IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30590-2024 (O&M)
Reserved on: 05.12.2024
Pronounced on: 19.12.2024

M/s Zonta Infratech Private Limited

….Petitioner

Versus

State of Punjab and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. Reshabh Bajaj, Advocate and Ms. Divyanshi, Advocate,
for the petitioner.

Mr. Jastej Singh, DAG, Punjab, for respondent No.1.

Mr. Deepali Puri, Advocate and Ms. Brea Sandhu, Advocate,
for respondent No.2.

Mr. R.K. Arora, Advocate and Mr. Jugam Arora, Advocate,
for respondent No.3.

****

VIKRAM AGGARWAL, J.

CM-19777-2024

Prayer in the present application is for placing on record replication to the reply filed by respondent No.2.

For the reasons mentioned in the application, the same is allowed. Replication filed by respondent No.2 is taken on record. The Registry is directed to tag the same at an appropriate place on the case file.

CWP-30590-2024 (O&M)

1. The petitioner (M/s Zonta Infratech Private Limited) assails the Technical Evaluation Report dated 02.08.2024 (Annexure P-7), vide which

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respondents No.3 and 4 were considered to be technically eligible/compliant pursuant to bids having been submitted by them in response to the Notice Inviting Tender dated 05.07.2024 (Annexure P-5) (hereinafter referred to as the 'NIT') issued by respondent No.2 (Municipal Corporation, Patiala) for Operation and Maintenance of Semi Underground Bins and Portable Compactors of Patiala city. It also assails the order dated 30.10.2024 (Annexure P-18), communicated to the petitioner on 04.11.2024, vide which the representations dated 02.08.2024 (Annexure P-10), 05.08.2024 (Annexure P-11) and 06.09.2024 (Annexure P-12) submitted by the petitioner were rejected by way of a non-speaking and unreasoned order. The petitioner further prays for the issuance of a writ of mandamus directing respondent No.2 to declare the bids submitted by respondents No.3 and 4 as being technically non-compliant/ineligible and awarding the tender in favour of the petitioner who had emerged as L1 in the tendering process.

FACTS

2. Respondent No.2 had issued a tender for supply and installation of Smart Semi Underground Waste Collection Bins and Portable Compactor and Collection and Transportation of MSW (Municipal Solid Waste) from Smart Bins and Compactors to Dumping Sites in 2018. The petitioner had emerged as the successful bidder and was allotted the work vide work order dated 28.09.2018. Thereafter, an agreement dated 23.10.2018 was entered into between the petitioner and respondent No.2 for a period of 05 years for the work of Supply and Installation of 85 numbers of Smart Semi Underground Waste Collection Bins and 06 numbers of Portable Compactors at 36 designated locations in Municipal Corporation, Patiala and Collection and Transportation of MSW to dumping sites. It is the case of the petitioner that the work allotted to the petitioner included supply and installation of equipment as also operation and maintenance for the

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period of contract. It has been averred that during the pendency of the aforesaid contract, its scope was expanded and a new work order dated 26.08.2021 was issued to the petitioner and the period of contract was also revised till April 2024. Again the period of work was extended by 02 months and the contract was to be terminated in June 2024. Yet another extension in the period of agreement was given for a period of 06 months as a result of which the agreement executed between the petitioner and respondent No.2 is valid till December 2024.

3. A fresh tender for evaluation and maintenance of Semi Underground Bins and Portable Compactors of Patiala City was issued on 22.02.2024 but all 04 bidders which included respondent No.3 (Pyara Singh and Sons) were found to be technically non-compliant vide technical evaluation report dated 21.03.2024 (Annexure P-2). It is the case of the petitioner that respondent No.3 had been held to be technically non-complaint for it did not fulfill the relevant eligibility criteria. A detailed evaluation (Annexure P-3) was also done which reflects the aforesaid position.

4. Yet another tender dated 12.06.2024 was issued for an estimated cost of Rs.4.88 crores (similar to the one issued on 22.02.2024). However, vide order dated 05.07.2024 (Annexure P-4), the said tender was also recalled as minimum number of bids had not been received. A third tender was then issued for the same purpose on 05.07.2024, again with an estimated cost of Rs.4.88 crores (Annexure P-5). The last date of submission of bids was 29.07.2024. Technical bids were to be opened on 30.08.2024 and financial bids were to be opened on 02.08.2024. The petitioner submitted its bids on 29.07.2024. Five bids were received by respondent No.2 and vide Technical Summary Report dated 02.08.2024 (Annexure P-7), three tenderers including the petitioner and respondent No.3 were found to be technically eligible. It is the case of the petitioner that both respondent No.3 and

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the third bidder namely Urban Edge Management Private Limited (respondent No.4) were in fact, not technically complaint as they neither had the work experience nor had they annexed the complete documents as required by the tender enquiry dated 05.07.2024. The bids of respondents No.3 and 4 have also been annexed as Annexure P-8 and Annexure P-9 respectively.

