



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 16.11.2021

% Judgment delivered on: 19.05.2022

+ W.P.(C) 5868/2021

AYESA INGENIERIA Y ARQUITECTURA S.A.U Petitioner
Through: Dr. Amit George, Mr. Priyabrat Tripathy,
Mr. Amol Acharya, Mr. Rayadurgam
Bharat, Mr. P. Harold, Mr. Ayush Acharjee
and Mr. Dorab Sabharwal, Advs.

versus

RAIL VIKAS NIGAM LIMITED Respondent
Through: Mr. Udit Seth and Mr. Anil Seth, Advs. for
R-1
Mr. Prashant Kumar Nair, Adv. for R-2

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J.

1. The present petition has been filed by the petitioner seeking amongst others the following relief:

“i) Issue a Writ/Order/Direction in the nature of mandamus and direct the Respondent to provide clarifications on the basis of which it has awarded a technical mark of 9245.35 to the Petitioner.

ii) Issue a Writ/Order/Direction in the nature of mandamus and direct the Respondent to issue a fresh evaluation of final markings of the Petitioner by considering the Lucknow project of the Petitioner as two separate projects as per the terms of the RFP.



iii) To quash the Letter of Award dated 16.05.2021 issued by the Respondent if "Yuksel Proje India - Tumas India JV" does not come out to be the most successful bidder after a fresh evaluation of the final markings of the Petitioner; ”

2. The case of the petitioner is that the petitioner is a company incorporated under the laws of Spain. In accordance with the Companies Act, 2013, the petitioner has set up and is operating its branch at D-99, 4th Floor, Sector-2, Noida, Uttar Pradesh – 201301. The respondent No.1/ Rail Vikas Nigam Ltd. is a company incorporated under the Companies Act, 1956 and is a wholly owned subsidiary of Ministry of Railways, Government of India.

3. The petitioner is engaged in the business of design consulting and project management of projects including projects of urban mass transport. On 02.12.2019 the respondent No.1 issued a Request for Proposal (RFP) from experienced and reputed Consultants to provide General Consultancy cum Project Management Consultancy (GC cum PMC) Services for: Construction of Elevated and Underground Metro Railway works from Mominpur (Ex.) to Esplanade, approx. 5.30 Km in connection with Joka - BBD Bag Metro Corridor, in the state of West Bengal, India (hereinafter called the “Project”). The RFP was revised in June 2020.

4. The RFP was based on “Quality and Cost Based Selection” (QCBS) process. It is submitted that in QCBS, bids the successful bidder is selected on the basis of marks given for both – technical experience, as well as financial quote. As per the RFP, 80% weightage was reserved for technical bid score, and 20% weightage was reserved for financial bid score. The bidder getting the highest combined marks would be considered for award of



the project. Since the scope of the Project included performance of GC Cum PMC, the bidders were required to possess the experience of both GC and PMC in past projects. Clause 5.7.2.2.3 of the RFP prescribed “Hurdle Criteria” under which bidders were supposed to possess past experience as both: (i)GC and (ii)PMC in similar projects.

5. The bidder was to be evaluated on a maximum of 10000 marks in accordance with Clause 5.7.2.3 of the RFP. Marks were to be awarded in the following manner:

"The following three criteria shall be used to evaluate the technical proposals for assessing the technical scores:

- (i) Experience of similar work (3000 for GC + 1000 for PMC),*
- (ii) Average Annual Consultancy Turnover (1500 marks),*
- (iii) Qualification and Experience of Key Personnel (Expat for consultancy services (4500 marks))"*

6. The petitioner submits that in a pre-bid meeting, a specific question was asked regarding execution of work relating to twin tunnel, to which the respondent No.1— rather than giving clarification, merely referred to the terms of the revised RFP.

7. The RFP also mandated the prospective bidders to submit a self-evaluation of marks for their respective technical experience in the prescribed format.

8. The petitioner submitted its bid for the Project on 30.07.2020. Having past experience, under Hurdle Criteria, the petitioner, in its bid, submitted the experience certificates of Lucknow GC and Panama-I projects, which are both GC cum PMC projects, and Panama-2 project which is a purely PMC



project. As per self-evaluation, the petitioner claims that it should have been awarded 9935.63 marks out of 10000 marks.

9. After submission of the bid of the petitioner, the respondent No.1 sought several clarifications on various aspects from the petitioner which were duly supplied. As per the petitioner, the Lucknow project executed by the petitioner was a twin tube tunnel project with a continuous underground stretch of 4.5 km. with finished cross section of more than 24 sqm.. As per the petitioner, the Lucknow project should be considered as two separate projects as per Note (c) appended to Clause 5.7.2.2.3 of the RFP, which is reproduced a little later in this judgment.

10. On 18.03.2021, the respondent No.1 declared the technical marks awarded to the five eligible bidders, wherein the petitioner was awarded 9245.35 marks, instead of 9935.63 – as self evaluated by the petitioner. The petitioner was awarded 2400 marks, for the component of completed GC project by the respondent No.1. The petitioner claims that it was entitled to award of 3000 marks under the said head based on its past experience. Since the financial quote of the petitioner was the lowest amongst all the eligible bidders, (17.53 crore lesser than the L1 bidder declared by the respondent No.1 upon application of the QCBS Process), the petitioner is aggrieved and submits that if the petitioner would have been awarded 9935.63 marks in the technical evaluation process, the petitioner would have had a final score of 99.22%, as the petitioner was awarded 600 marks for being the lowest financial bidder. This marking would be higher than the final marking of Yuksel Proje India - Tumas India JV (95.41 %), which has been issued Letter of Award (LoA) by the respondent No.1. Since no reason



was given, the petitioner conjures that the respondent No.1 had considered the twin tube Lucknow project as a single project, instead of two separate projects.

