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

Date of decision: 05th AUGUST, 2022

IN THE MATTER OF:

\+ **W.P.(C) 10582/2022 & CM APPLs. 31881/2022 & 30630/2022**

M/S VISUAL TECHNOLOGIES INDIA PVT LTD .... Petitioner

Through: Mr. Sanjiv Sen, Sr. Advocate with Mr. Kumar Shashank, Mr. Nimesh Kumar, Mr. Umang Mahindra and Mr. Piyush Tonk, Advocates.

versus

EXECUTIVE ENGINEER (E) PLEWD, CPWD AND ANR. ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC with Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Rishav Dubey, Mr. Aakarsh Srivastav, Mr. Ojaswa Pathak and Ms. Nithi Mittal, Advocates for UOI. Mr. Abhhimanyu Tiwari, Advocate for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition has been filed under Article 226 of the Constitution of India, 1950, seeking the issuance of a writ of *mandamus* for quashing of the letter dated 07.07.2022 issued by the Respondents whereby the Petitioner was found to be ineligible for opening of the financial bid on account of not fulfilling the eligibility criteria of work experience. The Petitioner has further sought for directions for the Petitioner to be allowed

to participate in the financial bid in E-TENDER NO. 06/CE(E)/PEWZ/PLEWD/2022-23 dated 02.06.2022.

2. The facts, in brief, leading to the instant petition are as under:

a) It is stated that NIT/RFP in respect of E-Tender No. 06/CE(E)/PEWZ/PLEWD/2022-23 dated 02.06.2022 was floated by Respondent No.1 for *" Supply, Installation, Testing and Commissioning (SITC) of telecast/broadcast facilities of Sansad TV at Parliament House Complex, New Delhi".* The type of work is stated to be "Audio-Visual Equipment", and the Estimated Cost for the same was stated to be Rs. 80,85,64,981/-, with Rs. 90,85,650/- as the Earnest Money.

b) One of the requirements for eligibility for application is that the contracts/firms interested in bidding need to be specialized agencies who have previously executed similar nature of works. Clause 1(a) of the bid document which has been extracted in the later part of the judgment provides that the bidder should have completed the works as mentioned in the document during the last seven years ending last date of month previous to the one in which tenders are invited. It also provides that the bidder who has done one similar work costing not less than 64% of estimated cost is eligible to participate in the tender.

c) The last date of submission of the bid and other documents, as per the NIT, was 17.06.2022 at 15:00 hours. However, the same was extended by way of multiple corrigendum to 23.06.2022 up to 15:00 hours, with 23.06.2022 at 15:30 hours as the time and opening of Eligibility-cum-Technical Bid.

d) The Petitioner submitted the technical bid, along with the requisite documents, and in order to show eligibility as per Clause 1(a) of the bid document, the Petitioner supplied documents with regard to completion of a contract for execution of SITC of Multi-Camera Mobile Van for outdoor production in HDTV format in the year 2016 for Doordarshan. It is stated that the value of the total work was Rs. 40,24,89,000/-, and after factoring in an escalation of 7% per year, the total value of the contract now amounts to Rs. 57,15,34,380/- after 6 years which is more than 64% of the estimated cost.

e) *Vide* letter dated 24.06.2022, clarifications were sought by the Respondent No.1 from the Petitioner with regard to the previous work experience stating that the actual value of work had not been mentioned, and that though the time period of execution of work was 12 months in the acceptance letter of work, however, the time taken had been approximately three years.The Petitioner was, therefore, requested to furnish the required documents/clarifications within five days of the letter, failing which it would have been assumed that the requisite documents/clarification was not available with the Petitioner. *Vide* reply dated 29.06.2022, the Petitioner stated that there was no difference between the value of works as per A/T, i.e. Rs. 40,24,89,000/- and the actual value of the work done, i.e. Rs. 40,24,89,000/. It was further stated that as per the governing conditions of the A/T [Clause 5 and Clause 15(h)], the guarantee/warranty period would form a part of the contract, and as this period was for 24 months, it aptly explained the three years period.

f) *Vide* letter dated 07.07.2022, the Petitioner was informed that they had been found to be ineligible for opening of the financial bid due to its inability of fulfilling the eligibility criteria of work experience of required value as per definition of similar work given in the NIT. For the approved eligible bidders, the financial bid was to open on 08.07.2022 at 15:00 hours.

g) Aggrieved by the letter dated 07.07.2022, the Petitioner has approached this Court by way of the instant writ petition.