5. The petitioner moved a representation dated 02.08.2024 (Annexure P-10) highlighting the discrepancies and irregularities in the bids of respondents No.3 and 4. For the representation did not evoke any response, another representation dated 05.08.2024 (Annexure P-11) was moved. Pursuant to the same, the petitioner was called for a personal hearing on 20.08.2024. However, no corrective action was taken. The petitioner, therefore, preferred ***CWP No.23122 of 202***4. Before the writ petition could come up for hearing on 11.09.2024, an e-mail was sent to the petitioner on 10.09.2024 alongwith a cryptic order dated 30.10.2024 (Annexure P-13). The writ petition, having found the order dated 30.08.2024 to be non-speaking, was disposed of vide order dated 11.09.2024 (Annexure P-14) upon a statement given by learned counsel representing the respondents that a fresh speaking order would be passed within a period of 10 days.

6. The petitioner was again called for a personal hearing on 13.09.2024 in the office of respondent No.2 and an order dated 13.09.2024 (Annexure P-15) was passed vide which the representation of the petitioner was rejected. This order was also sent to the petitioner on 20.09.2024 by way of an e-mail (Annexure P-16). This order was again challenged by the petitioner by way of ***CWP No.24829 of 2024*** and the said writ petition was again disposed of by way of a detailed order dated 25.09.2024 (Annexure P-17).

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7. The petitioner was yet again called for a personal hearing on 30.09.2024 and final order dated 30.10.2024 (Annexure P-18) was passed which, according to the petitioner, is again illegal and arbitrary.

RESPONDENT'S VERSION

8. The writ petition has been opposed by the respondents. A short reply by way of an affidavit of the Commissioner, Municipal Corporation, Patiala has been filed on behalf of respondent No.2. The crux of the reply is that the scope of the tender in question was defined in Clause 1 of the tender document and that respondent No.3 possessed the requisite experience to perform the work required by the tender in question. A certificate dated 27.04.2022 (Annexure R-1) has also been placed on record, stated to have been issued by the Nagar Nigam, Prayagraj which, as per the respondents, had been produced by the petitioner before them.

9. Respondent No.3 has also filed a reply giving details as to how it was duly eligible and possessed the requisite experience. Certain documents (Annexures R3/1 to R3/5) have been placed on record alongwith the written statement. It has been averred that respondent No.3 has extensive experience in Operation and Maintenance of Compactors and Hook Loaders. The details of the projects undertaken by respondent No.3 in the past and the current projects being undertaken by respondent No.3 have also been given in the written statement. It has also been averred that Courts should not interfere in such matters. Reference has been made to certain judgments in the case of '***Shivji Singla Vs. State of* Punjab**', 2015 (55) RCR (Civil) 415, '***M/s Agmatel India Pvt. Ltd. Vs. M/s Resoursys Telecom and Ors.'***, 2022(5) SCC 362, '***Tata Motors Limited Vs. The Brihan Mumbai Electric Supply and Transport Undertaking (Best) and Others'***, 2022 AIR (Bombay) 274, '***BTL EPC Ltd. Vs. Macawber Beekay Pvt. Ltd. and Others'***, Law Finder Doc Id#2328961, '***Bharat Coking Coal Ltd. and Others Vs.***

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AMR Dev Prabha and Others', 2020 (16) SCC 759 and '***M/s Siemens Aktiengeselischaft and S. Ltd. Vs. DMRC Ltd'***, 2014 (11) SCC 288 in the written statement.

REPLICATION

10. Replication was filed to the written statement submitted by respondent No.2 wherein the averments made in the written statement were denied and those made in the writ petition were reiterated.

