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

Date of decision: 8th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 9357/2023**

GURUJI ELEVATORS

..... Petitioner

Through: Ms. Neeru Nagpal and Mr. Arvind
Kumar Nagpal, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Monika Arora, CGSC with Ms.
Geetanjali Tyagi, GP and Mr.
Subhrodeep Saha, Mr. Kushal and
Mr. Ranjeet, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner has approached this Court challenging the Orders dated 30.01.2023 and 28.04.2023 passed by the Respondents rejecting the claim for enlistment of the Petitioner as a contractor in Class – I building and road category in CPWD.

2. The criterion for enlistment as a contractor in Class – I building and road category is given in the Rules for Enlistment of Contractors in CPWD, 2021. Rules 2.2, 6.1, 6.2.1 and 6.2.7 reads as under:

“2.2 "building work" means construction of a residential or non-residential structure, consisting of foundation, walls, floors, roofs, finishing, civil and



electrical services, complete, executed under a single contract with E&M component. In addition, building work shall also include boundary wall, repair and maintenance, additions, alterations, renovations, up-gradations, electrical installations, electrical and mechanical services of buildings but excluding standalone works of supply of materials, housekeeping, sweeping, care taking, watch & ward, operation and maintenance of electrical and mechanical services through original equipment manufacturers and any other works involving labour component only.

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6.1 *The status of an applicant for enlistment as a contractor in CPWD may be one of the following.*

- (a) An individual, who is a citizen of India.*
- (b) Sole proprietorship*
- (c) Partnership firm*
- (d) Limited liability partnership*
- (e) Private limited company*
- (f) Public limited company*

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6.2.1 *The criterion for work experience shall be of completed works, as given in Rule 6.2.7 and 6.2.8 of these rules, of the prescribed nature and magnitude executed on independent contract basis during the last seven years (works executed on labour rate contracts will not be considered). The value of works executed during the last 7 years shall be brought to current value by enhancing the actual cost of work at simple rate of 7% per annum, calculated from the date of completion of work to the date of submission of application. The works should have been executed in the same name and style in which the enlistment is sought by the applicant, except under special*



circumstances as stated in these rules separately.

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6.2.7 *The magnitude of work experience required for Buildings & Roads category for various classes is given in Table 2.*

Table 2: Magnitude of work experience for Building & Roads category

Number of completed work	Magnitude of each completed work								
	Rs. In lac								
	Class								
	I(Super)	I(AAA)	I(AA)	I(A)	I	II	III	IV	V
Three	7000	3500	1750	1100	400	110	35	10	3
Or									
Two	10500	5250	2600	1600	600	160	50	15	4
Or									
One	21000	10500	5200	3200	1200	320	100	30	8

A perusal of the table indicates that the person who seeks to be enlisted as Class-I contractor in building and roads category must have three completed works of value not less than Rs.400 lakhs each or two completed works of value not less than Rs.600 lakhs each or one completed work of value not less than Rs.1200 lakhs each.

3. The claim of the Petitioner is that the Petitioner fulfils the above conditions for enlistment as a Class – I building and road category. The case of the Petitioner is that the Petitioner's case was placed before the Advisory Committee which evaluated the case of the Petitioner. The relevant portion of the recommendations of the Advisory Committee reads as under:



The details of completed works submitted by the agency vide Annexure - III are as below:

Completed Works: Criterion

Three works each of value Rs 400 lac

Or

Two works each of value Rs 600 lac

Or

One work of value Rs 1200 lac

1st Eligible work: (Annexure III available at Page no. 283).

Self attested copy of final bill is submitted at page no 21 to 27.

Self attested copy of award letter is submitted at page no. 28 to 29.

