**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6566/2022

M/s Reutech Mining, A Division of Reutech Pty.Ltd. Through M/s K.K. Alliance India Private Limited (Power of Attorney Holder) Having its Office at Level-5, Landmark Plaza, SAS Business Centre, Ramdaspeth, Nagpur, Maharashtra, Through Power of Attorney Holder Vivek Tank. **PETITIONER**

.....VERSUS.....

1. Union of India, Through its Secretary, Ministry of Coal A Wing, Dr.Rajendra Prasad Road, New Delhi – 110 001.
2. Western Coalfields Limited, Through its Chairman cum Managing Director, Coal Estate, Civil Lines, Nagpur – 440 001.
3. Western Coalfields Limited, Through its Director Technical (Operations), Coal Estate, Civil Lines, Nagpur – 440 001. **RESPONDENTS**

Shri Vineet Kothari, Senior Advocate with Shri Mehul Kothari and Shri M.A. Vishwarupe, counsel for the petitioner.
Shri N.S. Deshpande, Deputy Solicitor General of India with Shri S.A. Chaudhari, counsel for the respondent no.1.
Shri A.S. Jaiswal, Senior Advocate with Shri N.G. Moharir and Shri G.E. Moharir, counsel for the respondent nos.2 and 3.

WITH

WRIT PETITION NO. 8247/2022

Sujyoti India (P.) Limited, having registered office at Unit No.1104, Krushal Commercial Complex, G.M. Road, above Shoppers Stop, Chembur (West) Mumbai-400089, through its Director Shashank s/o Padmakar Muley. **PETITIONER**

.....VERSUS.....

1. The Union of India, Through its Secretary, Ministry of Coal, A-Wing, Dr.Rajendra Prasad Road, New Delhi – 110 001.
2. The Western Coalfields, Through its Chairman cum Managing Director, Civil Lines, Nagpur. **RESPONDENTS**

Shri M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde, counsel for the petitioner.
Shri N.S. Deshpande, Deputy Solicitor General of India with Shri V.A. Bramhe, counsel for the respondent no.1.
Shri A.S. Jaiswal, Senior Advocate with Shri N.G. Moharir and Shri G.E. Moharir, counsel for the respondent no.2.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : DECEMBER 22, 2022
DATE ON WHICH JUDGMENT IS PRONOUNCED : JANUARY 05, 2023.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

Cancellation of the tender process initiated by the Western Coalfields Limited has been challenged by two successful bidders. That challenge is being considered together and the writ petitions preferred by them seeking issuance of purchase orders are being decided by this common judgment.

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The facts giving rise to the present proceedings are that on 17.11.2021, Western Coalfields Limited (for short, 'WCL') published a notice of Global Tender Enquiry for the Supply, Installation and Commissioning of Mine Slope Stability Monitoring Radar System with one year warranty and seven years Comprehensive Annual Maintenance Contract (CAMC). The petitioner in Writ Petition No. 6566 of 2022 – M/s Reutech Mining and the petitioner in Writ Petition No.8247 of 2022 – Sujyoti India alongwith M/s Hexagon Geosystems responded to the

aforesaid Global Tender Enquiry. In terms of the tender notice each bidder was entered into a Pre-Contract Integrity Pact with the WCL. The technical bids submitted by the aforesaid three bidders were opened on 18.01.2022. On evaluation of the said technical bids on 12.03.2022, the technical bids of M/s Reutech Mining and Sujyoti India were found qualified. The technical bid of M/s Hexagon Geosystems was rejected as the bid did not meet the requisite criteria. The two successful bidders were informed that the price bids would be opened on 15.03.2022. Accordingly, the price bids were opened on the said date. After conducting reverse auction wherein the bidders quoted their revised rates, the WCL declared that M/s Reutech Mining was the lowest bidder for Item No.2 in the tender enquiry while Sujyoti India was the lowest bidder for Item Nos.1 and 3 in the tender enquiry. On instructions of the WCL said bidders submitted the requisite price break-up alongwith a detailed calculation sheet on 25.03.2022. The WCL on 07.04.2022 referred the tender process to two Independent External Monitors (for short, 'IEMs') and sought their opinion as to whether the tender process should be taken further since the prices quoted by the bidders were more than the estimated tender value by 54.08% but when compared with the Last Purchase Price, the quoted prices were 5% higher. On 15.04.2022 the IEMs opined that the WCL could take necessary action so as to take the tender process to its logical conclusion. It is the case of the petitioners that thereafter they were not provided with any information with regard to the tender process by the WCL. Sujyoti India made representations to the IEMs as further tender process was being delayed. Similarly, M/s Hexagon Geosystems having been declared ineligible at the evaluation of its technical bid also made representations to the IEMs. The WCL referred the matter again to the IEMs in the light of said representations. The IEMs held meetings on 26.09.2022 and 27.09.2022 and thereafter on 29.09.2022 submitted their report to the WCL. They opined that the tender in question be cancelled in view of defects in scrutiny of the techno-commercial bids. The Tender Committee of the WCL considered the report of the IEMs on 07.11.2022 and thereafter resolved to accept the report of the IEMs and scrap the tender process. It was decided to go in for a fresh tender process. On 12.11.2022 the petitioners received the requisite communication informing them of the cancellation of the tender process. After making a representation to the WCL in that regard, these writ petitions have been filed challenging the decision of the WCL to cancel the tender process.

3. Shri Vineet Kothari, learned Senior Advocate for M/s Reutech Mining after referring to various clauses in the Global Tender Enquiry as well as Purchase Manual published by Coal India Limited in Year-2020 submitted that the WCL was not justified in cancelling the tender process

for procurement of Mine Slope Stability Radar on grounds that were foreign to the Purchase Manual as well as the conditions mentioned in the Global Tender Enquiry. The technical bid of M/s Reutech Mining having been found to be eligible in the techno-commercial scrutiny after which it was permitted to participate in the financial bid coupled with the opinion expressed by the IEMs to complete the tender process, there was no justifiable reason for the WCL to turn around and undertake a fresh reference to the IEMs. Without referring to the earlier opinion expressed by the IEMs on 12.04.2022, the IEMs erroneously considered the relevant documents and expressed an opinion to scrap the tender process. Notwithstanding the presence of Clause 22 of the Global Tender Enquiry which permitted the WCL to either accept or reject any or all bids it was not permissible for the WCL to exercise the power of rejection of all the bids in absence of any justifiable reason. The WCL ought to act reasonably and fairly in the said matter and Clause 22 could not be read to mean that the tender process could be cancelled at the whims of the WCL. It was urged that giving an absolute right to the WCL to scrap the tender process without any justifiable reason and in an arbitrary manner would render such clause *ultra vires*. Referring to the observations in paragraph 82 of the judgment of the Gujarat High Court in *Aakash Exploration Services Limited Through Director Heman Navinbhai Haria Versus Oil and Natural Gas Corporation Limited* [**Special Civil Application No. 7814**