11. The petitioner sent letters dated 05.04.2021 and 23.04.2021 to which no response was received. It is only on 25.05.2021 that the petitioner got to know that the respondent No.1 had issued LoA in favour of Yuksel Proje India - Tumas India JV. It is in this view of the matter that the present petition was filed as, according to the petitioner, the respondent No.1 has wrongly considered the Lucknow twin tube project as a single project, instead of two separate projects in terms of RFP.

12. When the matter came up before this Court on 04.06.2021, we, while issuing notice, directed filing of the counter-affidavit within 4 weeks, and also directed that the petitioner to implead Yuksel Proje India – Tumas India JV as a party respondent.

13. Before we proceed further, and to be able to appreciate the submissions of the parties, we consider it essential to set out the relevant clauses of the NIT hereinbelow:

***“5. 7 .1 System of Evaluation of Proposals
Hurdle criteria and Quality & Cost Based Selection (QCBS)
method shall be used to evaluate the Consultancy proposals. The
consultants who submit substantially responsive proposals
conforming to the RFP shall be taken up for further evaluation
as per clauses 5.7.2 to 5.7.4.***

5. 7 .2 Evaluation of Technical Proposals



5. 7 .2.1 Each substantially responsive proposal shall be evaluated to ascertain whether it fulfills the Hurdle Criteria as specified in clause 5.7.2.2 below.

5.7.2.2 HURDLE CRITERIA

Criteria Requirement	Compliance Requirements				Documents Submission Requirements
		Joint Venture			
	Single Entity	All Partners Combined	Other Partner	Lead Partner	
5.7.2.2.1 Net Worth					
Submission of audited balance or, if not required by the law of the Consultant's country, other financial statements acceptable to the Employer, for the last three years to demonstrate the current soundness of the Consultants financial position and its prospective long-term profitability. As a minimum, the Consultants net worth calculated as difference between total assets and total liabilities should be positive for each of the last three years.	Must meet requirement	Not applicable	Must meet requirement	Must meet requirement	Form TECH - 15
5.7.2.2.2 Average Annual Consultancy Turnover					
Minimum average annual consultancy turnover of INR 82.46 Cr calculated as total certified consultancy payments received for contracts in progress or completed, within the last three years. Notes: (i) If the balance sheets of the consultant or any of its constituents is in the currency other than INR, the same shall be converted to INR as per Note (h) below the table. (ii) If the Indian company is using the credential of parent/ holding Company whose balance sheet is in other than INR, then also conversion shall be done as per Note (h) below the table.	Must meet 100% of the requirement	Must meet 100% of the requirement	Must meet 10% of the requirement	Must meet 70% of the requirement	Form TECH - 16
5.7.2.2.3 Contracts of Similar work of size and nature					
Criteria Requirement	Compliance Requirements				Documents Submission Requirement
	Single Entity	Joint Venture			
		All Partners Combined	Other Partner	Lead Partner	



					s
The Consultant should have completed / substantially completed following two assignments i.e. (i) and (ii) in the last 10 years before the deadline for submission of the proposals in India or elsewhere with minimum total value of the fee received in assignments (i) and (ii) below combined should be INR 43.29 Crores.					
Criteria Requirement	Compliance Requirement				Documents submission requirements
	Single Entity	Joint Venture			
		All Partners Combined	Other Partner	Lead Partner	
(The works / assignments executed as sub-consultant or associates shall not be considered under this criteria) i. Any assignment of General Consultancy which includes the services of (a) Preparation of preliminary design & drawings. (b) Preparation of bid design and bid documents for "Design & build" contract package. (c) proof check of detailed design/ drawing. & (d) assisting evaluation of bids invited by the Employer. The above assignments (a) to (d) have to be in the fields of Civil Engineering structures, Electric traction & distribution, underground section Ventilation and Air Conditioning for Railway/ Metro Railway Project involving minimum 3.0 km continuous tunnel with finished cross-section of 24 sqm or more designed and constructed with TBM and/ or cut & cover in station portion as note "p" below in this table. ii. At least one assignment which includes Project Management Consultancy (PMC) services/ Services of Independent Engineer or Similar services where the services under the assignment must include construction supervision / performing Role of an Engineer for Railway/ Metro Railway for the minimum value of 21.65 Cr. (Duly updated and converted as per Note (i) below the table) Notes: p) Services stated from (a) to (d) in the criteria requirement are for Railway /Metro Railway project involving the specified tunnel length & cross section in the field of Civil Engineering structures, Electric traction & distribution, Underground section Ventilation & Air Conditioning. The above criteria may be met through completed/ substantially completed single assignment or combining more than one assignments. When	Must meet both (i) and (ii)	Must meet both (i) and (ii)	Must meet (ii)	Must meet (i)	Form TECH-28 and Form TECH- 29



different assignments are combined, it should ensure all activities of (a) to (d) are to be met for the stated category of project in the above stated fields.					
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Note:

(a) The contract should have been completed within this period irrespective of date of start.

(b) In case both the assignments required under (i) & (ii) above are being met through single contract the same shall also be considered for meeting requirement under clause 5.7.2.2.3.

(c) In case of twin tube tunnels, each tube will be considered separate subject to each tube fulfilling the stipulated criteria as of minimum 3.0 Km continuous underground length.....

(d) The GC/ PMC/ Independent Engineer Contract shall be treated as completed as on the date of commissioning of the project (excluding defect liability/ maintenance period) or satisfactory completion of the contracted serviced as certified by the Employer

(e) Any contract of such GC/Project Management Consultancy Services/ Services of Independent Engineer shall be treated as substantially completed if the consultancy fee received under the said contract is at least 80% of the contract value. The consultancy fee so received should be equal to or more than the minimum value stated above.

(f) In case a JV quoting for the consultancy proposal has executed similar work specified in 5.7.2.2.3 with the same constitution of JV, the requirement specified to be met under sub clause 5.7.2.2.3 shall be evaluated considering the JV as a single entity for this purpose.