3. Mr. Sanjiv Sen, learned Senior Counsel appearing for the Petitioner, states that the impugned letter dated 07.07.2022 has been issued without any logic and is liable to be quashed as the sole reason for the disqualification of the Petitioner is that the Petitioner allegedly failed to complete works of a similar nature within the last seven years. Mr. Sen states that the relevant clause of the bid document, i.e. Clause 1(a), has been satisfied by the Petitioner which is exemplified by the completion certificate dated 15.06.2022 issued by the Additional Director General on behalf of Prasar Bharti/Doordarshan wherein it has been unambiguously noted that the Petitioner's contract with Prasar Bharti/Doordarshan was completed on 11.07.2016. The learned Senior Counsel submits that this certificate indicates that the work done by the Petitioner was executed in the year 2016, and therefore, the Petitioner ought to have been allowed to participate in the financial bid.

4. Mr. Sen, learned Senior Counsel for the Petitioner, argues that the contract between the Petitioner and Prasar Bharti/Doordarshan was entered into on 21.06.2013, and that Clause 7 of the contract stipulated for the

delivery to be done within 12 months from the date of placement. He, however, states that Clause 15(h) of the contract clearly sets out that the guarantee/warranty, which forms a part of the contract, would remain in force for a period of 24 months. Consequently, Mr Sen submits that though the date of delivery was 20.06.2014, however, by including the period of warranty/guarantee, the date of completion of the contract as per the final certificate would be 11.07.2016, thereby rendering the Petitioner eligible for bidding.

5. The learned Senior Counsel for the Petitioner submits that the issue that is to be determined by this Court is whether the work done by the Petitioner and the inclusion of the warranty/guarantee period in the date of completion would entail that the Petitioner had satisfactorily finished similar works within the last seven years. Mr. Sen further submits that the contract between the Petitioner and Prasar Bharti/Doordarshan was not a contract simpliciter for sale of goods, but it was also a service contract, and that guarantees were necessary as they were a financial hedge that indicated that the equipment was working well even after the supply and commission of the equipment. The learned Senior Counsel contends that a fresh performance bond/Bank Guarantee had been demanded by Prasar Bharti/Doordarshan in December 2014, i.e. after the letter issued in September 2014, and that this can only mean that the contract subsisted till 2016. He, therefore, submits that the guarantee/warranty must form a part of the contract.

6. The learned Senior Counsel for the Petitioner submits that the decision taken *vide* the impugned letter dated 07.07.2021 indicates that the actions of the Respondents are *mala fide,* arbitrary and unreasonable in nature, and were meant to favour a certain bidder, i.e. Respondent No.3

who was impleaded during the course of proceedings. Mr. Sanjiv Sen argues that, despite not having any requisite work experience, the Respondent No.3 was favoured by Respondent No.1, and that the conditions set in the bidding document were only to unfairly and illegally accommodate Respondent No.3. Mr. Sen relies upon Jagdish Mandal v. State of Orissa and Ors., **(2007) 14 SCC 517,** to submit that the limited scope of judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, biasness and *mala fides.* Relying upon the said Judgement, Mr. Sen submits that the Court can interfere in tender or contractual matters if the process adopted or decision made by the erring authority is *mala fide* or intended to favour someone.

7. *Per contra,* Mr. Chetan Sharma, learned ASG appearing for the Respondents, submits that Clause 1(a) of the bid document categorically notes that the bidder should have satisfactorily *"completed the works".* He states that the term "work" has been defined in the bid document as *"SITC of – Telecast/Broadcast equipments i/c Cameras, Television Studio or/and Audio-visual works, Servers, networking or/and Teleport equipments"*, and that the usage of the word "works" implies that "contract" and the "work" done stand on different footing. The learned ASG submits that "warranty/guarantee" cannot be stated to be a part of the "work" done by the Petitioner.