of 2019] it was urged that Clause 22 did not give an unfettered right to the WCL to cancel the tender process. M/s Reutech Mining being the lowest bidder for Item No. 2 of the tender enquiry, it had a legitimate expectation that the work order would be issued to it since the entire tender process till that stage had been conducted in a fair manner which was even endorsed by the IEMs in their report dated 15.04.2022. It was then submitted that the Tender Committee to whom the first report of the IEMs was submitted on 12.04.2022 underwent a change and of the four members constituting the Tender Committee three were changed. The Tender Committee which considered the subsequent report of the IEMs did not consider the earlier report of the IEMs dated 15.04.2022 and took a diagonally opposite view of the matter. Our attention was invited to the observations in paragraph 58 of the judgment of the Hon'ble Supreme Court in *The Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Another Versus Shishir Realty Private Limited & Others* [**2021 (14) SCALE 378**] in the context of "regime revenge". M/s Reutech Mining was not heard prior to cancelling the tender process. It ought to have been heard in the light of the fact that its bid for Item No.2 of the tender notice had been found to be lowest and a decision of scrapping the tender process adversely affected it. In that regard the learned Senior Advocate placed reliance on the decision of the Orissa High Court in *M/s Maa Kalijaee Transport, Sambalpur Versus*

Union of India & Ors. [**W.P. (C) No. 2160 of 2022**] as well as the judgment of the Himachal Pradesh High Court in *Jalam Singh Versus State of Himachal Pradesh & Ors.* [**AIR 2022 HP 59**]. It was also urged that M/s Reutech Mining filed the present writ petition on 17.10.2022 seeking a direction to be issued to the WCL for issuance of a work order. Notice was issued in the writ petition on 19.10.2022 and during pendency of the present proceedings the WCL issued a corrigendum cancelling the tender process on 12.11.2022. This was done without obtaining the leave of the Court and the same indicated the approach of the WCL. The said decision was taken ignoring public interest. It was thus submitted that a clear case for issuance of a writ of mandamus was made out and M/s Reutech Mining was entitled to be issued a work order as regards Item No.2 of the tender enquiry issued by the WCL.

4. Shri M.G. Bhangde, learned Senior Advocate for Sujyoti India in addition to the aforesaid submissions contended that the subsequent reference to the IEMs notwithstanding the earlier opinion to complete the tender process was contrary to Section 8 of the Pre-Contract Integrity Pact. As per Cause (f) of the communication dated 01.07.2017 engaging the IEMs it had been clearly stated that the role of the IEMs was independent in nature and advice once tendered was not subject to review at the request of the organization. Moreover the Pre-Contract

Integrity Pact was entered into granting limited authority to the IEMs to consider as to whether the bidders and/or the WCL complied with the obligations under the agreement in the context of corruption. The subsequent reference made to the IEMs after receiving their earlier positive recommendation was therefore not in consonance with the Purchase Manual. It was urged that in the Global Tender Enquiry it had been made clear that the provisions of the New Coal India Limited Purchase Manual-2020 alongwith amendments would be applicable. Referring to Clause 13.22 of the Purchase Manual it was submitted that thereunder it was stated that under ordinary circumstances it was not desirable to scrap the tender and re-invite the quotations. Contingencies in which all bids could be rejected were also stipulated. There was necessity for a proper justification to be recorded for scrapping the tender. The impugned decision of scraping the tender process did not indicate independent application of mind by the Chairman and the Managing Director, Western Coalfields Limited though it was necessary for the said Authority to take a decision independently. Except for stating that the Chairman and the Managing Director agreed with the recommendations of the Tender Committee to cancel the tender there was no material on record placed by the WCL to indicate that a conscious decision after considering all relevant aspects was taken. The two reports of the IEMs alongwith the minutes of the Tender Committee meetings ought to have been considered by the Competent Authority before taking a final decision. It was not indicated as to which sub-clause of Clause 13.22.1 had been invoked. In absence thereof the impugned decision being arbitrary in nature was liable to be set aside.

It was urged that the work in question was supply, installation and commissioning of Mine Slope Stability Monitoring Radar system which was a work undertaken in the light of the statutory requirements prescribed under the Coal Mines Regulations, 2017 dated 27.11.2017. The said regulations had been framed in exercise of powers conferred by Section 57 of the Mines Act, 1952 and therefore with a view to ensure safety of persons working in mines such system was required to be installed. It therefore could not be said that the dispute raised was purely contractual in nature without any element of public law involved therein. The successful bidders having raised the contention that the scrapping of the tender process was unreasonable and arbitrary not being in consonance with the Purchase Manual as well as the terms of invitation under the Global Tender Enquiry, this Court could examine whether the decision to scrap the tender process was reasonable and fair in the context of Article 14 of the Constitution of India.

It was urged that the successful bidders were not merely seeking enforcement of their contractual rights but were questioning the exercise of power by the WCL in cancelling the tender process. Since it was being urged by the successful bidders that the cancellation of the tender process was arbitrary, unreasonable and without indicating any sufficient reason for the same in the context of the Purchase Manual-2020 the writ petition under Article 226 of the Constitution of India was maintainable. In that regard the learned Senior Advocate placed reliance on the decisions in *Harminder Singh Arora Versus Union of India & Others* [**(1986) 3 SCC 247**], *Kumari Shrilekha Vidyarthi & Others Versus State of U.P. & Others* [**(1991) 1 SCC 212**], *Sorath Builders Versus Shreejikrupa Buildcon Limited & Another* [**(2009) 11 SCC 9**], *R.R. Verma & Others Versus Union of India & Others* [**(1980) 3 SCC 402**] and *Kisan Sahkari Chini Mills Limited & Others Versus Vardan Linkers & Others*[**(2008) 12 SCC 500**]. Reference was also made to the decision in *Union of India & Others Versus Bharat Forge Ltd. & Another* [**2022(12) SCALE 122**] to urge that the WCL was an 'authority' as contemplated by Article 226 of the Constitution of India and the bidders could seek writ for enforcement of their fundamental as well as non-fundamental rights. It was in public interest that the WCL conducted the tender process in accordance with the Purchase Manual and the Global Tender Enquiry in the light of the law laid down in *Sorath Builders* (supra). Reference was also made to the decisions in *Padgilwar Agro Industries Versus Director & Ors* [**(2015) 4 Bom CR 406**] and *Sarvajanik Shri Ganeshotsav Mandal, Mumbai & Another Versus Municipal Corporation of Greater Mumbai & Others*

[**2006(4) Mh.L.J. 207**] to substantiate the contention that the terms mentioned in the Purchase Manual ought to have been duly followed. It was thus urged that the cancellation of the tender process being without any justifiable or legal cause was liable to be set aside and the consequential order of issuance of the work orders for Item Numbers 1 and 3 of the Global Tender Enquiry ought to be issued.