(g) For the purpose of value of work experience of a firm in a JV in sub clause 5.7.2.2.3 and for past experience of assignment in sub clause 5.7.2.2.3, credit shall be given for execution of the value/ quantity of that assignment executed by the firm as part of a JV, as certified by the Employer. If the Employer's certificate does not indicate the specific fee received by each partner or quantity of assignment executed by each partner, in such a case



credit for value/quantity of each assignment shall be given as per following provisions in order of priority:

(i) As per details given in JV agreement forming part of the relevant Contract Agreement.

(ii) If JV agreement does not provide such details, then credit shall be given in proportion of the percentage share of the firm in that JV.

(h) For Sub-clause 5.7.2.2.2 Average Annual Consultancy Turnover, the Bidder should submit actual consultancy turnover figures for the specified financial years. For Evaluation purposes the figures of previous years shall be updated @ 5% per year compounded annually based on Rupee value to bring them to the level of the last Financial Year specified. in sub-clause. If the figure for turnover in an individual year is in a currency other than INR, then the same shall first be converted to INR based on the exchange rates published by Reserve Bank of India/International Monetary Fund (in that order) as on last day of that year and then the figures in INR shall be updated as mentioned above.

(i) For Sub-clause 5.7. 2.2.3 Contract of similar work of size and nature, the Bidder should submit actual Value of Work completed/ substantially completed. Value of Work for Evaluation purposes shall be updated based on Rupee value to bring them to the price level of date of deadline for submission of bids as per formula given below:-

$$A=B [1+(5\div36500) \times N]$$

Where

A = updated value of work on dead line for submission of bids.

B = value of work on the date of completion / substantial completion as indicated in the Employer's certificate.

N = Number of days between date of completion and dead line for submission of bids.

The base date for updating purpose shall be considered as the date of completion of work as certified by the Engineer-in Charge.



In case value of the work is mentioned in a currency other than INR, then the same shall first be converted to INR based on the exchange rates published by Reserve Bank of India/International Monetary Fund (in that order) as on the date of completion/substantial completion of the work and then the figures in INR shall be updated as mentioned above.

(j) If the original Certificates (i.e. certificate of Incorporation/ Registration or Memorandum & Article of Association, Audited Balance Sheets, Employer Certificate etc which are relevant to the bid submission) is in a language other than in English, the same may be translated into English and notarized/attested by the Notary Public.

(k) Audited Balance Sheets/ Account Statements' shall be certified by a Certified Public Accountant / Chartered Accountant or any Registered Account Practitioner by any name.

(l) Successfully completed phases of any ongoing underground Metro works upto deadline for submission of bids will also be considered for qualification of work experience criteria provided these phases have tested, commissioned and put into operation and they are fulfilling the requirements mentioned in assignment (i) and/or (ii) above.” (emphasis supplied)

14. Both respondent No.1 and Yuksel Proje India – Tumas India JV (impleaded as respondent No.2) have filed their detailed counter affidavits. The respondent No.1 has raised the issue of the locus of the petitioner to maintain the writ petition, and also cited inordinate delay and laches by the petitioner in filing the present petition. According to the respondent No.1, it was a complex project which required construction of a 5.12 km metro tunnel passing underneath existing structures/houses on the ground. It is submitted that it is because of this complexity, that extra weightage was given to technical score.



15. As per the respondent No.1, the scoring was carried out by two different teams of the respondent, comprising of senior officers and the scoring has been done strictly in accordance with the tender document, in the most fair and transparent manner. According to the respondent No.1, the petitioner is wrongly considering the twin tube tunnel project of General Consultancy by U.P. Metro Rail Corporation (earlier referred to as Lucknow project) as two separate projects. As per the respondent No.1, Clause 5.7.2.2.3 of the RFP provides that the bidders must have carried out the assignment of providing General Consultancy services in the following services:

- “a) Preparation of preliminary design and drawings.*
- b) Preparation of bid design and bid documents for “Design & Build” contract package.*
- c) Proof check of detailed design/ drawing,*
- d) Assisting evaluation of bids invited by the Employer.*

The said (a) to (d) assignments have to be in the fields of Civil Engineering structures, Electric traction & distribution underground section Ventilation and Air Conditioning for Railway/Metro Railway project involving minimum 3 km continuous tunnel with finished cross-section of 24 sqm or more, designed and constructed by TBM and/or cut & cover in station portion. ”

16. Note (c) to Clause 5.7.2.2.3 reads as under:

- “(a)..*
- (b)...*
- (c) In case of twin tube tunnels, each tube will be considered separate subject to each tube fulfilling the stipulated criteria as of minimum 3.0 Km continuous underground length.*
- (d)..... ”*



17. The respondent No.1 submits that Note (c) to Clause 5.7.2.2.3 is only applicable for the assignment services (a) to (d) mentioned in Para (i) of the sub clause 5.7.2.2.3 of RFP, and does not permit bifurcating of a single contract into 2 separate contracts for securing more marks, as contended by the petitioner. According to the respondent No.1, Note (c) is an explanation in respect of separate subject/assignment, and does not permit treating each tube in a twin tunnel as a separate contract. As a result, the marks allotted to the Bidders, as per approved Technical Evaluation were as follows:

“

<i>SI. No.</i>	<i>Name of Bidder</i>	<i>Technical Score</i>
1/8	<i>AIPL-SMCIPL JV</i>	<i>Considered invalid</i>
2/8	<i>Egis Rail S.A.</i>	<i>9907.15</i>
3/8	<i>Geodata-RITES JV</i>	<i>Considered invalid</i>
4/8	<i>Ayesa Ingenieria y Arquitectura S.A.U.</i>	<i>9245.35</i>
5/8	<i>ILF Consulting Engineers Pvt. Ltd.</i>	<i>9773.30</i>
6/8	<i>Technica y Proyectos, S.A. (TYP SA)</i>	<i>9386.90</i>
7/8	<i>MM SpA in JV with SMEC (India) Private Ltd.</i>	<i>5750.95</i>
8/8	<i>Yuksel Proje India-TUMAS India (JV)</i>	<i>9918.75</i>

”

18. The petitioner was informed about its technical score, and was also explained the reason for the same.

19. It is also submitted by respondent No.1 that the petitioner failed to fulfill the financial criteria of Rs.43.29 crores as provided in Clause 5.7.2.2.3. According to the respondent No.1, the petitioner in its letter dated 05.04.2021 stated that it received INR 68.07 Cr as its fees for the Work of



GC Lucknow (Twin Tube). As per Clause 5.7.2.2.3, the total value of the fee received in assignments (i) and (ii) combined should be at least INR 43.29 crores. If the Lucknow Metro twin tube is to be considered as two contracts –as being contended by petitioner, then the total fee received has to be, at least, INR 86.58 Crores (i.e. Rs.43.29 Cr. x 2) for getting benefit of two Project/Contract, whereas the petitioner's admitted turnover from the said project is Rs. 68.07 Cr.