8. The learned ASG relies upon Agmatel India Private Limited v. Resoursys Telecom and Ors., **(2022) 5 SCC 362,** to submit that the author of the tender document is taken to be the best person to understand and appreciate its requirement. Therefore, if the interpretation of the author is manifestly in consonance with the language of the tender document or

subserving the purchase of the tender, then the Court should restrain itself from interfering.

9. Mr. Chetan Sharma also cites Clause 15(h) of the contract entered into between the Petitioner and Prasar Bharti/Doordarshan to submit that the aspect of Guarantee/Warranty is merely an after-sales service that is provided by the contractor for a period of 24 months, and can, by no stretch of imagination, be termed as a part of the actual provision of service/equipment by the Petitioner. He states that, in view of this, the Petitioner does not satisfy the eligibility requirement of having done any similar work in the past seven years, and therefore, the impugned letter dated 07.07.2021 issued by the Respondent No.1 should not be quashed.

10. Heard Mr. Sanjiv Sen, learned Senior Counsel for the Petitioner, Mr. Chetan Sharma, learned ASG, and perused the material on record.

11. The short question which arises before this Court in the instant matter is whether the interpretation of the bid document could be deemed to include the bank guarantee/warranty as a part of the contract, and whether the disqualification of the Petitioner by the Respondent No.1 is so arbitrary and *mala fide* that it warrants the interference of this Court.

12. At the outset, this Court deems it pertinent to delineate the inherent limitations in the exercise of power of judicial review of contractual powers. While exercising such a power, in respect of contracts entered into on behalf of the State, it has been observed consistently by the Supreme Court that the Court may only interfere in an administrative decision if, and only if, the same is arbitrary, irrational, unreasonable, *mala fide* or biased. In the absence of these situations, the Courts must not countenance interference with the decision merely at the behest of an unsuccessful bidder in respect of a technical or procedural violation.

13. The aforementioned observation was made by the Supreme Court in the case of Tata Cellular v. Union of India, **(1994) 6 SCC 651**, wherein it was categorically noted that *the Government is the guardian of the finances of the State; it is expected to protect the financial interest of the State and, therefore, the right to refuse the lowest or any other tender is always available to the Government.* The relevant portion of the said Judgement has been reproduced as under:

> *"**70**. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.*
>
> ***71**. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.*
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> *****

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

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

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

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

> *(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
>
> *(ii) Irrationality, namely, Wednesbury unreasonableness.*
>
> *(iii) Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

14. In Central Coalfields Limited and Anr. v. SLL-SML (Joint Venture Consortium) and Ors., **(2016) 8 SCC 622,** the Supreme Court had observed that a contract is a commercial transaction, and evaluating tenders and awarding contracts are essentially commercial functions. In view of this, the power of judicial review should not be permitted to be invoked to protect private interests at the cost of public interest, or to decide contractual disputes. The Supreme Court in the matter therein stated as under:

*"**43**. Continuing in the vein of accepting the inherent authority of an employer to deviate from the terms and conditions of an NIT, and reintroducing the privilege-of-participation principle and the level playing field concept, this Court laid emphasis on the decision-making process, particularly in respect of a commercial contract. One of the more significant cases on the subject is the three-Judge decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] which gave importance to the lawfulness of a decision and not its soundness. If an administrative decision, such as a deviation in the terms of NIT is not arbitrary, irrational, unreasonable, mala fide or biased, the courts will not judicially review the decision taken. Similarly, the courts will not countenance interference*

with the decision at the behest of an unsuccessful bidder in respect of a technical or procedural violation. This was quite clearly stated by this Court (following Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651]) in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] in the following words: (SCC p. 531, para 22)

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

> > *delay relief and succour to thousands and millions and may increase the project cost manifold."*
>
> *This Court then laid down the questions that ought to be asked in such a situation. It was said: (Jagdish Mandal case [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , SCC p. 531, para 22)*
>
> > *"22. ... Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*
> >
> > *(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*
> >
> > *or*
> >
> > *Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";*
> >
> > *(ii) Whether public interest is affected.*
> >
> > *If the answers are in the negative, there should be no interference under Article 226."*