5. Shri A.S. Jaiswal, learned Senior Advocate for the WCL opposed both the writ petitions. Inviting attention to the prayers made in the writ petitions seeking a direction to be issued to the WCL to issue necessary purchase orders it was submitted that such relief based on contractual obligations could not be sought to be enforced in exercise of writ jurisdiction. There being no element of public law or involvement of any public interest the petitioners were not entitled for such relief. The only right that the bidders could canvass was a fair consideration of their bids and not the right to be granted a work order. By submitting the bids the petitioners had merely made an offer and there was no concluded contract between the parties. The Competent Authority had rightly invoked the power conferred by Clause 22 of the Purchase Manual and the said clause was not under challenge. The cancellation of the tender process was for justifiable reasons keeping in view the interest of the WCL and it had acted in its best interest. It was then submitted that the IEMs

considered the representations made by the bidders themselves and recommended cancellation of the tender process. On the basis of material available the Tender Committee after due deliberations decided to cancel the tender process. The Chairman and Managing Director in the light of the material available directed scrapping of the tender process. There was no justification for the bidders to urge that the change in the constitution of the Tender Committee had altered the earlier position. The Tender Committee consisted of members based on their designations and the Tender Committee that was constituted in March-2022 underwent a change with the passage of time in October-2022. Based on independent consideration by the IEMs necessary recommendation for scrapping the process had been made. The Chairman and Managing Director was not expected to pass a reasoned order indicating various circumstances as is required in any adjudication of judicial proceedings. The terms mentioned in the Purchase Manual could be said to be advisory in nature and did not have any statutory force for being enforced in a Court of law. The WCL ought to be granted necessary commercial freedom to take a decision in its own interest. In absence of any allegation of bias or favoritism and it not having been demonstrated that public resources were being squandered there was no case to exercise jurisdiction under Article 226 of the Constitution of India. Merely because the decision to scrap the tender process was titled 'corrigendum' the ultimate decision did not change. The title of the documents was not very material. Since the decision to scrap the tender process was taken in the best commercial interest of the WCL there was no question of detailed reasons being assigned. The matter was required to be referred to the IEMs subsequently in view of the representations made by the bidders. The bidders therefore could not question the reason for making such reference. The learned Senior Advocate sought to demonstrate various factual aspects in the report of the IEMs and the evaluation by the Tender Committee to justify its decision. In support, the learned Senior Advocate placed reliance on the decisions in *Bharat Coking Coal Ltd. Versus AMR Dev Prabha* [**(2020) 16 SCC 759**], *Sethi Auto Service Station & Another Versus Delhi Development Authority & Others* [**(2009) 1 SCC 180**] and *Oriental Bank of Commerce Versus Sunder Lal Jain & Another* [**(2008) 2 SCC 280**]. Since there was no interim order passed in the writ petition preferred by M/s Reutech Mining, the WCL was not precluded from considering the matter and thereafter deciding to scrap the tender process. In any event the said writ petition having been amended, the decision to scrap the tender process was to be examined. It was thus submitted that in absence of any *mala fide*s and a possible view of the matter having been taken by the Tender Committee, there was no case made out to grant relief as prayed for in the writ petitions. It was submitted that both the writ petitions were liable to be dismissed.

6. At the conclusion of the hearing the learned counsel for the parties placed on record their notes of arguments. On behalf of Sujyoti India reliance was placed on the decision in *State of U.P. Versus Sudhir Kumar Singh* [**2020(12)SCALE 92**] to highlight the aspect of 'public law element'. We have accordingly considered the entire material relied upon.

7. The rival submissions of the parties now fall for consideration. M/s Reutech Mining and Sujyoti India are the bidders who have participated in the Global Tender Enquiry issued by the WCL. According to them the Tender Committee having found their technical bids to be techno-commercially qualified, their price bids came to be opened. In terms of the tender notice reverse auction was also conducted and insofar as Item no.2 was concerned M/s Reutech Mining was the lowest bidder while Sujyoti India was found to be the lowest bidder for Item Nos.1 and 3. The Tender Committee however without taking steps to have the tender process completed by issuing the work orders to the lowest bidders preferred to approach the IEMs at the behest of M/s Hexagon Geosystems which thereafter led to re-opening of the entire tender process. Such course it is urged is not contemplated either by the Purchase Manual or by the terms indicated in the Global Tender Enquiry. The Chairman and Managing Director, WCL without due application of mind and without considering all relevant factors had accepted the recommendation of the

IEMs to cancel the tender in question and go in for a fresh process. Broadly, on the aforesaid premise the aggrieved bidders have invoked writ jurisdiction under Article 226 of the Constitution of India challenging the cancellation of the tender process and have sought a mandamus to be issued to the WCL to take the tender process to its logical end and award the contract to them.

8. Before proceeding to consider the prayers as made in the writ petitions it would be necessary to first consider the scope as well as the broad parameters laid down by the Hon'ble Supreme Court in tender matters. Same can be done under the following heads:-

(a) **Right of a bidder *vis-a-vis* right of the principal to accept the best bid** :-

The right of a bidder to a fair consideration of his offer coupled with the fact that he is entitled to a fair, equal and non-discriminatory treatment in the matter of evaluation of his bid is well recognized. While a lowest/highest bidder is not entitled to insist for acceptance of his offer he is nevertheless entitled to urge that the offer made by him has to be fairly considered by the principal and that he is entitled not to be discriminated against while his offer is considered alongwith that of all other bidders. At the same time the principal has a discretion not to accept the lowest/highest bid but to undertake a fresh exercise of bidding in a given case. The commercial freedom of the principal has to be regarded and such freedom is not liable to be interfered with unless it is shown that the same has been exercised in an arbitrary, irrational or a perverse manner or that such decision has been taken to favour a particular bidder. In *Maa Binda Express Carrier & Another Versus North-East Frontier Railway & others* [**(2014) 3 SCC 760**] it has been held that award of a contract is essentially a commercial transaction which must be determined on the basis of considerations that are relevant to such commercial decision.