11. Learned counsel for the parties were heard.

ARGUMENTS (PETITIONER)

12. Mr. Gaurav Chopra, learned Senior counsel representing the petitioner vehemently submitted that the action of the respondents in holding respondents No.3 and 4 to be technically compliant is illegal and arbitrary and the same was done only with a view to favour respondent No.3. Specific reference was made by learned Senior counsel to the terms and conditions of the bid document and it was submitted that respondent No.3 did not possess the requisite work experience. It was strenuously urged that documents were taken by the respondents from the petitioner subsequently i.e. after the date of submission of the tenders had lapsed, which would not be permissible. Reference was made to Section 23, Clause 16 of the Punjab Transparency in Public Procurement Rules, 2022 (for short '2022 Rules') and it was contended that the procedure relating to submission, opening and evaluation of bids was to be in terms of Appendix 4, Clause 6 of which provided that any document not included by the bidder may be asked for by the procuring entity and submitted by the bidder online provided it does not vitiate the tendering process. Learned Senior counsel submitted that the document in question was submitted by respondent No.3 physically and not by way of online mode and accordingly the entire process stood vitiated.

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13. Learned Senior counsel also referred to the order under challenge (Annexure P-18) and submitted that the said order did not deal with the issue from the correct perspective and a bare perusal of the same shows that the same was passed only with a view to favour respondent No.3. In support of his contentions, reliance was placed upon the judgments passed by the Supreme Court of India in the case of '***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. and Anr.***', 2016 (16) SCC 818, '***Vidarbha Irrigation Development Corporation Vs. M/s Anoj Kumar Garwala***', 2020 (17) SCC 577 as also the judgment passed by this Court in ***CWP No.13894 of 2020*** titled as '***M/s Jind Transport Company Vs. Food Corporation of India and Others***', decided on 16.09.2020.

ARGUMENTS (RESPONDENTS)

14. On the other hand, learned counsel representing the respondents submitted that the impugned order is perfectly legal and valid and no interference is called for in the said order. Reference was made to the certificate earlier submitted by respondent No.3 and the certificate (Annexure R-1) and it was submitted that the certificate (Annexure R-1) was in addition to the certificate earlier submitted and that too because the petitioner had raised a dispute. It was submitted that a Technical Committee comprising of 05 persons i.e. 02 Superintending Engineers and 03 Executive Engineers had examined the certificate submitted by respondent No.3 after verifying the same from the issuing authority and had thereafter held that respondent No.3 had the experience of having executed similar works. It was submitted that such matters being highly technical in nature are to be taken by expert bodies only and Courts should not substitute their opinion in such matters. In support of their contentions, reliance was placed upon the judgments passed by the Supreme Court of India in the case of '***M/s Agmatel India Pvt. Ltd. Vs. M/s Resoursys Telecom and Ors.***', 2022(5)

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SCC 362, '***Tata Motors Limited Vs. The Brihan Mumbai Electric Supply and Transport Undertaking (Best) and Others***', 2022 AIR (Bombay) 274, '***BTL EPC Ltd. Vs. Macawber Beekay Pvt. Ltd. and Others***', Law Finder Doc Id#2328961, '***Bharat Coking Coal Ltd. and Others Vs. AMR Dev Prabha and Others***', 2020 (16) SCC 759 and '***M/s Siemens Aktiengeselischaft and S. Ltd. Vs. DMRC Ltd***', 2014 (11) SCC 288.

ANALYSIS AND FINDINGS

15. We have considered the submissions made by learned counsel for the parties and have perused the paper book.

16. Before adverting to the rival claims on merits, it would be pertinent to examine as to when and under what circumstances, while exercising the power of judicial review, interference is called for in such matters.

17. It would be essential to bear in mind that challenge to policy decisions, administrative action, issuance of tenders, holding of auctions, sale of plots, resumption proceedings have all been raked up before the Courts on various occasions. The question which fell for consideration before the Supreme Court of India and various high Courts in these kind of litigations was as to whether policy decisions, administrative actions etc. can be interfered with exercising the power of judicial review or as to whether the Courts were to refrain from doing so. Though there are a catena of judgments on the subject, reference to few of them would be noteworthy. In the case of ***Jagdish Mandal versus State of Orissa and others 2007 (14) SCC 517***, the Supreme Court of India was seized of a challenge to the award of construction contracts to one Jagdish Mandal and Laxmi Sharma. The High Court of Orissa had allowed the writ petition filed by the unsuccessful bidder after which the matter reached the Supreme Court. The Supreme Court of India examined the scope of interference in judicial review of tender processes