1	Name of Work/project & location	Running & Maintenance of Lift installed in residential and non-residential bldg at GTB Hospital Complex, Shahdara, Delhi (SH:- Running Operation of lift)
2	Name of Owner/Department	PWD, GOVT of NCT of Delhi
3	Name of agency	M/s Guruji Elevator
4	Agreement number, date	109/EE/(E)/HMED/East/PWD/GTBH/2018-19.
5	Agreement amount:	Rs. 4,85,42,532/-
6	Gross value of completed work	Rs. 7,27,69,385/-
7	Stipulated date of start	17.01.2019
8	Date of completion	
a.	Stipulated date of completion	16.01.2021
b.	Actual date of completion	17.04.2021
c.	Justified extended date of completion, if any	
9	Enhanced value of work	Rs. 7,69,97,984/-
	Date of submission of application	14.02.2022
	Date of completion of work	17.04.2021
	Difference between the two dates	303 Days
	Enhanced amount	Rs. (7,27,69,385 x 303 x 7)/(365x100) + Rs. 7,27,69,385 = Rs. 7,69,97,984/-

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ई. विवेक कुमार
सहायक अभियंता (वे.)

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10	Details and cost of services included (a) Civil (water supply, sanitary installation, drainage and water proofing work, etc) (b) Electrical (internal electrical installation, firefighting, fire alarm, HVAC, lift, electrical substation and DG set, etc) (c) Number of storeys constructed.	Running Operation of lifts & other allied Elect. Work. Rs. 7,27,69,385/-
11	Amount of compensation levied for delayed completion, if any	
a.	Whether case of levy of compensation for delay has been decided or not	Yes
b.	If decided, amount of compensation levied for delayed completion, if any	EOT has been without levy of compensation up to 17.04.2021.
12	Details of litigation/arbitration, if any	Nil
13	Details of Owner	
a.	Department	PWD, GOVT of NCT of Delhi
b.	Name	Executive Engineer (E)
c.	Address	O/o EE (E), HMED (East) PWD, GTB Hospital, Shahdara, Delhi-110095
d.	Phone	011-22585802
e.	e-Mail	eepwddelhib242@gmail.com

2nd Eligible work: (Annexure III available at Page 149)

Self attested copy of final bill is submitted at page no. 151 to 164.

Self attested copy of award letter is submitted at page no. 46 to 47.

1	Name of Work/project & location	RMØ Lifts Installed at various Building at LN Hospital, New Delhi (SH-Running and operation of lift).
2	Name of Owner/Department	PWD, GOVT of NCT of Delhi
3	Name of agency	M/s Guruji Elevator
4	Agreement number, date	50/EE(E)/PWD/HMED(C)/2017-18
5	Agreement amount:	Rs. 4,01,18,464/-
6	Gross value of completed work	Rs. 7,20,34,790/-
7	Stipulated date of start	17.08.2017
8	Date of completion	
a.	Stipulated date of completion	16.08.2019
b.	Actual date of completion	15.04.2020
c.	Justified extended date of completion, if any	
9	Enhanced value of work	Rs. 8,12,90,767/-
	Date of submission of application	14.02.2022
	Date of completion of work	15.04.2020
	Difference between the two dates	670 Days
	Enhanced amount	Rs. (7,20,34,790 x 670 x 7)/(365x100) + Rs. 7,20,34,790 = Rs. 8,12,90,767/-
10	Details and cost of services included (a) Civil (water supply, sanitary installation, drainage and water proofing work, etc) (b) Electrical (internal electrical installation, firefighting, fire alarm, HVAC, lift, electrical substation and DG set, etc) (c) Number of storeys constructed.	Running Operation of lifts etc Rs. 7,20,34,790/-
11	Amount of compensation levied for delayed completion, if any	
a.	Whether case of levy of compensation	Yes

[Signature]

[Signature]

ई. विवेक कुमार
सहायक अभियंता (शे.)

Signature Not Verified

Digitally Signed
By: SHAZAD ZAKIR
Signing Date: 17.02.2024
16:05

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	for delay has been decided or not	
b.	If decided, amount of compensation levied for delayed completion, if any	EOT has been granted without levy of compensation upto 15.04.2020.
12	Details of litigation/arbitration, if any	Nil
13	Details of Owner	
a.	Department	PWD, GOVT of NCT of Delhi
b.	Name	Executive Engineer (E)
c.	Address	O/o EE(E), HMED(C), PWD, LN Hospital Complex, New Delhi-110002
d.	Phone	011-23235590
e.	e-Mail	eehmedc@gmail.com

Evaluation of contractor's performance in Annexure IV for completed works

The Superintending Engineer Health, PWD, GNCTD, 2nd Floor, MSQ Building, I.P. Estate, New Delhi-110002 has sent the inspection report of the above said completed works vide their letter no 23(inspection)/अधीनस्थि(वि)/स्वा/2022-23/915-H dated 08.06.2022. The same is available at pages 302-312. (Dy. No. 2209 dated 14.06.2022).