It would therefore be necessary for the Court in such circumstances to seek to balance the competing rights between a bidder who is entitled to a fair consideration of his offer with the right of the principal to enter into a contract which suits its commercial interest. In a given case when the right of a bidder to fair treatment and consideration of his bid for acceptance is found to be honoured and satisfied, the insistence for issuance of a writ of mandamus against the principal to accept the lowest bid would have to give way to the right of the principal to choose not to accept such offer when such decision is shown to have taken *bona fide*ly, in a transparent manner and not with a view to favour any particular bidder. If such informed decision is taken after considering the offer of the competing bidders and the Court finds that such decision is a possible view taken without it being arbitrary or irrational, the scope to interfere would be narrow.

(b) **Decision making process versus correctness of the decision** :-

It is well settled and requires no reiteration that in administrative matters and especially matters pertaining to decisions taken by the tender issuing authority, the Court is more concerned with the decision making process rather than the decision itself. The Court would be more concerned with the manner in which the decision under challenge has been taken rather than the aspect whether a correct decision in the facts of the case has been taken. In *Sterling Computers Limited Versus M and N Publications Limited* [**(1993) 1 SCC 445**] it has been held that while exercising the power of judicial review the Court is primarily concerned as to whether there has been any infirmity in the 'decision making process'. If it is found that the decision has been taken after due opportunity to the parties to explain and such decision can be supported by indicating the material considered, the same would satisfy the requirements of the decision making process being fair. In this regard we may refer to the observations of the Hon'ble Supreme Court in *Tata Cellular Versus Union of India* [**(1994) 6 SCC 651**] wherein in paragraph 74 it has been observed as under:-

> "*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.*"

It is no doubt true that in certain circumstances when a decision itself is questioned the same can be examined on the anvil of irrationality. In paragraph 81 of the decision in *Tata Cellular* (supra) it has been observed as under:-

> "*81. Two other facets of irrationality may be mentioned.*
>
> *(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. Secretary of State for Environment, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.*
>
> *(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R. v. Barnet London Borough Council, ex p Johnson the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down.*

(c) **Reasonableness of an order *vis-a-vis* sufficiency of grounds in support of the decision** :-

In *West Bengal Central School Service Commission & Others Versus Abdul Halim & Others* [**(2019) 18 SCC 39**] it has been held that in exercise of jurisdiction under Article 226 of the Constitution of India the High Court does not sit in appeal over an administrative decision. An unreasonable order or a decision so arbitrary and capricious that no reasonable person could ever have arrived at is liable to be struck down by a writ Court. If the decision cannot be rationally supported by the materials on record, it may be regarded as perverse. However, the power of the Court to examine the reasonableness of an order does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable man could have taken. The writ Court does not interfere because a decision is not perfect.

Referring to the aforesaid decision, a three Judge Bench in *Municipal Council Neemuch Versus Mahadeo Real Estate* [**(2019) 10 SCC 738**] has reiterated that interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law meaning thereby that the error is apparent on the face of the record and is self evident. Moreover, such decision must have led to manifest injustice.

(d) **<u>Duty to record reasons *vis-a-vis* reasons that persuaded the Authority to take its decision</u>** :-

In this regard it is necessary to note the distinction in cases where there is a statutory duty to record reasons while arriving at a particular conclusion in contra-distinction with an administrative decision wherein application of mind could be indicated on the basis of the material on record to urge that even in the absence of a separate reasoned order, the conclusion as recorded is after considering that material. Reference can be made to a recent decision of the Hon'ble Supreme Court in *National Highways Authority of India & Others Versus Madhukar Kumar & Others* [**2021(11) SCALE 233**] wherein the aspect of duty to give reasons has been considered. The earlier decision in *Rajeev Suri Versus Delhi Development Authority* [**2021(1) SCALE 1**] was referred to wherein it was held that when the Statute itself provide for an express requirement of a reasoned order it was understandable that absence of reasons would be a violation of such legal requirement and therefore illegal. However in cases where there is no such express requirement of reasons the ultimate effect of absence of reasons on the final decision cannot be sealed in a straightjacketed manner. Such cases would have to be examined from a proper perspective in the light of overall circumstances. The Court would look at the nature of the decision-making body, nature of rights involved, stakeholders, form and substance of the decision etc. The ultimate enquiry would be of application of mind and a reasoned order would be merely one element in this enquiry. The Court may decide in the context of overall circumstances of the case and a sole element (of no reasons or lack of elaborate reasons) cannot be enough to make or break the decision as long as the judicial mind is convinced of substantial application of mind from other circumstances. Thereafter in paragraph 62 of its decision in *National Highways Authority of India & Others* (supra), it was observed as under:-

> "*62. It is one thing to say that there should be reasons, which persuaded the Administrator to take a particular decision and a different thing to find that the reasons must be incorporated in a decision. The question, relating to duty to communicate such a decision, would arise to be considered in different situations, having regard to the impact, which it, in law, produces. ……….. Even if, there is no duty to record reasons in writing, undoubtedly, it must be followed and it would amount to the violation of the Statute, if it were not followed. Even if, there is no duty to record reasons or support an order with reasons, there cannot be any doubt that, for every decision, there would be and there must be, a reason. The Constitution does not contemplate any Public Authority, exercising power with caprice or without any rationale. But here again, in the absence of the duty to record reasons, the Court is not to be clothed with power to strike down administrative action for the mere reason that no reasons are to be found recorded. In certain situation, the reason for a particular decision, may be gleaned from the pleadings of the Authority, when the matter is tested in a court. From the materials, including the file noting's, which are made available, the court may conclude that there were reasons and the action was not illegal or arbitrary. From admitted facts, the court may conclude that there was sufficient justification, and the mere absence of reasons, would not be sufficient to*

> *invalidate the action of the Public Authority. Thus, reasons may, in certain situations, have to be recorded in the order. In other contexts, it would suffice that the reasons are to be found in the files. The court may, when there is no duty to record reasons, support an administrative decision, with reference to the pleadings aided by materials.*"

9. The facts on record indicate that pursuant to the Global Tender Enquiry dated 17.11.2021 that was floated by the WCL bids were to be submitted by 04.01.2022. In response to the said Global Tender Enquiry, three bids were received being those of M/s Hexagon Geosystems, M/s Reutech Mining and Sujyoti India. The technical bids came to be opened on 18.01.2022. After technical evaluation the techno-commercial bid of M/s Hexagon Geosystems came to be rejected on 12.03.2022. The technical bids of the other two bidders were found to be qualified. The Tender Committee in its meeting held on 12.03.2022 thus opined that the bids of M/s Reutech Mining and Sujyoti India were techno-commercially accepted. It recommended the opening of the price bids of the said two bidders. Accordingly the financial bids were opened on 15.03.2022 followed by reverse auction on the same day. After the reverse auction, the bid of M/s Reutech Mining was found to be lowest for Item No.2 while the bid of Sujyoti India was found to be lowest for Item Nos.1 and 3. The said bidders were asked to submit the price break-up pursuant to an e-mail dated 16.03.2022. In response thereto the price break-up of the reverse auction price came to be submitted on 22.03.2022

and 23.03.2022. On 25.03.2022 Sujyoti India provided its detailed calculation sheet. Thereafter on 07.04.2022 the General Manager (MM) Purchase referred the matter to the two IEMs for their opinion. On 12.04.2022 joint opinion was given by the IEMs advising the WCL to take the tender process to its logical end. M/s Reutech Mining and Sujyoti India heavily rely upon this joint opinion to contend that the WCL ought to have acted in accordance therewith and issued the respective work orders.