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and award of contracts. While referring to various judgments on the subject, the Supreme Court of India held that judicial review of administration action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. It was held that its purpose is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. It was held that 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. It was held that a contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. The Supreme Court of India laid down that the principles of equity and natural justice stay at a distance and that if the decision relating to the award of a contract is *bona fide* and is in public interest, Courts will not, in exercise of power of judicial review, interfere even if a procedural abberation or error in assessment or prejudice to a tenderer is made out. It was held that the power of judicial review would not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. It was held that 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. It was held that such interferences, whether 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. It was held that under the circumstances, before interfering in such matters in exercise of the power of judicial review, a Court should pose to itself the questions whether the process adopted or decision made by the authority is *mala fide* or is intended to favour someone and that whether the public interest is affected;

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"19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is *bona fide* and is in public interest, courts will not, in exercise of Page 0102 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. 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. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of

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licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

18. In the case of ***Silppi Constructions Contractors versus Union of India and Anr. Etc. Etc. 2020 (16) SCC 489*** also the Supreme Court of India referred to the judgments on the subject and held as under:-

"19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or

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> **tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.**

The Supreme Court of India, therefore, held that the Courts, being the guardian of fundamental rights would be duty bound to interfere when there is arbitrariness, irrationality, *mala fides* and bias. It was held that in all the judgments referred to by the Supreme Court of India, the Courts had been cautioned time and again that they should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters and that the Courts are normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or *mala fides* or bias or irrationality is made out. It was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. It was held that in matters involving technical issues, the Courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. It was held that the Courts should not use a magnifying glass while scanning tenders and make every small mistake appear like a big blunder. It was held that in fact, the Courts must give 'fair play in the joints' to the Government and public undertakings in matters of contract and must also not interfere where such interference will cause unnecessary loss to the public exchequer. It was held that the essence of the law laid down in the judgments which had been rendered from time to time is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the Courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable. It was held that

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the Court does not sit like a Court of appeal over the appropriate authority and must realize that the authority concerned is the best judge of its requirements and, therefore, interference of the Courts should be minimal. It was held that if two interpretations are possible, then the interpretation of the author must be accepted and that the Courts will only interfere to prevent arbitrariness, irrationality, bias, *mala fides* or perversity.

19. Very recently, the Supreme Court of India took a similar view in the case of ***State of Punjab and others versus Mehardin 2022 (5) SCC 648*** and while referring to the cases of ***Jagdish Mandal versus State of Orissa and others and Silppi Constructions Contractors versus Union of India and Anr. Etc. Etc.*** (supra) as also the judgment in the case of ***TATA Cellular versus Union of India (1994) 6 SCC 651*** reiterated the view**.**

20. Most recently, while examining the challenge to the central vista project in the case of ***Rajeev Suri Versus Delhi Development Authority 2022 (11) SCC 1,*** a Constitution Bench of the Supreme Court of India examined the scope of judicial review of an Administrative or so to say quasi legislative action. It was held that the rule of law as accepted and settled in India, with regard to judicial interference in administrative and executive or policy matters is no more *res integra*. It was held that the duty enjoined upon the judiciary is to ensure checks and balances and to place itself between the Government and citizens when they come face to face in a Court of law and that it is meant to act as an equalizer and ensure that the flow of decisions from executive to citizens is overseen through the prism of well-established principles, as and when called upon to do so. It was held that the judicial organ is not meant to impose the citizens' or even its own version of good governance upon the Government in the name of Rule of Law in exercise of its power of judicial review.

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21. The Apex Court examined the issue threadbare starting from observations made by Lord Brightman in the case of Chief Constable of the North Wales Police v. Evans [1982] 1 WLR 1155 to the observations of the Supreme Court of India in the case of ***TATA Cellular versus Union of India*** (supra), the observations made by Graham Aldus and John Alder in their book 'Applications for Judicial Review, Law and Practice' and while examining the need for heightened judicial review, the Supreme Court of India declined to interfere in the Central Vista Project and held as under:-

> **"167. To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action - legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus etc. Once the existence of power is not in dispute, it is essentially an enquiry under Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part-III in a lawmaking function. The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of ultra vires the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice - audi altrem partem, speaking orders, absence of bias etc. The enquiry is also informed by the Wednesbury principles of unreasonableness. The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure**

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policy decision is not interfered with in an ordinary manner. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection of fundamental rights guaranteed by the Constitution must inform all enquiries of State action by the constitutional Court."