20. Respondent No.2, which is a joint venture between Yuksel Proje India Pvt. Ltd. (wholly owned subsidiary of Yuksel Proje A.S.) and Turkish Engineering Consulting & Contracting - Tumas India Pvt. Ltd., a private limited company, in its counter affidavit, has submitted that the present writ petition is not maintainable, as the claim of the petitioner is purely commercial in nature, and hence the correct forum for the petitioner would have been the Civil Court, and not this Court exercising Writ Jurisdiction.

21. We have heard Dr. Amit George, learned counsel appearing for the petitioner, and Mr. Udit Seth, learned counsel for the respondent No.1. The submissions of Dr. Amit George, learned counsel appearing for the petitioner are as under:-

- i. The Twin Tubes of the Lucknow Project are two "separate" projects/contracts:

With respect to the GC projects, the petitioner has provided qualification certificates of Panama – I and Lucknow Projects. It is argued that since the Lucknow project is a twin tube tunnel project, and each tube is having more than 3 kms continuous



underground stretch and finished cross section of more than 24 sqm., the twin tubes of the Lucknow project should have been considered two ‘separate’ projects/contracts in accordance with Note (c). Consequently, the petitioner should be given marks for two project/contracts. The reason for the same, according to the petitioner, is that the respondent No.1 has specifically added the words “*each tube will be considered separate*” in Note (c) and these words cannot be interpreted in any other way. The above phrase expressly recognizes the more complex nature of execution of work contemplated under a twin-tube tunnel, while at the same time ensuring that there is a minimum specification for this twin-tube tunnel viz. 3 Km. continuous underground stretch and finished cross section of more than 24 sqm., so that the benefit of separate marking only inures in the case of execution of substantial twin tube tunnel work.

- ii. That it is nowhere mentioned that Note (c) is applicable only for (a) to (d) under Clause 5.7.2.2.3:

It is further submitted that it was an admitted fact that each of the tubes in Lucknow project individually fulfils the qualifications of (a) to (d) under Clause 5.7.2.2.3 (i). The respondent No.1 has admitted that if one project executed by a bidder qualifies conditions (a) and (b), and another project executed by it qualifies conditions (c) and (d), they can be combined to give the bidder an eligibility of executing a project having the qualifications prescribed in clauses (a) to (d) under Clause 5.7.2.2.3 (i), and when the respondent No.1 itself, admittedly, allows combinations



of different projects to determine the eligibility of clauses (a) to (d), and to determine the number of contracts for the purpose of marking, there is no reason as to why two different tubes fulfilling all these qualities, even though of the same project, cannot be considered separately for marking as 2 GC projects/contracts. respondent No. 1 cannot pick-and-choose as to the scope of operation of this fiction, without the bid document permitting the same.

- iii. Distinction between the terms ‘assignment’, ‘project’ and ‘contract’ not provided in the Bid Document:

It has further been argued that the distinction sought to be made by the respondent No.1 in respect of the terms ‘assignment’, ‘project’ and ‘contract’ is not applicable to the facts of the present case, as the words ‘assignment’, ‘project’ and ‘contract’ are nowhere defined in the bid document, and have been, in fact, interchangeably used.

- iv. The submission of the respondents that, for the Lucknow project, to be considered as two contracts, the fees charged by the petitioner should have been 2 x 43.29 crores, is not correct. This interpretation is contrary to respondent No. 1’s own stand, that Lucknow project was a single “contract”. As regards the financial criteria, Clause 5.7.2.2.3 clearly provides that “*the minimum total value of the fee received in assignments (i) and (ii) below combined should be INR 43.29 Crores*”, which the petitioner has, admittedly, fulfilled.



v. Rule of *contra proferentem* is applicable to the facts of the case. The respondent No.1 failed to provide answers to specific question asked, and the respondent No.1 remained evasive. In this view of the matter, the doctrine of *contra proferentem* is applicable to the facts of the present case.

22. On the other hand, Mr. Udit Seth, learned counsel for the respondent No.1 has raised three technical objections, namely:

- i. The petition is barred by Delays and Laches: The respondent No.1 submits that the Technical Scores were made available on 18.03.2021, while the Financial Bids were opened on 23.03.2021. Moreover, the work was awarded to LI (respondent No. 2) on 16.05.2021. However, the present petition was filed on 02.06.2021 i.e., after 76 days of petitioner getting to know its technical score. Hence there is delay in filing the Petition.
- ii. Scope of Judicial Review in Tender Cases: Judicial intervention is warranted, if the bid evaluation process is tainted with *malafide* or arbitrariness, not otherwise. No case of *malafides* or arbitrariness is made out by the petitioner.
- iii. Scheme of Evaluation Process in Tender Document: petitioner's score under GC category is 2400, for having 'Two Completed Contracts'. By placing reliance solely on Note (c), the petitioner wants to convert Lucknow Project into two separate contracts. The petitioner wrongly assumes that it should have been awarded 3000 marks for 3 completed contracts i.e., 2 contracts for the twin tube Lucknow project, plus 1 Panama project. The scoring parameter enshrined in the table of Clause 5.7.2.4.1 gives weightage to



successful completion of 'Contracts'. Therefore, the unit of measurement for scoring is 'Contract' and not 'assignment', or 'length of rail' or metro 'tunnel length'. As per the respondent No.1, a 'contract' is a cluster of assignments executed for a project, which may include minimum tunnel length constructed.

