



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14th OCTOBER, 2022

IN THE MATTER OF:

+ **W.P.(C) 6733/2022 & CM APPL. 20428/2022**

HARSHIDHI SECURITY SERVICES

..... Petitioner

Through: Mr. Prashant Mehta and Ms.
Charanpreet Singh, Advocates

versus

DELHI DEVELOPMENT AUTHORITY (DDA) Respondent

Through: Mr. Sanjay Katyal, Standing Counsel
for DDA with Mr. Adab Singh
Kapoor and Mr. Nihal Singh,
Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition under Article 226 of the Constitution of India has been filed challenging the Order/Notification bearing No.F6(35)A/PD-4/DDA/2022/119 dated 21.04.2022 issued by the Respondent cancelling the Notice Inviting Tender (NIT) bearing No.12/EE/PD-4/DDA/2021-22 dated 26.02.2022.
2. Shorn of details, the facts leading to the instant writ petition are as under:



- a) The Petitioner is a partnership firm registered under the provisions of the Indian Partnership Act, 1932 and is engaged in carrying out the business of providing security guards, security supervisors, Gunmen, labour supplies placement, labour contractor, mechanized housekeeping, cleaning services and manpower Consultant and Consultancy Services etc.
- b) The Respondent/DDA invited e-bids from the eligible bidders *vide* Notice Inviting Tender (NIT) bearing No.12/EE/PD-4/DDA/2021-22 dated 26.02.2022 for allotment of tender from specialized agencies, who have a valid license under the Private Security Agencies Regulation Act (PSARA), 2005, for providing round the clock security guards for watch and ward for sites and office complexes under the flyovers (specialized work). The estimated cost of the work was Rs.1,17,96,435/- for 365 days.
- c) The Petitioner was one of the bidders for the aforesaid tender issued by the Respondent. The Petitioner submitted all the required documents and also submitted the quoted amount of Rs.1,12,40,822.91/- *vide* letter dated 23.03.2022 to the Respondent.
- d) It is stated in the writ petition that other entities have also participated in the aforesaid tender. The tender amounts quoted by the entities, namely, M/s Star Security and Placement services, M/s Friends Detective Security Services, M/s. Kushal Suraksha and Allied Services Pvt. Ltd., M/s. Rakshak Securities Pvt. Ltd. and M/s Stallion Security were Rs. 88,00,140.51/-, Rs.88,00,140.51/-,



Rs.88,47,326.25/-, Rs.88,74,458.05/- and Rs.88,87,434.13/- respectively.

e) It is stated in the writ petition that all other entities quoted amounts much lesser than what is permissible i.e., amounts quoted by all other entities were lesser than the legal requirement of minimum wages to be paid to skilled category workmen.

f) It is further stated that the Respondent had neither awarded the tender nor cancelled it. Aggrieved by the same, the Petitioner filed a petition bearing W.P.(C) 6475/2022 before this Court praying that the tender should be awarded to the Petitioner herein who was the only responsive bidder in the tender as other entities had quoted the amounts below legal requirement of minimum wages payable to a worker under a skilled category. The advance notice was served upon the Respondent on 19.04.2022.

g) During the pending of the petition, the Respondent cancelled the tender *vide* Order/Notification bearing No. F6 (35) A / PD-4 / DDA /2022/119 dated 21.04.2022 without awarding it to the Petitioner herein.

h) Due to the cancellation of the tender, the said petition was withdrawn with liberty to file a fresh petition challenging the cancellation of tender *vide* Order/Notification bearing No.F6(35)A/PD-4/DDA/2022/119 dated 21.04.2022 issued by the Respondent.