22. It is on the touchstone of the principles culled out in the aforesaid judgments that we now proceed to examine the rival claims. Reference to the previous two rounds of litigation between the parties at the instance of the petitioner has already been made while detailing the facts of the case and, therefore, need not be repeated. The Tender Summary Reports are on accord as Annexure P-7 which convey that the petitioner as also the private respondents were held to be technically compliant on 02.08.2024. The Tender Notice dated 05.07.2024 and the general terms and conditions annexed thereto laid down the eligibility criteria vide Clause 2;

"<u>2. Eligibility Criteria:</u>

The bid to be submitted online by the bidder shall comprise scanned copies of the following documents:

a) Bidder must have achieved a minimum annual financial turnover (of solid waste work class) equal to 40% of the estimated cost i.e. 4,88,92,691/- of working any one of the last three (3) financial years immediately preceding the Financial Year in which bids are invited.

b) Bidder must have satisfactorily completed in the last seven (7) years ending last day of month previous to the one in which bids are invited as a prime Contractor.

one similar work of value not less than 80% of the estimated cost of work

or

two similar works each of value not less than 50% of the estimated cost of work

or

three similar works each of value not less than 40% of the estimated cost of work.

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c) An authorization form by the bidder/agency having authorized their official to sign all the documents on bidder/agency's behalf.

d) An undertaking that bidder's available bid capacity is more than the estimated value of the project/work

e) The proof of bidder's PAN issued by Income Tax department;

f) The proof of bidder's valid GST Registration Number issued by concerned department;

g) The proof of bidder's valid ESI registration number.

h) The proof of bidder's valid EPF registration with the Provident Commissioner;

i) Affidavit/undertaking of not having been black- listed by any Govt./ Semi Govt. Organization/ Corporation at any stage and/ or debarred by Govt. of India or any Department of Govt. of Punjab

j) The affidavit/ undertaking that information being submitted by the bidder is correct and true, and that any false information shall lead to disqualification at any stage;

k) An undertaking that the bidder agrees to the terms and conditions of bidding document including the technical requirements and in case there is anything contradictory in his technical proposal with respect to the conditions of bidding document, the latter shall prevail.

Note: - Work Completion certificates or other related documents as per above clauses must be attached.

23. The issue raised by the petitioner is that respondents No.3 and 4 did not possess the requisite work experience nor had the complete documents been annexed by them. For the time being, for, respondent No.3 was found to be L1 and was awarded the contract, we shall discuss the issue raised *qua* respondent No.3 alone. It is the categoric case set up by the official respondents as also by respondent No.3 that it duly possessed the requisite work experience.

24. It has been averred by respondent No.3 in its written statement that the gross turn over in 2021-2022 was Rs.18,34,87,902/-. In 2022-2023, it was Rs.19,66,25,697/- and in 2023-2024, it was Rs.39,37,47,189/-. It is also the

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specific case of respondent No.3 that it had obtained sufficient experience in the field as is required in the tender with regard to Supply, Operation and Maintenance of Semi Underground Bins and Portable Compactors. Admittedly, a certificate had been uploaded by respondent No.3 while submitting its bid and, thereafter, in continuation of the previous certificate, a certificate dated 27.04.2022 issued by the Municipal Corporation, Prayagraj was also presented which duly stated that respondent No.3 had done works of Operation and Maintenance for 27 Port Stations including 08 numbers Hook Loaders and 35 numbers Portable Compactors for two years. The certificate further stated that the total work cost was Rs.4,03,75,000/-. The certificate also stated that the work carried out by respondent No.3 since January 2019 was satisfactory. In the impugned order, it was duly noticed that there being no definition of similar work in the RFP or the instructions issued by the Corporation, the Technical Evaluation Committee examined the documents submitted by the bidders and found the petitioner and respondents No.3 and 4 to be technically compliant. The order also states that the request for considering additional documents was considered by the Technical Evaluation Committee as the submitted documents were in continuation of the tender documents attached by respondent No.3 online while uploading the bid and, therefore, in the interest of healthy competition and fair play, the certificate dated 27.04.2022 submitted by respondent No.3 was considered in terms of the provisions of Section 23 Clause 6 of the 2022 Rules. In our considered opinion, the order considers all aspects of the matter and there appears to be no *mala fide* on the part of the respondents. Even the decision making process does not appear to be defective much less illegal and arbitrary. It would be apposite to refer to the relevant part of the impugned order dated 30.10.2024;

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"Thereafter, third time the tender was floated by Municipal Corporation Patiala on the same grounds vide tender ID 2024_ĐLG_ 123381 _1 dated 30.07.2024 on the same estimated cost. In the said tender five bidders namely Cheluvaraju Geron engineering Private Limited, M/s Pyara Singh and Sons, Urban Edge Management Pvt. Ltd and Zonta Infratech Private Limited total five bidders applied in this tender out of which three bidders namely (i) Pyara Singh and Sons; (ii) Urban Edge Management Private Limited and (iii) Zonta Infratech Private Limited were found to be technically qualified by . Technical Evaluation Committee report dated 02.08.2004, thereafter, the financial bid of the bidders were opened on the same day i.e. 02.08.2024.