23. We have heard learned counsel for the parties and gone through the pleadings and judgments relied upon by them.

24. The issues we are called upon to examine in the present case are, whether, the interpretation of the relevant tender clauses advanced by the petitioner is the only plausible interpretation, or the interpretation adopted by the respondent No.1 is also one of the plausible interpretations. If the interpretation adopted by the respondent is also plausible, it would not be proper for us to interfere with the same. We must also keep in mind the legal principle that the Tender Inviting Authority is best suited to know and state what its requirements are. At the same time, if the interpretation advanced by the petitioner appears as the only plausible and reasonable interpretation, the respondents cannot, now, construe the clauses differently, as they being the authors of the tender document, would be bound by the *doctrine of contra proferentem*. In the aforesaid light, we proceed to examine the relevant clauses of the tender in question.

A. Interpretation of Clause 5.7.2.2.3, as well as the import of Note '(c)'.

- i. The core issue in the present case would be, whether the interpretation of Clause 5.7.2.2.3 as well as the import of Note '(c)' quoted above, adopted by the respondent tender inviting



authority is a plausible interpretation. If it is, the Court would have to respect it. On the other hand, if it is completely implausible and unreasonable, the Court may reject it and bind the respondent No.1 to the only plausible interpretation by involving the doctrine of *Contra Proferentem*.

- ii. The interpretation sought to be placed by the petitioner to the aforesaid clauses is that the Lucknow project – which was a twin tube tunnel project, should be considered as two separate contracts, because they fulfill the stipulated criteria of both: minimum 3 kms continuous underground length, and a finished cross section of more than 24 sqm. The petitioner relies on the words “*In case of twin tube tunnels, each tube will be considered separate..*” in Note (c), in support of this conclusion.
- iii. We do not find merit in this submission advanced by the petitioner. This is because the interpretation advanced by the petitioner is not the only possible interpretation and that advanced by the respondent No.1 is also a plausible interpretation. According to the respondent No.1, Note ‘(c)’ does not permit dividing of a single contract into two or more contracts. Clause 5.7.2.4.1 reads as follows:

“5.7.2.4.1 Experience of similar projects for GC and PMC services i.e. contracts of similar size and nature (3000+1000=4000 marks): For completed/ substantially completed similar contracts in India or elsewhere as indicated in para 5.7.2.2.3(i) for GC and 5.7.2.2.3(ii) for PMC, marks for experience will be



allocated for as per the following: (The works/assignments executed as sub-consultant associates shall not be considered under this criteria)

Description	Score		
	GC* (i)	PMC** (ii)	Total (i) + (ii)
<i>For single substantially completed contract</i>	1875	625	2500
<i>For single completed contract</i>	2250	750	3000
<i>For two substantially completed contracts</i>	2250	750	3000
<i>For one completed and one substantially completed contract</i>	2400	800	3200
<i>For three substantially completed contracts</i>	2400	800	3200
<i>For one completed and two or more substantially completed contracts</i>	2625	875	3500
<i>For four or more substantially Completed contracts</i>	2625	875	3500
<i>For two completed contracts</i>	2400	800	3200
<i>For two completed and one or more substantially completed contracts</i>	2700	900	3600
<i>For three or more completed contracts</i>	3000	950	3950

Note: 1. If the items of PMC are included in any GC Contract, then the same GC contract will be considered for both the GC and PMC Scores.

2. When different assignments are combined to meet criteria as indicated in para 5.7.2.2.3(i) for GC, number of contract is determined after each such combination.

Apart from above, additional 50 marks will be given for work experience in India as below:-



*(i) At least one completed or substantially completed work experience of GC of rail/metro tunnel **in India.***

Or

*(ii) At least one completed or substantially completed work experience of Project Management Consultancy (PMC) services/ Services of Independent Engineer or Similar service where the services actually provided under the contract must include construction supervision/ performing role of Engineer for rail/metro **in India.***

- iv. Clause 5.7.2.4 details the scoring plan under the quality based technical evaluation criteria. Clause 5.7.2.4.1 talks about the scores for Experience of similar projects for GC and PMC Services in "Contracts" of similar size and nature and have been categorized on the basis of numbers of completed Contracts/ substantially completed contracts. This clause specifically talks about the "Contracts" and, thus the scoring parameter of Clause 5.7.2.4.1 and the unit of measurement envisaged by the respondent No.1 for scoring is "*contract*", and not 'assignment', or 'length of rail' or metro 'tunnel length.'
- v. The execution of any independent contract entails its negotiation; contract document preparation and execution; mobilization; actual successful execution of the contract at site; winding up; settlement of all outstanding issues; raising of final bill; obtainment of completion certificates/ no dues certificates; hand over of the project and; several other aspects. The emphasis in the aforesaid Clause 5.7.2.4.1 seems to be on the



experience of the contractor in repeated experience of the entire drill from start to finish of the “Contract”. Just to give an example, lets say a cricket batsman scores a triple century. It counts as a single “ton” or a single triple “ton”. It cannot be broken up and counted as 3 centuries for the purpose of consideration of past experience or record.