15. Relying upon <u>Tata Cellular v. Union of India</u> (supra) and <u>Central Coalfields Limited and Anr. v. SLL-SML (Joint Venture Consortium) and Ors.</u> (supra), the Supreme Court noted in <u>Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and Anr.,</u> **(2016) 16 SCC 818**, that if the decision-making process is *mala fide* or is intended to favour

someone, then interference on the part of the Court would be permissible. The relevant paragraph iterating the same is reproduced 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."*

16. Flowing from the aforesaid Judgement, it is clear as day that the scope of interference by way of judicial review in tender matters is extremely limited, and can only be justified if done to rectify patent arbitrariness, unreasonableness, *mala fides,* or bias, in the administrative decision. In the absence of the same, the Court must tie its hands and should not interfere, even if a procedural aberration or error in assessment or prejudice to a tenderer is made out.

17. In the instant case, the sole contention of the Petitioner is based upon the conjunctive interpretation of Clause 1(a) of the bid document and Clause 15(h) of the contract with Prasar Bharti/Doordarshan to arrive at the conclusion that the 24 months period of warranty would be inclusive of the contract. The Petitioner contends that the completion certificate dated 15.06.2022, wherein the Date of Completion has been noted to be 11.06.2016, squarely places the Petitioner within the eligibility criteria with regard to having done similar works in the past seven years as mandated by Clause 1(a). At this juncture, this Court deems it fit to reproduce Clause 1(a) of the bid document, as well as Clause 15(h) of the contract with Prasar Bharti/Doordarshan:

*“***Clause 1(a) of the bid document**

1. Contractors/ firms who fulfill the following requirements shall be eligible to apply. Joint ventures are not accepted.

(a) Should have satisfactorily completed the works as mentioned below during the last Seven years ending last date of month previous to the one in which tenders are invited.

Three similar works each costing not less than32% of estimated cost

OR

Two similar works each costing not less than 48% of estimated cost

OR

One similar work costing not less than 64% of estimated cost.

Similar work shall mean works of “SITC of - Telecast/Broadcast equipments i/c Cameras, Television Studio or/and Audio-visual works, Servers, networking or/and Teleport equipments” The value of executed works shall be brought to current costing level by enhancing the actual value of work at simple rate of 7% per annum; calculated from the date of completion to last day of submission of bids.

Completion certificate for work experience credential should clearly mention the date of start of work, date of completion, total value of work done, scope of work and agreement no. to which it pertains.

For Work Experience credentials, the bidders are also required to submit copy of agreement with BoQ/final bill of the work with a separate sheet prepared referring these documents specifically mentioning the *components of BoQ according to which work qualifies as similar work and actual amount of these components in BoQ/executed as per agreement. Also Bidders shall have to submit all relevant documents i/c Tax deposit receipt i/e TDS/GST etc. for confirming the authenticity of work experience certificate and components of similar work.*"

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*"***Clause 15(h) of the contract with Prasar Bharti/Doordarshan**

h. *Guarantee/ Warranty:*

The following guarantee/ warranty shall form part of this contract:-

The contractor/seller hereby declares that the good, stores/articles sold/supplied to the purchaser under this contract shall be of the best quality and workmanship and new in all respect and shall be strictly in accordance with the specification and particulars contained/mentioned in contract. The contractor/seller hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 24 months from the date of commissioning of the said goods/stores/ articles to the purchaser notwithstanding the fact that the purchaser (inspector) may have inspected and/or approved the said goods/stores/articles if during the aforesaid period of 24 months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid or not giving satisfactory performance or have deteriorated and the decision of the purchaser in that behalf shall be final and binding on the Contractor /Seller and the purchaser shall be entitled to call upon the contractor/seller to rectify the goods/stores/articles or such portion thereof as is found to be defective by the purchaser within a *reasonable period, or such specified period as may be allowed by the purchaser in his discretion on an application made thereof by the contractor/Seller, and in such an event, the above mentioned guarantee/ warranty period shall apply to the goods/stores/articles rectified from the date of rectification thereof, otherwise the contractor/seller shall pay to the purchaser such compensation as may arise by reasons of the breach of the warranty herein contained.*

(i) Guarantee that they will supply spare parts if and when required on agreed price. The agreed basis could be including but without any limitation and agreed discount on the published catalogue or an agreed percentage of profit on the landed cost

(ii) Guarantee to the effect that before going out of production for the spare parts they will give adequate advance notice to the purchaser of the equipment so that the latter may undertake the balance of the lifetime requirements

(iii) Guarantee to the effect that they will make available the blueprints of the drawings of the spares if any when required in connection with the main equipment.