Sl. No.	Parameter and evaluation criteria	Max marks	Marks in 1st Eligible work	Marks in 2nd Eligible work	Average marks	Remarks
1	Work experience (a) 18 marks for minimum eligible value (b) 30 marks for twice the minimum eligible value or more Marks for intermediate values shall be determined by straight line variation	30	21.40*	22.26**	21.83	Calculated by straight variation line
2	Contract performance (a) 30 marks for completion of work without litigation (b) 18 marks for completion of work with litigation (c) Zero mark for rescission of contract	30	30	30	30.00	No litigation in any works. Accordingly, 30 marks
3	Time over Run TOR= Actual time for completion/stipulated period of completion of work plus extended time period without levy of compensation. In case, levy of compensation is not decided, extended time period without levy of compensation shall be nil. (a) - 10 marks if TOR <= 0.8 (b) 8 marks if 0.8 < TOR < 1 (c) 6 marks if TOR = 1 (d) Zero mark if TOR is > 1	10	6	6	6.00	1 st Eligible work - TOR = 1. Accordingly, 6 marks 2 nd Eligible work - TOR = 1. Accordingly, 6 marks
4	Quality of completed works	30	27.00	27.00	27.00	1 st Eligible work - Average Marks is 72 out of 80. Accordingly, 27 marks out of 30. 2 nd Eligible work - Average Marks is 54 out of 60. Accordingly, 27.00 marks out of 30.
Total Marks		100	84.40	85.26	84.83	

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ई. विवेक कुमार
सहायक अभियंता (इ.)



Guraji Elevator

***1st Eligible Work**

18 marks for minimum 6,00,00,000

30 marks for 12,00,00,000 or more

Enhanced cost of work = Rs. 7,69,97,984/-

Accordingly, marks = $18 + \frac{(7,69,97,984 - 6,00,00,000)}{(12,00,00,000 - 6,00,00,000)} \times (30 - 18)$
= 21.40****2nd Eligible Work**

18 marks for minimum 6,00,00,000

30 marks for 12,00,00,000 or more

Enhanced cost of work = Rs. 8,12,90,767/-

Accordingly, marks = $18 + \frac{(8,12,90,767 - 6,00,00,000)}{(12,00,00,000 - 6,00,00,000)} \times (30 - 18)$
= 22.26

S.No	Parameter	Minimum Marks required for eligibility	Average Marks Obtained	Eligibility Criterion fulfilled (Yes/No)
1	Work Experience	18	21.83	Yes
2	Contract Performance	18	30.00	Yes
3	Time Overrun	6	6.00	Yes
4	Quality of completed works	18	27.00	Yes
5	Total Marks	70	84.83	Yes

Conclusion and Recommendation:

The applicant agency Guraji Elevator fulfills the eligibility criteria for enlistment in Class - I, Building & Roads Category in CPWD as explained and elucidated above (From S.No 1 to 9). Therefore, the case of Guraji Elevator for enlistment in Class - I, Building & Roads category in CPWD is recommended for approval please.

Member Secretary
Gurvinder Singh
Executive Engineer(P)-II
O/o ADG (PRD), New Delhi

Member
H. S. Nikhurpa,
Senior Architect,
O/o ADG (PRD), New Delhi

Member
Shailesh,
SE & PD, Teen Murti
Project Circle

Chairman 20/7/2022

Ajeet Vinay Kujur,
CE (Works cum TLQA),
ADG (PRD), New Delhi

Recommendations of Advisory Committee for
enlistment of Guraji Elevator in Class-I (B&R)
category is hereby put up for approval please.

ADG (PRD) I am not very
convinced on the credentials
of the agency. Original contract is of
operation & maintenance of lift. Guraji Elevator

20/7/2022
अजीत विनाय कुजूर
मुख्य अभियंता (सि. व. व. प्र.)

ई. विवेक कुमार
सहायक अभियंता (सि.)