The financial bids received by the bidders are as under in the tabular form;

Sr. No.	Bidder Name	Estimated Rate	Quoted %age	Rates
1	Pyara Singh and Sons	48892691.16	-7.00	4,54,70,202.78
2	Urban Edge Management Pvt. Ltd.	48892691.16	-5.45	4,62,28,039.49
3	Zonta Infratech Private Limite	48892691.16	-.01	4,88,87,801.89

In view of the above said bids M/s Pyara Singh and Sons has submitted the lowest bid (L1), Urban Edge Management Pvt. Ltd. is the second lowest (L2) and the petitioner company is the third lowest bid (L3). The petitioner submitted application dated 02.08.2024 (Annexure P-10) in which he asserted that the bidders shall have completed 'similar works' only and the similar work as per the RFP is "operation and maintenance of semi underground bins and portable compactors and if the party does have only experience of operation & maintenance of portable compactors, that cannot be counted as eligible project and similarly, if a party does not have experience for operation & maintenance of semi-underground bins and does have only portable compactors, that would be disqualified. In other words the party shall have experience of both the components together. Thereafter, the petitioner company submitted another application dated 05.08.2024 (Annexure P-11) in

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continuation to earlier application dated 02.08.2024 in which he asserted that M/s Pyara Singh & Sons was disqualified due to insufficient experience. That condition continues for the current call of tenders as well. As the custodian of Public conscience the petitioner requested to re-evaluate the bids and impart justice. Thereafter, the petitioner company gave another representation dated 06.09.2024 (Annexure P-12) in which he has raised certain deficiencies on the part of L1 and L2. The L1 has not fulfilled clause 2(b) of the RFP as the L1 has not executed the work in any of the documents annexed with this tender thus does not satisfy the minimum financial eligibility of the bidder on account of clause 2(b) of the RFP and L2 has only supplied the turnover certificate and net worth certificate of M/s Pole Star Enterprises which is admittedly is a minority shareholder of the Joint Venture and EPF and ESI registration certificate of minority partner cannot be considered as a valid document for the present tender.

In view of the applications dated 02.08.2024 and 05.08.2024 following principle of natural justice the petitioner was called for personal hearing on 16.08.2024 before the Joint Commissioner Municipal Corporation Patiala in which Sh. Satpal Bhamra, Vice President, Zonta Infratech Private Limited from petitioner side and Sh. Harkiran Pal Singh, Superintending Engineer and Sh. Jatinder Pal Singh, Corporation Engineer were present. The representative of the petitioner company was asked to submit any new fact other than the facts enumerated in the above said representations and was further asked to represent his case and provide documents in its support. The representative submits that "The similar work shall compromise O&M of both semi underground bins and portable compactors as provided in the tender scope- ie. operation & maintenance of semi-underground bins and portable compactors of Patiala city. As this eligibility is missing, the party stands disqualified at Patiala". It is pertinent to mention here that in continuation to the earlier certificate uploaded by M/s Pyara Singh and Sons who is the lowest bidder (L1) the petitioner submitted the Copy of certificate issued by Prayagraj Municipal Corporation in which it is certified by the Prayagraj Nagar Nigam that the L1 "has done operation and maintenance work for 27 Port stations including 8 No. Hook loaders and 35 Nos. portable compacters for two years. The total work cost was Rs. 4,03,75000.00. The work carried out by the firm since Jan 2019 is satisfactory".

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In view of the above said certificate the, L1 Company has undertaken and worked in the field of O&M of Solid Waste Management (SWM). The representative of the petitioner company further, contended that the bid of the L1 was earlier rejected by the Technical Evaluation Committee on the grounds of insufficient experience but further, the L1 submitted the above certificate dated 27.04.2022 issued by the Chief Engineer, Municipal Corporation Prayagraj therefore, the documents of the L1 was considered eligible by the Tender Opening Committee resultantly, the bid was opened on 02.08.2024. Further, the second lowest bidder L2 Urban Edge Management Pvt Ltd. has formed consortium with M/s Pole Star Enterprises to qualify to participate in the tender dated 30.07.2024 therefore, the objection of the petitioner that the documents of L2 company cannot be considered on the grounds that the any of the minority partner was not a prime bidder or any of the partner has not a valid ESI or EPF registration is not a valid objection. The purpose to make the consortium by the two companies is to be technically qualified for this tender by using the resources of both the companies and the consortium of these two companies are technically qualified in respect of clause 2(b) of the RFP and one of the company is having a valid ESI/EPF Nos for bidding of this tender. Accordingly, the L2 was considered to participate in the tender process.

