is different from what was prescribed by BSNL at Serial No(s). 16 and 17 referred to hereinabove.

31. In absence of any material to the contrary placed by the petitioner on record, it appears that the objection raised by the respondent deserves acceptance. The TEC-GR, referred to in the tender document of BSNL relates to *‘Lawful Interception System for PSTN’*, that is, *‘Public Switched Telephone Network’*, while the one prescribed by the respondent in its Technical Specification was specifically for International Private Leased Circuit (‘IPLC’); the two being different systems. The petitioner has not been able to show before us that the LIMS offered by it through its OEM supplier has been deployed successfully in the IPLC scenario. The petitioner has also not been able to establish the same nor that the QR prescribed by BSNL was an amendment to the QR stipulated by the respondent in its tender document.



32. In view of the above, we find that the respondent has given an adequate opportunity to the petitioner to satisfy the respondent that it complies with the Qualification Requirement as prescribed by the respondent in the tender document.

33. In fact, as suggested by the learned counsel for the petitioner and admitted by the learned senior counsel for the respondent, the respondent even deputed its officer to visit BSNL so as to satisfy itself of the system deployed in BSNL. Learned senior counsel for the respondent submits that even that did not give any clarity to the respondent on the system supplied by PertSol to BSNL. The respondent, therefore, cannot be complained of having acted out of haste, or in an arbitrary manner.

34. The requirements in letters dated 14.10.2021, 12.11.2021, and 03.12.2021 were not additional in nature, but were merely giving an opportunity to the petitioner to satisfy the respondent of its compliance with the Qualification Requirement.

35. In view of the above, the judgment of this Court in *Orion Security Solutions Pvt. Ltd.* (supra) and of the Supreme Court in *Dutta Associates Pvt. Ltd.* (supra) can be of no avail of the petitioner. The decision of the respondent declaring the petitioner's bid as "non-responsive" cannot be termed as arbitrary, nor any new condition was imposed by the respondent on the petitioner after the floating of the tender documents.

36. Similarly, the decision of this Court in *IVRCL Infrastructures & Projects Ltd.* (supra) has no application to the facts of the case, as the compliance with the TEC QR stipulated in the tender document cannot be termed as a minor condition that can be ignored in the evaluation of the tender document.



37. We may herein also note that the decision of the respondent has also been affirmed by the Independent External Monitors. They have opined that the petitioner was rightly declared as technically unresponsive in the bid by the respondent. The relevant quotation from the opinion has been reproduced hereinabove.

38. In *N. G. Projects Ltd.* (supra), the Supreme Court has reiterated that the Courts must realise their limitations while testing issues involving technical aspects. The employer of the project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The satisfaction, whether a bidder satisfies the tender condition, is primarily upon the authority inviting the bids. Where the Technical Evaluation Committee was not actuated by extraneous considerations or *mala fide*, its conclusions cannot be interfered with by the Court merely because they were not to the liking of the writ petitioner. We may quote from the judgment, as under:

“ 22. *The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e., not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona-fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.*

23. *In view of the above judgments of this*



Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

39. In view of the above, we find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

VIPIN SANGHI, ACJ

MARCH 23, 2022
RN/P