10. In the meanwhile on 15.03.2022, M/s Hexagon Geosystems issued an e-mail stating that it ought to be considered as an eligible bidder for the justification provided in the said e-mail. This was replied to by the General Manager (S & C) on 22.03.2022 seeking to justify the decision to hold M/s Hexagon Geosystems to be technically disqualified. Further representations/grievances were again received from M/s Hexagon Geosystems on 22.03.2022, 25.03.2022, 08.04.2022 and 25.05.2022. In addition, it also issued an e-mail dated 21.08.2022 addressed to the IEMs followed by a further e-mail dated 26.08.2022 also issued to the IEMs.

It may be noted that on 04.05.2022 Sujyoti India issued a communication to the IEMs stating therein that despite having secured L-1 position in the reverse auction the tender was not being finalized prior to the expiry of the validity period which was 17.05.2022. It requested the IEMs to advice WCL to finalize the tender within the validity period and further stated that it be given a fair opportunity in case of any clarification required in the context of the tender process as well as natural justice. This was followed by another communication dated 15.06.2022 issued to the WCL in response to the request for extension of the validity period. By the said communication Sujyoti India submitted price justification of the quoted reverse auction price. It also extended the validity period till 15.07.2022 as an exceptional case. There is yet another communication dated 08.08.2022 issued by Sujyoti India to the IEMs stating therein that it had submitted NSIC certificate which covered the entire service component of the subject tender. It was stated that by virtue of aforesaid it was eligible for "relaxation for MSME and Start-ups" as per Clause 34 of Section II, Instructions to Bidders. It further stated that it was having comprehensive annual maintenance contracts with Coal India Limited subsidiaries. It being MSME and CAMC contract holder for WCL and SECL, the turnover criteria of the service component of the tender mentioned in Point No.11 for Indian in general eligibility criteria in the tender enquiry was not applicable. By stating that its offer was valid till 15.08.2022 it requested the IEMs to intervene in the matter and advice WCL to finalize the tender.

11. According to the bidders the IEMs having rendered their opinion on 12.04.2022 that the tender process should be taken further to its logical end, it was not necessary or rather impermissible for the WCL to again make a reference to the IEMs. This submission is based on the Terms of Engagement of the IEMs dated 01.07.2017 and 13.03.2019. Clause (f) of the Terms of Engagement dated 01.07.2017 reads as under:-

> "f*) The role of IEMs is advisory, would not be legally binding and it is restricted to resolving isues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.*"

As per the aforesaid clause it has been stated that the role of the IEMs is advisory not being legally binding on the WCL and advice once tendered would not be subject to review at the request of the WCL. Section 8 of the Pre-Contract Integrity Pact stipulates that the IEMs are required to be appointed after approval by the Central Vigilance Commission so as to review independently and objectively the extent to which the parties comply with the obligations under the agreement. It was highlighted that the IEMs were more concerned with the aspect of corruption in the tender process either at the instance of the principal or the parties responding to the bid. In the light of the earlier opinion dated 12.04.2022 having been expressed by the IEMs the WCL ought to have proceeded further and issued the respective work orders to the successful bidders.

In this regard it is required to be noted that the techno-commercial bid of M/s Hexagon Geosystems was held to be disqualified and the techno-commercial bids of M/s Reutech Mining and Sujyoti India were held to be qualified. Immediately thereafter on 15.03.2022 M/s Hexagon Geosystems issued an e-mail urging that rejection of its techno-commercial bid was unjustified. This was followed by various other e-mails referred to hereinabove. It also issued e-mails to the IEMs on 21.08.2022 and 26.08.2022. It is also seen that Sujyoti India on 08.08.2022 issued a communication to the IEMs stating therein that the work order ought to be issued to it. In the said communication reference was made to its eligibility as per Clause 34 of Section II, Instructions to bidders as well as to the turnover criteria of the service component at Point No.11 of the tender enquiry. Insofar as M/s Reutech Mining is concerned it had also issued a communication dated 14.06.2022 to the General Manager (MM) WCL as well as an e-mail on 15.07.2022 indicating the manner in which the WCL had received a competitive price as compared to the earlier purchase orders. It had also issued a legal notice to the WCL on 28.09.2022 followed by another notice dated 30.09.2022 to the IEMs.

12. It is in the backdrop of the aforesaid communications, e-mails as well as representations received by the WCL and thereafter by the IEMs that the IEMs sought to discuss the matter with the officials of the WCL as well as the representatives of the bidders on 26.09.2022 and 27.09.2022 at Nagpur. It is undisputed that the representatives of all three bidders were present in the said meetings. While the representatives of M/s Hexagon Geosystems and Sujyoti India were physically present the representative of M/s Reutech Mining participated through video conferencing. In this context it is necessary to note that though M/s Reutech Mining and Sujyoti India have now sought to urge that the subsequent reference made by the WCL to the IEMs was not warranted especially in the light of the Terms of Engagement of the IEMs it is seen that in none of the communication addressed by M/s Reutech Mining and Sujyoti India is any protest raised to the re-consideration of the matter by the IEMs in the meetings held on 26.09.2022 and 27.09.2022. It was open for the said bidders to have registered their protest on the count that having rendered an earlier opinion on 12.04.2022 the IEMs could not have reviewed their earlier opinion or that the WCL could not have sought such further opinion from them. On the contrary it is to be noted that insofar as M/s Reutech Mining is concerned it has on 14.06.2022 and thereafter on 15.07.2022 submitted its justification for being issued the work order and has also furnished comparative price analysis. Similarly

Sujyoti India has in its communication dated 15.06.2022 submitted its price justification and thereafter on 08.08.2022 has canvassed its eligibility for relaxation for MSME and Start-ups as per Clause 34 of Section II – Instructions to bidders while also referring to Point No.11 with regard to the turnover criteria.