There is no defined definition of similar work in RFP or instructions issued by the Corporation however, the technical evaluation committee as per the documents on record all the three bidders found the bidders technically considered by the Tender Opening Committee for participation in the Financial Bid. Accordingly, the application dated 02.08.2024 & 05.08.2024 was filed by the office of Municipal Corporation Patiala vide order dated 23.08.2024. Thereafter, the comparative statement and estimate of the work were sent to Chief Engineer (O&M), Department of Local Government Punjab, Chandigarh for vetting.

Thereafter, the above said work was resolved by the resolution Committee vide resolution bearing No. 659 dated 30.08.2024 and subsequently, Letter of Acceptance (LOA) bearing No. 1174 dated 02.09.2024 was issued in the favour of M/s Pyara Singh & Sons (L1). The petitioner company submitted another application dated 02.08.2024 on the same grounds as in earlier applications dated 02.08.2024 & 05.08.2024. The comparative statement was also vetted by the Government vide letter bearing No. 46909 dated 03.09.2024.

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In compliance to the orders dated 25.09.2024 passed by the Hon'ble High Court the petitioner company and other stake holders were called for personal hearing on 30.09.2024 before the Commissioner, Municipal Corporation Patiala in which Sh. Satpal Bhamra from Zonta Infratech Private Limited along with their counsel were present. The representatives of the petitioner company represented their case and argued on the same facts and contentions as in the application dated 02.08.2024, 05.08.2024 & 06.09.2024. The L1 did not appear on 25.09.2024 & L2 sent e-mail dated 24.09.2024 and showed his inability to come on the fixed date. In the interest of justice last and final opportunity was given to L1 & L2 for personal hearing on 01.10.2024 in which L2 did not turned up and L1 represented his case and asserted that we are in the field of manufacturing of SWM equipments and Operation & maintenance of SWM and has the required financial eligibility as per clause 2(b) and experience therefore, our company is technically eligible for this tender.

In view of the aforesaid submissions and discussions during the personal hearing of the petitioner on 30.09.2023 & 01.10.2024 it was apprised by the Superintending Engineer about the Certificate dated 27.04.2022 submitted by L1 in the office of the undersigned issued by Prayagraj Municipal Corporation in which it is certified that the L1 "has done operation and maintenance work for 27 Port stations including 8 No. Hook loaders and 35 Nos. Portable compacters for two years. The total work cost was Rs. 4, 03, 75000.00. The work carried out by the firm since Jan 2019 is satisfactory" which was handed over to the petitioner during the hearing. The claim of the petitioner is rejected being bereft of merits on the grounds Firstly, that the request for considering additional documents was considered by the Technical Evaluation Committee as the submitted documents were in continuation of the tender documents attached by the L1 online during the uploading of the bid therefore, in the interest of healthy competition and Fair play the certificate given by the L1 was considered as per Section 23 Clause 6 of the Punjab Transparency in Public Procurement Rules 2022. Secondly, in the absence of any specific definition of similar work' in the RFP or the instructions issued by the Corporation, this contention of the petitioner/complainant is also rejected on the basis that the L1 has worked in the field of O&M with Prayagraj Municipal Corporation where the petitioner has executed the work of MSW at

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27 Port stations including 8 No. Hook loaders and 35 Nos. Portable compacters with the said corporation and it will be against the spirit of healthy competition and will lead to promote monopolisation if bid submitted by the L1 would have been rejected on the ground that the L1 has not executed the work of semi-underground bins as both are the components of Municipal Solid Waste and as per the RFP the company possesses the required qualification and experience and the work executed by the L1 is of similar nature and the (L1) is the lowest bidder and further the claim of the petitioner that the L2 is also not technically eligible has no weight as the purpose to make the consortium by the two companies is to be technically qualified for this tender by using the resources of both the companies and the consortium of these two companies are technically qualified in respect of clause 2(b) of the RFP and one of the company is having a valid ESI/EPF No's for bidding of this tender. Accordingly, the application/ complaint/claim dated 02.08.2024, 05.08.2024 & 06.09.2024 (Annexure P/10, P/11, P12) of the petitioner is rejected being bereft of merits.