- vi. As per the petitioner, the petitioner falls in the last column of ‘*three or more completed contracts*’ and should have been awarded 3000 marks under the head GC for 2 completed contracts in Lucknow, and one in Panama-1, whereas, the respondent No.1 has given a score of 2400 to the petitioner for two completed contracts on the premise that the twin tunnel assignment was executed under a single contract.
- vii. We cannot find fault in the respondent No. 1’s approach that the petitioner’s self-evaluation under GC category for having three or more completed contracts is an incorrect evaluation, if the unit of measurement is taken to be “contract” and not assignment. The respondent No. 1’s submission that the Lucknow project comprising of twin tunnel of more than 3 km, and having cross section of more than 24 sqm can, at best, be considered as two assignments, but by no stretch of imagination can they be considered as two contracts, is reasonable and plausible.
- viii. Thus, it cannot be said that the respondent No.1 has wrongly awarded 2400 marks for 2 completed projects (Lucknow and Panama 1). The respondent No.1’s submission, that if the



interpretation of the petitioner were to be accepted, it would mean that a bidder who constructed a single tunnel of 300 km under a single contract, would be entitled to claim that the same should be treated as 100 separate contracts (considering the fact that the criteria mentioned in Note (c) is 3 km) is unexceptionable. The respondent No. 1's plea that such an interpretation would go completely contrary to the plain meaning of the word "contract", and in the present context, would defeat the very purpose of the criteria laid down in the tender appears to have merit. It could be said that the emphasis of the above Clause 5.7.2.4.1 is on the number of completed/substantially completed contracts. That criteria cannot be bypassed by breaking down the single contract, into multiple contracts, on the basis that the work executed under the single contract comprised a twin tunnel.

- ix. Where the plain English reading conveys a particular meaning, it is not open to petitioner to use the words "contract" "project" "assignment" interchangeably to convey a different meaning. In *Central Coalfields Limited & Anr. V. SLL-SML (Joint Venture Consortium) & Ors.*, (2016) 8 SCC 622, the Supreme Court observed as follows:

"33. In Ramana Dayaram Shetty v. International Airport Authority of India this Court held that the words used in a document are not superfluous or redundant but must be given some meaning and weightage:



7. “It is a well-settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the language of a document “and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use.” To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable.”” (emphasis supplied)

- x. The respondent No. 1’s submission that the interpretation as canvassed by the petitioner would make the word ‘contract’, a surplusage, which cannot be the intention of the document is plausible. There is no doubt that the whole purpose of the issuing Rules/instructions is to ensure their enforcement, lest the Rule of law should be a casualty.
- xi. In *W.B. SEB v. Patel Engg. Co. Ltd.*, (2001) 2 SCC 451, the Supreme Court emphasised on maintaining sanctity and integrity of process of tender/bid and also award of a contract and observed “.....adherence to the instructions cannot be given a go-bye by branding it as a pedantic approach otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the



Rule of law and our Constitutional values. The very purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules.”

- xii. Hence, we find no *malafide* or violation of the Wednesbury principle of reasonableness in the respondent No. 1's evaluation of Lucknow project as one contract. We, therefore, are not inclined to accept the petitioner's submission that under the terms of the tender, the Lucknow project should necessarily be considered as two separate contracts. The respondent No. 1's objective of adopting such a criterion appears to be to ensure that the bidder has a wholesome/heterogenous experience in executing a complex project. We find the explanation given by the respondent No.1 to be reasonable, plausible and acceptable.

B. Two Interpretations of clause 5.7.2.2 .3

- i. The argument of the petitioner that a tender condition cannot be subject to two equally probable interpretations does not impress



us. Clause 5.7.2.2.3 starts with minimum value of fees received by the bidder, after which, the clause mentions in great detail the specific works, areas of work, industry of work with precise requirements in GC' Work (i.e., cluster of "assignments"). The clause also mentions the mandatory work requirements along with minimum value requirement in PMC Work.

- ii. 'Note p' further permits the bidder to combine completed/substantially completed assignments so as to fulfil the multiple rigorous criteria laid down in (a) to (d) required under GC Work eligibility. Note p which reads as under:

“Notes:

p) Services stated from (a) to (d) in the criteria requirement are for Railway /Metro Railway project involving the specified tunnel length & cross section in the field of Civil Engineering structures, Electric traction & distribution, Underground section Ventilation & Air Conditioning. The above criteria may be met through completed/ substantially completed single assignment or combining more than one assignment. When different completed/ substantially assignments are combined, it should ensure all activities of (a) to (d) are to be met for



the stated category of project in the above stated fields.”

- iii. As per Note 2, once the completed/substantially completed assignments meet the criteria, the respondent No.1 can determine the number of completed contracts, on the basis of each combination of such assignments. Note 2 reads as under:

“2. When different assignments are combined to meet criteria as indicated in para 5.7.2.2.3(i) for GC, number of contracts is determined after each such combination.”

- iv. Hence Note P read with Note 2 essentially lays down how a ‘contract’ would be determined – firstly, by allowing for combining of the assignments to meet the criteria laid down in (a) to (d), secondly, once the combination of assignments meets the criteria, then determining the number of contracts from such combinations. Thus, it appears that what is meant by a ‘contract’, is a cluster of assignments to be executed for a project, which may include the minimum tunnel length constructed.

- v. At the same time, the argument of respondent No.1 that if Lucknow project is to be treated as two separate contracts (being twin tunnels) the petitioner should have received 43.29X 2 (86.58) crores is misplaced. We cannot permit the respondent No.1 to add a meaning and interpretation to the clause, which are not borne out of the tender document. The financial threshold in the present tender is 43.29 crores, and reading Note



(c) harmoniously with clause 5.7.2.2.3 does not lead to the conclusion that the financial requirement of 43.29 crores is required to be doubled in case of 2 contracts. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. The Supreme Court in ***Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.***, (1979) 3 SCC 489, applying this rule held that:

*“Now, there can be no doubt that what paragraph (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered 2nd class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in *Viteralli v. Seton*(1) where the learned Judge said:*



"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

C. Reasons to be given by the tendering authority.

- i. It is the contention of the petitioner that whenever the bid of a bidder is rejected – for whatever reasons, the reasons are bound to be conveyed to the bidder concerned, so that he may avail of his remedies, if he feels aggrieved. However, the respondent No. 1 kept the bidders in suspense regarding the final valuation, and issued the Letter of Award to the respondent No.2 quietly, keeping others in the dark. The petitioner has relied on the order of this Court in *Montecarlo Ltd. & Anr. Vs. National High Speed Rail Corporation Ltd.* [WP(C) 5127/2021] to buttress his argument.