3. The Petitioner, thereafter, filed the instant writ petition challenging the Order/Notification bearing No.F6(35)A/PD-4/DDA/2022/119 dated 21.04.2022 issued by the Respondent cancelling the Notice Inviting Tender (NIT) bearing No.12/EE/PD-4/DDA/2021-22 dated 26.02.2022.
4. Notice was issued in the present petition on 28.04.2022. Counter affidavit has been filed on behalf of the Respondent.
5. It is submitted by the learned counsel for the Petitioner that the cancellation of the tender is completely arbitrary and bad in law. It is further submitted that the Petitioner's bid was the only responsive bid and the tender has been cancelled by the Respondent only to defeat the legitimate right of the Petitioner.
6. It is submitted by the learned counsel for the Petitioner that the estimated cost of the work as calculated by the Respondent amounts to Rs.1,17,96,435/-, and the Petitioner, after taking into account the minimum wages payable to a worker under the skilled category, quoted Rs.1,12,40,822.91/-. The other entities participating in the tender had quoted bids which were below the minimum wages payable to a worker under the skilled category, thereby rendering their bids unresponsive. Therefore, the Petitioner ought to have been granted the contract.
7. In the counter affidavit, it has been stated that technical bids were received from nine parties/tenderers. On 17.03.2022, during the process of scrutiny of the technical bids, the Respondent found that the documents of three parties to be not conforming to the pre-requisites of the tender. On 19.03.2022, the Respondent opened the financial bids of the remaining six entities/tenderers and the same was made available to be viewed by the



bidders. On 25-26.03.2022, it was noticed by the Respondent that as per the conditions in the NIT, the bidder ought to quote the rate considering the minimum wages as per the circular issued by GNCTD. However, it was not clearly mentioned under which category i.e. semi-skilled or skilled, the security guards be considered. On 28.03.2022, the Respondent received a representation from M/s Friends Detective Security (one of the six qualified bidders), which relied upon a Government Notification bearing No.SO 2232(E) & 2233 dated 18.09.2008 and a schedule of quantity (forming part of another NIT of DDA) to contend that the security guards without gun for watch and ward would fall under the semi-skilled category. It is stated that on 28.03.2022 itself, it was decided by the Respondent to seek clarification with respect to the categorization of security guard from GNCTD. On 16.04.2022, in view of the ambiguity in the condition in Notice Inviting Tender (NIT) leading to the lack of clarity to the contractors, it was decided by the Respondent to recall the tender. On 18.04.2022 while accepting the recommendation, the accepting authority decided to recall the tender.

8. On 06.07.2022, the Respondent DDA has produced the original files before this Court which deals with the cancellation of the tender.

9. Heard Mr. Prashant Mehta, learned counsel for the Petitioner, Mr.Sanjay Katyal, learned Standing Counsel for the Respondent, and perused the material on record.

10. Learned counsel for the Petitioner draws attention of this Court towards Schedule - E of the Tender wherein it is stated that the estimated cost for providing round the clock security guards for watch and ward for sites and



office complexes under the flyovers (specialized work) was Rs.1,17,96,435/- for 365 days.

11. Learned counsel for the Petitioner also draws attention of this Court towards the Schedule of Quantity which reads as under:

SCHEDULE OF QUANTITY

N.O.W.- M/O completed scheme under Flyover.

S.H.:- Providing round the clock security guard for watch & ward for sites, office complexes under Flyover. (Specialized work)

S. No	DESCRIPTION OF ITEMS	QTY	UNIT	RATE	AMOUNT
1	Providing round the clock security guard without gun for watch & ward of Government premises and its all belongings by deploying neatly dressed security guards in 8 hour's shift including necessary T&P like torch, lathi and uniform etc. complete as per the direction of Engineer-in-charge. (One job means 8 hour's	10950.00	Each job.	1077.30	11796435



	duty).				
	TOTAL AMOUNT				11796435

Conditions:-

- 1) The above rate includes provision of GST and Cess. Therefore, the bidder is required to quote the rate accordingly. However, the bidder should quote rate considering minimum wages as per GNCTD plus GST & Cess.
- 2) Payment to be done through electronic mode in the bank accounts of Security Guards & proof.
- 3) Security Guards will be deployed in PD-1, 2 ,3, 4 & as per requirement and direction of Engineer-in-charge."

11. Learned counsel for the Petitioner further draws attention of this Court towards a letter dated 18.08.2021 regarding classification of labour and points out that the security guard without gun (8 hours shift duty per day) comes under skilled category. He, therefore, states that the services of security guard without gun would come under the skilled category and, therefore, there was no ambiguity regarding the category of the person to be engaged. He further states that Petitioner has quoted the amount after taking into account the minimum wages payable to a skilled category. He states that the bids submitted by all other bidders were below the minimum wages payable to a skilled category worker. He, therefore, states that in the absence of any ambiguity in the tender regarding the category of worker, the tender ought not to have been cancelled and the same should have been awarded to the Petitioner herein.