13. We thus find from the conduct of the aforesaid two bidders that they participated in the deliberations with the IEMs on 26.09.2022 and 27.09.2022 without any protest nor has any objection been shown to have been raised to the re-consideration of the matter by the IEMs despite the earlier opinion dated 12.04.2022. Having participated in the said deliberations and having sought to justify their entitlement to the issuance of the work orders they cannot now be heard to contend that the subsequent exercise conducted by the IEMs at the behest of the WCL was totally unwarranted and not supported by the Terms of Engagement of the IEMs. M/s Reutech Mining and Sujyoti India are thus estopped by their own conduct and from urging that the subsequent reference by the WCL to the IEMs was not permissible. In this factual situation the reliance placed on the decision in *R.R. Verma* (supra) does not carry the case of the bidders further. In any event it is found that the WCL as well as the IEMs having received various communications/ representations from the participating bidders, the act of the WCL in again seeking the

opinion of the IEMs in these circumstances cannot be said to be an impermissible or illegal act. The subsequent reference being occasioned by the events that occurred after 12.04.2022 in the form of receipt of representations, seeking of another opinion cannot be held to be an impermissible act. Moreover the opinion expressed by the IEMs was after considering the response of all bidders in the meetings held on 26.09.2022 and 27.09.2022. On this count it cannot be held that the subsequent reference made to the IEMs was illegal or unjustified.

14. Coming to the observations of the IEMs as recorded pursuant to the meetings held on 26.09.2022 and 27.09.2022 it can be noticed that insofar as M/s Reutech Mining is concerned it was found that the authorization document in favour of its official who had then issued authorization in favour of M/s K.K. Alliance (Indian Partner) had not been submitted in the technical bid documents nor available in the connected files. Insofar as Sujyoti India is concerned the IEMs observed that it was not eligible for exemption from the condition of annual turnover as a MSME unit that was evident from the notice inviting tender. The Technical Committee had erroneously interpreted the relevant clause of the Global Tender Enquiry and granted such benefit. It further noted that the total L-1 rate for all the seven machines alongwith the CAMC was 54% higher than the estimated value of the tender being unreasonably

high. It further noted that there had been some major changes in the quantity and profile of the equipment under purchase since the time it was last placed before the Board of Directors. In view of the aforesaid the IEMs opined that the tender in question be cancelled in the light of defects in the scrutiny of the techno-commercial bids. It recommended carrying out detailed analysis of equipments available in market for Slope Stability Monitoring Radar System that could truly and genuinely provide advanced warning for the safety to the life and property to those deployed in the neighbourhood of dump sites. The Technical Committee was also advised to have its knowledge level constantly updated.

15. The aforesaid opinion of the IEMs was thereafter considered by the Tender Committee. It took into consideration the documents on record and noted shortcomings in the documents submitted by the bidders. Insofar as M/s Hexagon Geosystems was concerned it noted that as per Clause 25 of the NIT there was a scope of seeking specific clarification from M/s Hexagon Geosystems under the shortfall/ clarification criteria before technically rejecting its bid. It further noted that the tender specific authorization as per the terms of the NIT has been submitted by M/s Hexagon Geosystems. Insofar as M/s Reutech Mining is concerned the Tender Committee referred to Section II – Instructions to Bidders and Clause 11.2 to note that there was no authorization

submitted from M/s Reutech Pty. Limited for Radar System to take instructions regarding submission of the tender document and authorizing M/s Ruetech Mining to submit the tender document. It also noted that M/s Reutech Mining had submitted a supply order issued to it by M/s Tata Steel placed on M/s Elecome Technologies Private Limited but no document was submitted indicating relationship between M/s Elecome Technologies Private Limited and M/s Reutech Mining Systems/ Reutech Pty. Limited. Such shortfall/clarification could have been sought during the techno-commercial scrutiny of the offer. As regards Sujyoti India is concerned the Tender Committee observed that insofar as Section III – Technical Sanction was concerned there was no specific document submitted in support of Point No.11 of the eligibility criteria. Similarly it noticed shortcomings on the aspect of relaxation for MSME and Start-ups under Clause 34. It was observed that the said deficiencies were noticed after the price bid opening and reverse auction was conducted.

16. Based on the aforesaid deliberations the Tender Committee opined that the opinion of the IEMs regarding systemic improvement was relevant. It found that comprehensive techno-commercial scrutiny of the offers should have been done before price bid opening so as to avoid representations/grievances of the bidders. It opined that since many techno-commercial defects/deficiencies had been observed after price bid

opening and as opined by the IEMs in their joint report it found it prudent to cancel the tender so as to maintain transparency and sanctity of the tender. It accordingly recommended the cancellation of the tender.

A perusal of the report of the Tender Committee indicates that it has perused the relevant tender documents submitted by the bidders and it has noticed various deficiencies that ought to have been noted during the comprehensive techno-commercial scrutiny of the offers. In addition it also considered the opinion of the IEMs in the matter regarding systemic improvement and observed that since the Mine Slope Stability Radar was a life saving safety equipment necessary measures for systemic improvement ought to be taken. We find from the documents on record that the IEMs held meetings with all bidders on 26.09.2022 and 27.09.2022. After considering various aspects the IEMs jointly opined that in view of the defects in the scrutiny of the techno-commercial bids the tender in question be cancelled. The Tender Committee thereafter has considered the aforesaid opinion alongwith relevant documents to recommend that it had also noticed various techno-commercial defects/ deficiencies after opening of the price bids. In the light of its observations it proceeded to recommend cancellation of the tender process.

17. The learned Senior Advocates for the petitioners strenuously urged that the technical analysis of the documents submitted by the

respective bidders was not properly undertaken initially by the IEMs and thereafter by the Tender Committee. They sought to demonstrate from the material on record that insofar as M/s Reutech Mining is concerned the linkage between the foreign manufacturer and their officials issued authorization to the Indian agent for participating in the tender which was evident from the documents submitted alongwith the techno-commercial bid. Similarly the observation with regard to the relationship between M/s Elecome Technologies Private Limited and M/s Reutech Mining was incorrect. As regards Sujyoti India it was urged that no relaxation had been sought for under Clause 34 and that the observations of the IEMs that it was not entitled for relaxation of experience/turnover criteria was incorrect. In short, it was urged that the conclusions arrived at initially by the IEMs and thereafter by the Tender Committee while proceeding to recommend cancellation of the tender process was the outcome of incorrectly considering the material on record in the context of the requirements under the Global Tender Enquiry.