Clause 7.1 of RFP reads as under:-

"Information relating to evaluation of proposals and recommendations concerning contract award shall not be disclosed to consultants who submitted proposals or to other persons not officially concerned with the recruitment process until the winning firm has been notified and contract awarded."



- ii. Even though the above clause permits disclosing the reason subsequently, the petitioner admits in its pleadings that he was verbally explained that in final technical marking, the respondents have not considered Lucknow GC Project as 2 separate projects resulting in lesser marks to the petitioner. Further, as per tender document there is no provision for disclosing the reasons of any difference between self-evaluated marks and the final marks awarded before the final contract is awarded. It is imperative that confidentiality is maintained. The judgment relied upon by the petitioner has been set aside by the Supreme Court in ***National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd., 2022 SCC OnLine SC 111*** and the Supreme Court has observed:

“90. Even otherwise, the High Court has not at all appreciated the purpose of the aforesaid clauses. The aforesaid clauses stated that information relating to the evaluation of the Bids and recommendation of the Contract award, shall not be disclosed to Bidders or any other person, until information on Contract award is communicated to all the Bidders in accordance with ITB 42 and as per Clause 42.5 “After notification of award, unsuccessful Bidders may request, in writing, to the Employer a debriefing seeking explanations on the grounds on which their Bids were not selected”. It further provides that “the Employer shall promptly respond, in writing, to any unsuccessful Bidders who, after the notification of the award in accordance with ITB 42.1, request a debriefing”. Thus, Clauses 28.1 and 42.5 read as under:—



“Option A - Section I. Instructions to Bidders

Clause E. Evaluation and Comparison of Bids

28. Confidentiality

“28.1 Information relating to the evaluation of Bids and recommendation of Contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders in accordance with ITB 42.

Clause F. Award of Contract

42. Notification of Award

42.5 After notification of award, unsuccessful Bidders may request, in writing, to the Employer a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond, in writing, to any unsuccessful Bidders who, after the notification of award in accordance with ITB 42.1, request a debriefing.”(emphasis supplied)

91. The purpose of the aforesaid clauses appears to be to prevent a possible challenge to the multiple stage tender process midway. The High Court has construed that the said clauses would restrict the right of the bidders to seek judicial scrutiny of the tender process. However, the High Court does not seem to be wholly true. The High Court ought to have appreciated that first of all Clause 28 is a confidentiality clause. On general reading of the aforesaid two clauses, it can be said that it does not take away the right of the Bidders to seek judicial scrutiny at all. Only the stage and time to know the reasons and thereafter if the unsuccessful Bidder is aggrieved can seek the remedy, which is deferred till the final decision on



award of contract is taken and communicated. As observed hereinabove, the object and purpose would be no interference in the tender process in between till the final decision to award the contract is taken. By no stretch of imagination, it can be said that it takes away the right of the unsuccessful bidder to seek the judicial scrutiny of the tender process. After the final decision is taken to award the contract and the contract is awarded, thereafter it will always be open for the unsuccessful bidders to ask for the reasons to which the employer is required to furnish promptly and thereafter the unsuccessful bidder may avail the legal remedy, which may be available to it, may be claiming the damages. The High Court ought to have appreciated that it is always advisable that in such a foreign funded Mega project, delay may have a cascading effect and many a times have a financial burden due to delay in projects and therefore, there shall be minimal interference and/or no interference till the entire tender process or till the award of contract is completed. The foreign funded agency therefore is justified in providing such clauses to prevent challenge to the tender process midway. A foreign funded agency, who invests/funds such a huge amount for such a Mega project on bilateral talks between two countries is justified in insisting such clauses and to insist that the information relating to the evaluation of the Bids and recommendation of contract award shall not be disclosed to Bidders or any other person until information on contract award is communicated to all the Bidders and the grounds on which the unsuccessful Bidders' Bids are not selected shall be provided thereafter.

92. The object and purpose of providing aforesaid clauses is very clear namely no interference with respect to the tender process midway and till the



final decision on awarding the contract is taken. Even, we are also of the opinion that in a Mega project, which is funded by a foreign country, there shall not be any interference with the tender process midway till the final decision is taken to award the contract. The reason behind this is that any delay in such a project may increase the ultimate project cost and it may affect the future investment by the foreign country, which would never be in the larger nation's interest.

93. Under the circumstances, the High Court has committed a grave error in holding that Clauses 28.1 and 42.5 are patently illegal, more particularly, in absence of any challenge to the same and also on the ground that once the original writ petitioner participated having knowledge of the aforesaid clauses in the ITB, thereafter it was not open for the original writ petitioner to challenge the same. The original writ petitioner was knowing right from the very beginning with respect to the confidentiality clause contained in Clause 28 and that grounds on which the Bids of unsuccessful Bidders are not selected shall be communicated only after a final decision to award the contract is communicated under Clause 42. If the original writ petitioner was aggrieved either it would not have participated and/or ought to have challenged such clauses before participating in the tender process. Under the circumstances, the impugned judgment and order passed by the High Court holding Clauses 28.1 and 42.5 as patently illegal cannot sustain and the same also deserves to be quashed and set aside.”

D. Rule of *Contra proferentem* is applicable to the Tender document.

- i. The petitioner has argued that since there is an ambiguity in the tender document, the same should be constructed against the



drafter of the tender i.e., the respondent No.1. The petitioner has relied on the principle of *contra proferentem* to support its argument. However, it is now well settled by the Supreme Court that *contra proferentem* cannot be applied to lay down that in case of any ambiguity in a tender document, it has to be construed in favour of a particular person who projects a particular view point. Moreover, in the facts of this case, the aforesaid doctrine is not attracted, as the interpretation adopted is a plausible and reasonable interpretation.