(iv) It is a condition of the contract that the contactor shall be responsible for free after-sales service for minimum period of 24 months from the date of acceptance of the equipment by the consignee,

(v) a) The complete system including all items/equipment vehicle & Chassis should be guaranteed for two years of trouble free operation from the date of commissioning. In case of any item or equipment failure including software and hardware within this period, the same shall be rectified or replaced free of cost to Doordarshan at the site. In

case, it is not rectified within one week, replacement of the equipment shall be arranged by the bidder

b) The guarantee includes all the hardware, software and modules of the complete system including vehicle.

c) The firm will provide up gradation of all the offered software free of charge during the guarantee period"

18. Clause 7 of the Contract, which is relevant for the instant case, reads as under:

*"7. **Date of Delivery***

Within 12 Months from the date of placement of this A/T i.e. 20.06.2014."

19. Clause 1(a) of the bid document distinctly notes that a bidder must have satisfactorily completed works of similar nature during the last seven years ending last date of month previous to the one in which tenders were invited. The term "works" has also been elaborated to mean works of *"SITC – Telecast/Broadcast equipments i/c Cameras, Television Studio or/and Audio-visual works, Servers, networking or/and Teleport equipments"*. The Clause further states that the completion certificate must clearly mention the date of start of work, date of completion, total value of work done, scope of work, and agreement number to which it pertains.

20. A reading of Clause 7 of the contract between the Petitioner and Prasar Bharti/Doordarshan shows that the date of delivery was to be *"within 12 months from the date of placement of this A/T i.e. 20.06.2014"*. The learned ASG's submission that as the delivery of the product/services was concluded in the year 2014 itself, the Petitioner cannot take the aid of Clause 15(h) of the contract to state that the guarantee/warranty period of

24 months to extend the contract period, cannot be rejected. It has further been submitted by the learned ASG that the usage of the term "works" implies that it is the date of delivery that needs to be taken into consideration to calculate the period, and not the conclusion of the contract itself. This Court finds weight in the above submission of the learned ASG as a perusal of Clause 15(h) of the contract only reveals that the guarantee/warranty period is styled merely as an "after-sales service" period, and cannot be interpreted as a period which forms a part of the work done by the Petitioner.

21. Furthermore, in Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and Anr. (supra), the Supreme Court had observed that the owner or the employer of a project, who had authored the tender documents, would be the best person to interpret the same, and the Courts must accord due deference to their understanding and appreciation of the same. This has been stated in the following:

> *"**15**. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."*

22. The Judgement relied upon by the learned ASG, i.e. Agmatel India Private Limited v. Resoursys Telecom and Ors. (supra) becomes relevant at this juncture as it reiterates the same finding that if the interpretation of the author is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, then the Court should restrain itself from interfering. The relevant portion can be read as follows:

> *"26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."*

23. This Court must not sit as an Appellate Authority over the interpretation given by the Respondent No.1 and deference must be given by the Court to Respondent No.1's interpretation of the bid document. The contention of the Petitioner that the duration of the work done by the Petitioner for Prasar Bharti/Doordarshan should include the guarantee/warranty period cannot be accepted. Reliance placed by the Petitioner on Jagdish Mandal v. State of Orissa (supra) is of no consequence as the said Judgement cements the principle that judicial review can only be exercised if the decision taken is arbitrary or if the decision taken is meant to favour another bidder. This Court is of the

opinion that the decision taken by Respondent No.1 is in consonance with the terms and conditions of the bid document, and the averment of the Petitioner that the decision of Respondent No.1 is to favour Respondent No.3 is without any basis or concrete evidence.

24. In light of the above observations, the instant petition is dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2022
Rahul