12. Learned counsel for the Petitioner states that since the security guard



(watch and ward) staff belongs to the skilled category worker, they cannot be paid lesser than the minimum wages payable to a skilled worker. Therefore, the reason given by the Respondent in its counter affidavit regarding the ambiguity of the category of the worker cannot be accepted.

13. *Per contra*, learned counsel for the Respondent/DDA draws attention of this Court towards the file notings wherein it is noted that the NIT and BOQ do not clearly mention under what category would security guard fall as per the minimum wage circular issued by GNCTD. The file notings also indicates that after taking into account the nature of work i.e. watch and ward, it is more close to a semi-skilled category and as per the minimum wages payable to semi-skilled category, the amount comes to Rs.88,87,239/-. The office notings further indicates that out of six agencies/tenderers, the Petitioner and one M/s Stallion Security had quoted above the desired amount i.e. Rs.88,87,239/-. The office notings further indicates that from the scrutiny of the case, it was noticed that there is an ambiguity in the tender document as to whether under which category the worker would fall i.e. under a skilled category or a semi-skilled, and since there was an ambiguity regarding the category of worker, a clarification was sought from the Labour Department, GNCTD regarding the category of security guards. The office notings further indicates that due to the ambiguity regarding category of worker, the tender was recalled by the Respondent/DDA.

14. Learned counsel for the Respondent/DDA further states that one of the bidders, namely, M/s Friends Detective Security Services had also filed a Schedule of Quantities for engagement of Firm/Agency for watch and Ward of UER-III Road from Mohammad Pur Mazri Road to Western Yamuna



Canal which reads as under:

"SCHEDULE OF QUANTITY"

Name of Work:- A/R & M/o Completed scheme (UER-I,II & III) for the year 2021-2022.

Sub Head.:- Engaging of Firm/Agency for watch and Ward of UER-III Road from Mohammad Pur Mazri Road to Western Yamuna Canal.

S. No.	DESCRIPTION OF ITEMS	QTY	UNIT	RATE	AMOUNT
<i>1</i>	<i>Providing round the clock security guard without gun for watch & ward of UER-III Road/DDA by deploying neatly dressed security guards in 8 hour's shift including necessary T&P like torch, lathi and uniform etc. complete as per directions of Engineer-in-charge. (One job means 8 hour's duty). (wages for Security Guard are as for Semi-Skilled</i>	<i>2190</i>	<i>Each job.</i>	<i>1077.30 (Rs. One Thousand Seventy Seven & Thirty Paise Only)</i>	<i>23,59,287.00</i>



	<i>Category)</i>				
	<i>Total</i>				23,59,287.00
	<i>Cost Index @ - 1%</i>				-23,593.00
	<i>Total</i>				23,35,694.00

The portion in bold is missing in the Schedule of Quantity in the present tender.

15. Learned counsel for the Respondent/DDA states that it is clear from the above Schedule of Quantity that the security guard without gun for watch & ward comes under a semi-skilled category. He, therefore, states that there is a clear discrepancy in the Notice Inviting Tender (NIT) which did not specify as to whether under which category the worker would fall i.e. under a skilled category or a semi-skilled category. He states that most of the bidders/tenderes participating in the tender had submitted their quotations after taking into account the category of worker as a semi-skilled category which rendered their bids unresponsive. He, therefore, states that the Petitioner herein should not be given benefit of the ambiguity in the Notice Inviting Tender (NIT). He further states that the Respondent will end up paying substantial amount of money due to ambiguity in the tender.

16. Heard learned counsel for the Parties and perused the material on record.

17. This Court has perused the file notings which deal with the cancellation of tender. The file notings read as under:



As per the condition in the NIT in BOQ & on Special Condition mention at Page-105 i.e. "The bidder should quote rate considering minimum wages as per circular issued by GNCTD including GST & Cess. The quoted rate should not include EPF, ESI and Bonus (as applicable) payable under respective statutes. In the case of quoting the rates below than the minimum wages of GNCTD including GST & Cess, the same shall be summarily rejected". However, it is not clearly mention under which category (semi-skilled or skilled) security guard should be considered as per minimum wage circular by GNCTD. Furthermore, the nature of work i.e. watch and ward is more close to semi-skilled category. Accordingly total amount as per the semi-skilled category comes to Rs.88,87,239/- as per the above condition, with the details as under:

(CP 137.3)

Minimum wages of GNCTD (Semi skilled)	=	Rs.681.09	A
Add 18% of GST on A	=	Rs.122.58	B
TOTAL(A+B)	=	Rs.803.58	C
Add 10% of cess on C	=	Rs.80.36	D
TOTAL(C+D)	=	Rs.881.62	E
TOTAL amount (Qty x Rate i.e. 10950 x 811.62)	=	Rs.88,87,239/-	

The rates quoted by all the six agencies are as given below:

S. No.	Name of Agency	Quoted Percentage	Quoted Amount
1	Kushal Sanshodhan And Allied Services Pvt. Ltd.	-25.00%	Rs.88,87,326.25
2	Rajshat Securities Pvt. Ltd.	-24.77%	Rs.88,74,458.05
3	Hanshidhi Security Services	-4.74%	Rs.112,40,822.91
4	Friends Detective Security Services	-25.40%	Rs.88,00,140.51
5	Stallion Security	-24.66%	Rs.88,87,434.13
6	Star Security and Placement Services	-25.40%	Rs.88,00,140.51

Accordingly out of above six mentioned agencies, four agencies i.e. at S.No. 1, 2, 4 & 6 quoted the amount below the desired amount i.e. Rs.88,87,239/- Hence bid of these four agencies may not be considered as per the NIT clause. Further two agencies i.e. S. No. 3 & 5 quoted the amount above the desired amount i.e. Rs.88,87,239/- Hence bid for these two agencies may be considered, detail are as under:-

S. No.	Agencies	Quoted Percentage	Quoted amount	Remarks
1	M/s Stallion Security	-24.66	Rs.88,87,434.13	L1
2	M/s Hanshidhi Security Services	-4.74	Rs.112,40,822.91	L2

Justification statement has been prepared based on applicable minimum wages GNCTD (semi-skilled) which comes out to be Rs.102,87.33%. The amount quoted by L-1 (M/s Stallion Security) agency is Rs.88,87,434/- which is 24.66% below the estimated cost put by the tender and 15.61% below the justified amount, which is a competitive and the work may be awarded to the L-1 (M/s Stallion Security) as its quoted amount.

Executive Engineer (P)
Diary No. 96
Date 28/8/22
Project Civil Circuit, B.D.A.

पिस खर्च 'X' 'Y' अतः NP-5, accordingly approval may be accorded to award the work to agency (M/s Stallion) as per terms & conditions of NP at its reduced rate.

SE/P-1
28/8/22
मिल्ली निवास अधिकरण

वृद्ध 7-53 (मालिक) अग्रिम NP-6/71
7-ब्लॉक निवास

EE/PD-4 has proposed the justification of Rate 5 considering the Security Guard (without Gun) the Semi-Skilled category.

In view of above, clarification is required from Labour Department, MCTD regarding the category of Security Guard whether it falls in Skilled category or Semi-skilled category.

Quinnville at 11:00

7-1-22
201/03/2022
EE(P) PCC-1

~~SE/PCC~~ In view of above, please classify the
Category of Security Guard in GNETD.

India

28/03/2022

EB-1D-4-

22/10-4
A letter was sent to office of Labour Commissioner (NCTD) vide letter No. P4CWS/MISC/CB/PO-4/DOA/2022/99 dtd: 23-09-22 for clarification of minimum wages of SE without GWD. Accordingly letter from additional commissioner labour (NCTD) received and placed at CP 577 in which category of SA (without GWD) is not specifically mentioned. So there is ambiguity in condition due to which there may not be clarity to the contractors while awarding their salary. Hence to avoid any undue benefit to any agency & due to ambiguity it is recommended to reject the tender & to invite the tenderer not mentioning any ambiguity.

Executive Engineer (P)
 Diary No. 95
 Date 18/4/2000
 Project Civil Works, DDA
 A

Handwritten note: "Tender may be" (partially obscured)



recalled based on latest information received by
 Dy CAO (R&R) dt 11/2/2022
 EB/PD-4.