- ii. In *Agmatel India (P) Ltd. V. Resoursys Telecom*, 2022 SCC OnLine SC 113, the Supreme Court observed the following:

“54. The same aspects apply to the observations regarding ‘contra proferentem rule’ as referred by the High Court with reference to the case of United India Insurance Company Limited (supra). The said rule was referred by this Court while not accepting the argument made on behalf of the insured and while observing that the said rule had no application, when the language of the relevant clauses was plain, clear and unambiguous. We may, however, observe that even from the extracted part of the principles related with the ‘contra proferentem rule’, as reproduced by this Court from the Halsbury’s Laws of England, it is clear that the said rule was applied in the case of ambiguity in the insurance policy because the policies are made by the insurer and its ambiguity cannot be allowed to operate against the insured. This rule, in our view, cannot be applied to lay down that in case of any ambiguity in a tender document, it has to be construed in favour of a particular person who projects a particular view point. The obvious inapplicability



of this doctrine to the eligibility conditions in a notice inviting tender could be visualized from a simple fact that in case of ambiguity, if two different tenderers suggest two different interpretations, the question would always remain as to which of the two interpretation is to be accepted? Obviously, to avoid such unworkable scenarios, the principle is that the author of the tender document Is the best person to interpret its documents and requirements. The only requirement of law, for such process of decision-making by the tender inviting authority, is that it should not be suffering from illegality, irrationality, mala fide, perversity, or procedural impropriety. No such case being made out, the decision of the tender inviting authority (NVS) in the present case was not required to be interfered with on the reasoning that according to the writ Court, the product “Smart Phone” ought to be taken as being of similar category as the product “Tablet”.” (emphasis supplied)

iii. In the present case, no plea of *mala fide* has been made out.

E. The Tender evaluation is in respect of highly technical aspects.

- i. The Tender involves technically experienced and qualified General Consultants (GC) cum Project Management Consultants (PMC), because the construction is to be carried out through a densely populated area and involves construction of a 5.12 km tunnel for metro passing underneath existing structures/houses on the ground. As a result, the respondent No.1 has laid down strict qualifying criteria for its bidders. The criteria laid down is adopted because it is essential for safe and sound construction, as well as operation and maintenance of the



Project. Which is imperative, especially considering the previous mishaps.

- ii. Understandably, to avoid any accidents in the future, the respondent No.1 has also followed 2 Tier System for evaluating all the bids and awarding the work to the most competent bidder. The respondent No.1 had set-up 2 separate Committees comprising of Senior and experienced personnel from different disciplines, who have evaluated all the bids as per the qualifying criteria for the work was awarded. The 2 Committees were:-

a) Bid Evaluation Committee (BEC) Consisting of 4 Senior Officers, viz. Executive Director (Metro), Executive Director Electrical), Executive Director (Signaling & Telecommunication) and Group General Manager (Finance). The said Committee evaluated the Bid and gave its recommendation.

b) Acceptance Committee (AC) Consisting of 3 Directors viz. Director (Project), Director (Operation) and Director (Finance). The said Committee again evaluated the Bid, considered BEC recommendation and approved awarding of work.

- iii. The concerned committees have awarded marks to both - the petitioner and respondent No.2, against each technical feature of which assessment is to be made, in terms of tender in question. As a Court, sitting in judicial scrutiny of matters of grant of tender, we are conscious of our limitations and cannot



step into the shoes of Evaluation Committees. Therefore, the marks awarded against each of the feature, to either the petitioner or respondent No.2, cannot be called into question before us, when no case of *malafides* or arbitrariness is made out. We have no competence to evaluate the marking process, and we are not examining the said aspect like an appellate authority.

- iv. This Court, in *Sabre GLBL Inc. v. AIR India Limited*, 2021 SCC OnLine Del 5014, has already held that the Court cannot step into the shoes of Evaluation Committee, and analyse the scores awarded by experts. We have also emphasized the need to find the right balance between the administrative discretion to decide the matters on one hand, and the need to remedy any unfairness on the other. We have categorically held that the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents unless there is *malafide* or perversity in the understanding or appreciation or in the application of the terms of the tender conditions.
- v. In the case in hand, the Tender Floating Authority is the best person to assess its requirements; float a tender; assess the marks to be awarded on various technical parameters declared in the tender, and after carefully analysing the same, declare the successful bidder. The respondent No.1 is the best judge of its own requirement, being mindful of public safety, financial implication and engineering complexity involved in this project



- vi. We find no *malafide*, arbitrariness or unreasonableness in evaluation of the bid of the petitioner and that of respondent No. 2.

F. Limited Scope of Judicial Review

- i. The scope of the Court's jurisdiction under Article 226 of the Constitution of India is discretionary. This Court has to be satisfied that the facts of a particular case warrant this Court to exercise its extraordinary writ jurisdiction to correct a perversity, arbitrariness, bias or *malafides*. It is settled position of law, that Courts ought to exercise their discretionary powers with caution, and only in furtherance of public interest. In *Michigan Rubber (India) Ltd. v. State of Karnataka and Ors*, (2012) 8 SCC 216, the Supreme Court, laid down the principles for when the interference under Article 226 is called for:

“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.”

- ii. In ***Jagdish Mandal v. State of Orissa***, (2007) 14 SCC 517, the Supreme Court held that even if a procedural aberration or error in assessment is present, as long as the decision is *bona fide*, the Court will not exercise the power of judicial review:

*“22...Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. **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....”*

25. The respondent No.1, in the present case, appears to have abided by the RFP, and has awarded the work after evaluation and approval by 2 Expert Committees set up by the Respondents. We find no perversity *malafide*, arbitrariness or favouritism in Respondent No.1's decision to



award the work to respondent No.2. In this view of the matter, and for the reasons stated above, we are not inclined to grant any relief to the petitioner. The petition is, accordingly, dismissed. The parties are left to bear their respective costs.

(JASMEET SINGH)
JUDGE

(VIPIN SANGHI)
ACTING CHIEF JUSTICE

MAY 19, 2022/ sr



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