18. We are however of the considered view that it would not be permissible for this Court in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India to examine these aspects and thereafter record a finding that the opinion expressed or the conclusion recorded in that regard is incorrect. As stated above the

correctness of the decision and the reasons recorded cannot be made the subject matter of scrutiny in such exercise unless it is shown that the same suffers from perversity or an apparent error on the face of record. The Court hardly possesses any expertise in the matter of assessment of technical requirements especially in the light of the fact that the said documents had been initially considered by the IEMs who are stated to be retired civil servants. We may in this regard refer to paragraph 15 of the decision in *Afcons Infrastructure Limited Versus Nagpur Metro Rail Corporation Limited & Another* [**(2016) 16 SCC 818**] which reads as under :-

> "*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.*"

In *Silppi Constructions Contractors Versus Union of India* [**(2020) 16 SCC 489**] it has been held that if there are two interpretations of the tender documents authored by the authority then the interpretation of the author must be accepted. The Court can interfere to prevent arbitrariness, irrationality, bias, *mala fide*s or perversity. In *Bharat Coking Coal Limited* (supra) it has been held that differences in opinion of contractual interpretation ought not to be a ground for the High Court to hold the view of the principal incorrect. After referring to the aforesaid decisions, the Hon'ble Supreme Court in its recent decision in *Agmatel India Private Limited Versus Resoursys Telecom & Others* [**(2022) 5 SCC 362**] has clarified that if the interpretation given to the tender document by the person inviting the offers is not acceptable to the constitutional Court, that by itself would not be a reason for interfering with the interpretation given.

Thus, even if the Court does not accept the correctness of the reasons recorded by the Tender Committee it would not be permissible for it to either correct such error or substitute its opinion in the place of that expressed by the Tender Committee. In the absence of any arbitrariness or irrationality in considering the documents in question such exercise would not be permissible.

At the cost of repetition it may be stated that in the communication dated 08.08.2022 issued by Sujyoti India reference has been made to its justification based on Clause 34 of Section II – Instructions to Bidders as well as Point No.11 of the Eligibility Criteria. It is on these two points that the Tender Committee has noticed certain shortcomings in the techno-commercial scrutiny of its bid. This would indicate that the justification put forth by Sujyoti India on 08.08.2022 was considered by the Tender Committee while recommending the cancellation of the tender process. The consideration of the explanation by the Tender Committee may not be to the satisfaction of the bidders but then the same cannot be the basis for setting aside such recommendation if the same is found to have been arrived at in the totality of the facts of the case.

19. It was urged on behalf of the petitioners that the Tender Committee that was initially constituted on 12.03.2022 underwent a change and the opinion of the IEMs was considered by a re-constituted Tender Committee of which only one member was part of the earlier Tender Committee. The other three members who were members of the earlier Tender Committee had been replaced. According to the WCL the members of the Tender Committee represent various departments and the concerned official holding the post in the concerned department at the relevant time is a member of the Tender Committee. In the absence of any specific allegation that the composition of the Tender Committee had been deliberately changed so as to re-consider the matter, we do not find that this could be a reason for doubting the exercise conducted by the Tender Committee while submitting its report dated 07.11.2022. It is seen that the Tender Committee consisted of the Director (Technical)

Operations, General Manager (S & C), General Manager (MM) and Chief Manager (Finance). There is no basis for the Court to record a finding that the decision taken and the opinion expressed by the subsequent Tender Committee was on account of its re-constitution. In this regard we may refer to the observations of the Hon'ble Supreme Court in paragraph 38 of its decision in *Ratnagiri Gas and Power Private Limited Versus RDS Projects Limited and Others* [**(2013) 1 SCC 524**] as under:-

> "*38. We need hardly point out that in cases where the decision-making process is multi-layered, officers associated with the process are free and indeed expected to take views on various issues according to their individual perceptions. They may in doing so at times strike discordant notes, but that is but natural and indeed welcome for it is only by independent deliberation, that all possible facets of an issue are unfolded and addressed and a decision that is most appropriate under the circumstances shaped. If every step in the decision-making process is viewed with suspicion the integrity of the entire process shall be jeopardised. Officers taking views in the decision-making process will feel handicapped in expressing their opinions freely and frankly for fear of being seen to be doing so for mala fide reasons which would in turn affect public interest. Nothing in the instant case was done without a reasonable or probable cause which is the very essence of the doctrine of malice in law vitiating administrative actions. We have, therefore, no hesitation in holding that the findings recorded by the High Court to the effect that the process of annulment of the tender process or the rejection of the tender submitted by RDS was vitiated by mala fides is unsustainable and is hereby set aside. Question 2 is accordingly answered in the negative.*"

In that view of the matter, the observations in paragraph 58 of the decision in *The Vice-Chairman and Managing Director* (supra) do not advance the case of the petitioners.

20. There was a debate as to whether the Global Tender Enquiry for procurement of Mine Slope Stability Monitoring Radar System was purely a commercial exercise or that there was an element of public interest involved. While the WCL sought to contend that it was just another commercial activity being undertaken by it in the running of its operations it was urged by the bidders that since such procurement was linked with the safety of workers of the mines and such exercise was undertaken by an 'authority' for the purposes of Article 226 of the Constitution of India, the same was in public interest. We do find that it is the statutory obligation of the WCL to ensure the safety of the persons working in the mines in the light of the provisions of the Coal Mining Regulations, 2017. The WCL being an 'authority' under Article 226 of the Constitution of India it undoubtedly is required to act in a reasonable and fair manner while conducting its aforesaid exercise. We do find that an element of public interest is involved therein. The estimated tender value of Rs.62.65 Crores coupled with the fact that an Open (Global) E-Tender was required to be issued thus indicate the nature of gravity of the exercise. The tender process therefore cannot be treated merely to be a

commercial activity of the WCL but it does have an element of public interest especially in the light of the decision in *Bharat Forge Ltd.* (supra).

Having held so we find the opinion expressed by the IEMs that a detailed analysis of the equipments available in the market ought to be carried out and selection of the equipments necessary for the safety to the life and property deployed in that regard ought to be kept in mind to be material and relevant. The Tender Committee has also opined that the equipment in question was a life saving safety equipment thus requiring systemic improvement measures. It is in this context that the challenge as raised to the cancellation of the tender process has been entertained keeping in view the observations in *Kisan Sahakari Chini Mills Ltd.* (supra). We however find that it would not be in larger public interest to review and upset the opinion expressed by the IEMs, the recommendation of the Tender Committee and the subsequent approval by the Chairman and Managing Director of the WCL. In absence of any evident arbitrariness, irrationality or *mala fide*s in arriving in its decision there would be no scope for this Court to interfere in exercise of Article 226 of the Constitution of India.