7/4
 18/04/2022

PIS put up tender cancellation letter to upload on
 tender website.

letter has been pickup for signature.
 21/04/22

19/04/22

21/04/22

21/04/22

21/04/22

दिल्ली विकास प्राधिकरण



18. The powers of judicial review and the scope of interference by Courts in matter relating to tender is well settled. It has been held repeated times by the Apex Court and several High Courts that interference by Courts regarding tender matter is warranted only if decisions taken by the State is so arbitrary or unreasonable that requires judicial scrutiny or that the decision taken by the authority is accentuated by malafides to favour a particular party.

19. In Michigan Rubber (India) Ltd. vs. State of Karnataka, (2012) 8 SCC 216, the Apex Court after referring to a number of judgments has summarised 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 the 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 the 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 a 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 the negative, then there should be no interference under Article 226. "

20. In Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818, the Apex Court has observed as under:



"11. Recently, in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)* [*Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)*, (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] 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. Port of Bombay* [*Dwarkadas Marfatia and Sons v. Port of Bombay*, (1989) 3 SCC 293] it was held that the constitutional courts are concerned with the decision-making process. *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] 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* [*Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517] as mentioned in *Central Coalfields* [*Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)*, (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] .

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.

21. In Municipal Council, Neemuch v. Mahadeo Real Estate, (2019) 10 SCC 738, the Apex Court has observed as under:

"14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of "Wednesbury unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

xxx xxx xxx

16. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice."



22. This Court has gone through the file notings and the same have been extracted above. A perusal of the office notings shows that there was a genuine doubt with regard to the categorization of the worker as to whether the security guards without gun for watch & ward would come under a skilled category worker or a semi-skilled category.

23. Learned counsel for the Petitioner has drawn attention of this Court towards a letter dated 18.08.2021 wherein comments were invited by the CPWD on the classification of labour taken in DSR 2021 and DAR 2021. The Annexure-I of the said letter i.e., a table showing the type of labour and their category as per the minimum wages notification issued by Ministry of Labour, in which the Security Guard without gun (8 hours shift duty per day) has been shown as a skilled worker. The said letter also clarifies the scope of skilled and semi-skilled occupation which reads as under:

"(u) "skilled occupation", means an occupation which involves skill and competence in its performance through experience on the job or through training as an apprentice in a technical or vocational institute and the performance of which calls for initiating and judgement

(t) "semi skilled occupation" means an occupation which in its performance requires the application of skill gained by the experience on job which is capable of being applied under the supervision or guidance of a skilled employee and includes supervision over the unskilled occupation."

24. The file notings indicate that there was an ambiguity as to whether the Security Guard without gun (8 hours shift duty per day) performs a job of a skilled worker or a semi-skilled worker.



25. As stated already, it is well settled that Courts must be slow in interfering matters relating to tender. The Courts must not use a magnifying glass while scanning the tenders to make every small mistake appear like a big blunder.

26. In Silppi Constructions Contractors vs. Union of India, (2020) 16 SCC 489, the Apex Court, after considering previous judgments, has observed 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."

27. The Judgment of Silppi Constructions Contractors vs. Union of India (Supra) has further been followed by the Apex Court in N. Ramachandra Reddy v. State of Telangana, (2020) 16 SCC 478.

28. Learned counsel for Respondent/DDA has drawn attention of this Court towards another tender for engagement of Firm/Agency for providing round the clock security guard without gun for watch & ward of UER-III Road from Mohammad Pur Mazri Road to Western Yamuna Canal for DDA, wherein in the Schedule of Quantity it is clearly mentioned that security guard without gun for watch & ward would come under a semi-skilled category. This portion as stated above is missing in the present tender.

29. In the instant tender documents, the clarification regarding the category



of security guard without gun for watch & ward is not available and it was left for bidders to contemplate this and decide for themselves as to whether the security guards will fall in skilled category or unskilled category. Consequently many bidders have submitted their bids on the assumption that the workmen would belong to the minimum semi-skilled worker category. In view of the above, the Respondent/DDA was well within its right to cancel the tender.

30. Though, it has been contended by the learned counsel for the Petitioner that the tender was cancelled by the Respondent/DDA only to extend benefit to the existing contractor, the said argument does not cut any ice as there is nothing on record to substantiate the said argument.

31. As the Respondent/DDA has cancelled the tender owing to the ambiguity in the tender, this Court does not find any reason to interfere with its decision. Nothing prevents the Petitioner herein from participating in the subsequent tender which has already been floated by the Respondent/DDA.

32. With these observations, the instant petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

OCTOBER 14, 2022

S. Zakir