25. Still further, in the short reply submitted by respondent No.2, it has been averred that a Technical Committee comprising of 05 persons i.e. 02 Superintending Engineers and 03 Executive Engineers had examined the certificate submitted by respondent No.3 after verifying the same from the issuing authority and that, thereafter, the Committee arrived at a conclusion that the certificate depicted a similar work having been done by respondent No.3. If one peruses the impugned order as also the averments in the written statement, it becomes manifestly clear that the decision to hold respondent No.3 to be technically complaint does not suffer from any illegality. If one keeps the principles laid down in the judgments referred to in the preceding paragraphs, the relevant terms and conditions of the tender document, the impugned order dated 30.10.2024 and the entire facts and circumstances as have been stated in the preceding paragraphs, there remains no doubt in the mind of this Court that no

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interference is called for in the decision taken by the respondents and that the impugned order dated 30.10.2024 does not suffer from any illegality.

26. The argument that in terms of the provisions of Section 23, Clause 6 of the 2022 Rules, no document could have been obtained physically and, therefore, the acceptance of the document from respondent No.3 vitiated the process is devoid of merit because the said document was obtained in continuation of the previous document and that too when an objection was raised by the petitioner. Even otherwise, this Court cannot substitute its opinion for the opinion of a Committee consisting of expert members dealing with the subject. It has to be borne in mind that Courts are not experts on such subjects and should refrain from substituting the opinion of experts with their opinion.

27. We have gone through the judgments relied upon by learned counsel for the parties. The judgment in '***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. and Anr.***' (supra) deals with the circumstances under which there can be a judicial review of the conditions of contract. This judgment also refers to the judgments in '***Jagdish Mandal versus State of Orissa and others***' (supra) and '***Tata Motors Limited Vs. The Brihan Mumbai Electric Supply and Transport Undertaking (Best) and Others***' (supra), a reference to which has already been made in the preceding paragraphs. This judgment would not come to the aid of the petitioner, for, we have not found the decision making process to be *mala fide* or intended to favour the private respondents. In fact, we are bound to follow the dictum laid down by the Supreme Court of India in this case wherein it was held that the owner or the employer of the project having authored the tender document would be the best person to understand and appreciate its requirements and interpret (*emphasis supplied*) its documents. For the same reasons, the judgment in '***Vidarbha Irrigation Development***

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Corporation Vs. M/s Anoj Kumar Garwala' (supra) would not help the petitioner. No doubt, in this judgment, it was held that essential tender conditions had to be strictly complied with and there was no power to condone lack of such strict compliance. However, as has already been discussed, there was no condonation of strict compliance and a document was accepted in continuation of a document which had duly been submitted. In fact, these judgments as also the judgments relied upon by the respondents come to their aid. In the case of '***M/s Agmatel India Pvt. Ltd. Vs. M/s Resoursys Telecom and Ors.'*** (supra), a direction had been issued by the High Court of Delhi to the tender inviting authority to process the technical bid of the petitioner and held the rejection of the technical bid as being unreasonable and arbitrary. After considering the submissions made by the rival parties, the terms and conditions of the tender document and the law on the subject, it was reiterated by the Supreme Court of India that the author of the tender document is 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 sub serving the projects of the tender, the Court would prefer to exercise restraint. It went to the extent of holding 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 Court, that, by itself would not be a reason for interfering with the interpretation given. In the case of '***Tata Motors Limited Vs. The Brihan Mumbai Electric Supply and Transport Undertaking (Best) and Others',*** a similar view was taken by the Supreme Court of India and it was held as under:-

> **"48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising**

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> **their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See: Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489."**

Similar view was taken by the Supreme Court of India in the case of '***BTL EPC Ltd. Vs. Macawber Beekay Pvt. Ltd. and Others'*** (supra), '***Bharat Coking Coal Ltd. and Others Vs. AMR Dev Prabha and Others'*** (supra) and '***M/s Siemens Aktiengeselischaft and S. Ltd. Vs. DMRC Ltd'*** (supra), in which, it was held as under:-

> **"18. The principles governing judicial review were then formulated in the following words:**
>
> **(i) The modern trend points to judicial restraint in administrative action.**
>
> **(ii) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.**
>
> **(iii) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.**

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> **(iv) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.**
>
> **(v) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides**
>
> **(vi) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."**

Keeping in view the totality of the facts and circumstances as discussed in the preceding paragraphs, we do not find any merit in the present writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

19.12.2024
Prince Chawla

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*

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