21. We have no difficulty in holding that Clause 22 of the Global Tender Enquiry does not grant an absolute unbridled power to the WCL to arbitrarily reject all bids. Reliance placed on the decision in *Akash*

Exploration Services Limited (supra) in that regard is justified. Clause 22 would have to be read with Clause 13.22.1 of the Purchase Manual which reads as under :-

> "*13.22.1 Under the ordinary circumstances, it is not desirable to scrap a tender and re-invite quotations. Rejection of all bids is justified when:*
>
> *(a) The quality and quantity requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;*
>
> *(b) Effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of bidders (refer to clause – 13.16 above).*
>
> *(c) All bids and proposals are not substantially responsive to the requirements of bidding documents.*
>
> *(d) The bids'/proposals' prices are substantially higher than the updated cost estimate or available budget or where the prices quoted are considered unreasonable because of sudden slump in market prices.*
>
> *(e) None of the technical proposals meets the minimum technical qualifying score.*
>
> *(f) There has been a material change in the basic specifications after issuance of tender enquiry.*
>
> *(g) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall cancel the procurement process.*
>
> *Approval of the competent authority will be obtained before cancelling tenders. Finance shall also be consulted before cancelling tenders. Proper justification must be recorded for scraping any tender.*"

In this context it was urged that none of the contingencies specified in sub-clauses (a) to (g) above were satisfied and hence the scrapping of the tender process was not in terms of Clause 13.22.1. In our considered view it is not possible to hold that only in the event of contingencies enumerated in sub-clauses (a) to (g) can all the bids be rejected. The said contingencies are illustrative in nature and not exhaustive. There could be situations besides those mentioned in the aforesaid sub-clauses which could require scrapping of the tender process. The commercial freedom of the principal cannot be curtailed by such restrictive interpretation. There has to be some scope for 'free play in the joints'. Undoubtedly, such scrapping has to be for justifiable reasons that would satisfy the requirements of reasonableness and fair play. If it is shown that such decision is neither arbitrary, unreasonable, *mala fide* or with a view to favour a particular bidder then the mere fact that the rejection of all the bids is not for the contingencies mentioned in sub-clauses (a) to (g), the same would not be a reason to hold that the scrapping of the tender process is not in accordance with Clause 13.22.1. The totality of the material considered while scrapping the tender would require consideration to support such decision. In *Municipal Corporation, Ujjain Versus BVG India Ltd.* [**(2018) 5 SCC 462**] it has been held that discretionary power under Article 226 of the Constitution of India has to be exercised with great caution only in furtherance of public interest and not merely on the making out of a legal point. The principles of equity and natural justice do not operate in the field of commercial transactions.

22. Much was argued about the absence of indication of application of mind by the Competent Authority/Chairman and Managing Director before accepting the recommendation of the Tender Committee to cancel the tender process. It was stated that as required by Clause 13.22 of the Purchase Manual the scrapping of the tender was not desirable in ordinary circumstances and rejection of all bids was justified only in the case of contingencies mentioned in Clauses (a) to (g) of Clause 13.22.1 thereof. Proper justification was to be recorded for the scrapping of any tender. It is to be noted that in the presence of sufficient material on record in the form of relevant documents, opinion of the IEMs and thereafter by the Tender Committee, the Chairman cum Managing Director was required to consider the same before taking the final decision. It is true that Clause 13.22.1 requires recording of proper justification for the scrapping of the tender process. The requirement of recording proper justification by the Competent Authority cannot be placed on a high pedestal in the sense that unless it is shown that a separate and detailed consideration of the material is shown to have been specifically undertaken, proper justification before taking a final decision is absent. If from the material on record it is shown that the

recommendation as made itself contains sufficient reasons which are accepted by the approving authority the same cannot be said to be bad for failure on the part of the approving authority to further record reasons for accepting such recommendation. In this regard reference can be made to the decision of the Hon'ble Supreme Court in *Sarat Kumar Dash & Others Versus Biswajit Patnaik & Others* [**(1995) Supp. 1 SCC 434**] wherein it has been held that in administrative matters while accepting the recommendations as made it would not be necessary for the superior authority to again record specific reasons while approving the same.

A distinction has to be kept in mind of the situation where there is a duty cast to record reasons as in a statutory adjudication with a situation where existence of material is sufficient to persuade an Authority to take a decision. While absence of reasons in a statutory adjudication could be one of the reasons for interfering with the same, absence of a reasoned order while taking an administrative decision cannot be subjected to challenge only on that count. As held in *National Highways Authority of India & others* (supra), mere absence of reasons by itself would not vitiate the decision if the material on the basis of which such conclusion is recorded is otherwise available in the record of the proceedings. We therefore find that the impugned communication dated 12.11.2022 clearly indicates that the General Manager (MM) Purchase explained the proposal for cancellation of the tender to the

Functional Directors. While considering the said proposal and after consulting the Functional Directors, the Chairman and Managing Director agreed with the recommendation of the Tender Committee to cancel the tender in question. The decision to cancel the tender has to be considered in totality of the circumstances and material placed before the Authority. To reiterate, it cannot be said that on a ground that is not mentioned in sub-clauses (a) to (g) of Clause 13.22.1 of the Purchase Manual the tender cannot be scrapped. There has to be a scope for 'play in the joints' coupled with commercial freedom in taking such decision. In a given situation it is open for the principal to act in accordance with its commercial interest which exercise would not be liable to be interfered with in the absence of any arbitrariness, irrationality, favouritism or *mala fide*s. We find the aforesaid aspects absent herein and on that count the approval granted by the Chairman and Managing Director cannot be faulted.

23. It was also suggested that considering the nature of the Global Tender Enquiry there were only three commercial entities who were eligible to participate in the tender process. In such tender enquiry directing the exercise to be re-conducted would result in the said entities again participating in the process. Moreover the price bids of M/s Reutech Mining and Sujyoti India had been opened indicating the prices offered by them. A fresh exercise would prejudice said parties. In our

opinion the same cannot be a reason for compelling the WCL to accept the bids of the successful bidders and issue them the work order. We find that the WCL has acted in its larger interest and when pitted against the commercial interest of the bidders, the latter has to give way to the former. We also note that under Clause 13.22.2 of the Purchase Manual on the scrapping of the earlier tender process it is made clear to the parties who have quoted against the previous tender that fresh invitation to tender would be in supersession of the previous one.

24. Hence for aforesaid reasons, we do not find that there is any case made out to exercise extraordinary writ jurisdiction under Article 226 of the Constitution of India and grant relief to the petitioners. The decision taken by the WCL of scrapping the tender process is not found to be either arbitrary, irrational, *mala fide* or with a view to favour any party. Neither is the said decision vitiated by an apparent error of law nor does it result in manifest injustice. By observing that the petitioners are free to invoke any other appropriate remedy as is available in law to seek such relief, the writ petitions stand dismissed. Rule stands discharged with no order as to costs.

(ANIL L. PANSARE, J.) **(A.S. CHANDURKAR, J.)**

APTE

Signed By: Digitally signed byROHIT DATTATRAYA APTE
Signing Date:05.01.2023 18:09