Signature



4. It is the case of the Petitioner that the aforesaid recommendations of the Advisory Committee ought to have been considered and the Petitioner ought to have been enlisted as a Class – I building and road category. It is stated by the learned Counsel for the Petitioner that the Impugned Orders rejecting the recommendations of the Advisory Committee, apart from being contrary to the Rules, is also arbitrary.
5. Notice was issued in the writ petition on 17.07.2023.
6. Counter affidavit has been filed by the Respondents.
7. The case of the Respondent in the affidavit is that the Petitioner does not fulfil the requisite conditions. It is also stated that the recommendations of the Advisory Committee was withdrawn subsequently. The relevant portion of the withdrawal of the recommendation reads as under:

Conclusion and Recommendation:

In the light of clarification received from DG Office, CSQ unit vide their letter no. CSQ/CM/18(4)/Enlistment (Misc)/2022/1002 dated 02/09/2022, the contract for the work experience submitted by applicant is for labour component only, and it is not acceptable for eligible building work. Also the work done through extra items with material component are found of lesser quantum than the prescribed experience. Accordingly, in reference to the observations of enlisting authority at NP-12, the case of Guruji Elevator for enlistment in Class – I, Building & Roads category in CPWD is recommended now for rejection please.

Member Secretary
Gurvinder Singh
Executive Engineer(P)-II
O/o ADG (PD), New Delhi

Member
H. S. Nikhurpa,
Senior Architect,
O/o ADG(PD), New Delhi

Member
Manish Rawat,
SE & PD, Development
Project Circle

Chairman
Ajeet Vinay Kujur,
CE (Works cum TLQA),
ADG(PD), New Delhi

Submitted for approval of rejection
of application, please.

ADG (PD), Delhi.

CE/Work
EE(P)-II

अधीन विनय कुजूर
मुख्य अभियन्ता (कार्य, परीक्षा, परीक्षा, परीक्षा)



8. It is further pointed that the Respondents themselves had filed an RTI application regarding the nature of work completed by the Petitioner and the relevant portion of response under the RTI application is being extracted below:

	Govt. of India O/o Chief Engineer (W-cum-TLQA) ADG (PD), CPWD, Sewa Bhawan, R.K. Puram, New Delhi - 110066. Tel. No. 011-26104978, 26104016 Email: delce-tlqad@cpwd.gov.in	भारत सरकार कार्यालय मुख्य अभियंता (कार्य एवं टीएलक्यूए) अपर महानि (परिधि) कैंलोनि वि. सेवा भवन, आर.के.पुरम, नई दिल्ली। Tel. No. 011-26104978, 26104016 ईमेल: delce-tlqad@cpwd.gov.in	
सं: 12(2)/ADG(PD)/B&R/C-I/2023/ 622		दिनांक 03-01-23	
सेवा में, Sh. Naresh Kumar Desai, U-38, 2 nd floor, Shakarpur, New Delhi - 110092 E-mail: guruji.elevator@gmail.com			

विषय: Seeking information under Right to Information Act-2005 – reg.

संदर्भ: Your RTI registration No. CPWDD/R/E/23/00036 dated 01.02.2023

With reference to your online RTI registration No. CPWDD/R/E/23/00036 dated 01.02.2023 on the subject mentioned above, the information is as follow:-

Point No. 1:- Certified legible copies of all correspondence whether internal or external made by the concerned officer including in this regard the replies received are attached.

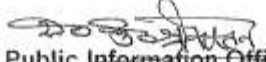
Point No. 2:- Copy of complete note sheets containing the noting made by the each officer who has dealt your case including noting of the advisory committee is attached.

Point No. 3:- Your application for registration in class-I, (B&R) category in CPWD have not been found eligible. (Page-32)

Appeal, if any, against the above reply can be filed before the First Appellate Authority within 30 days of receipt of this letter. The details of the First Appellate Authority is as under:-

Chief Engineer (W-cum-TLQA)
O/o ADG (PD), CPWD, Sewa Bhawan,
R.K. Puram, New Delhi -110066

This issues with the approval of Chief Engineer (Works cum TLQA), New Delhi.


Public Information Officer



2024: DHC: 1217



File No.: 25(471)/ADG(PRD)/B&R/C-V2022

कार्यालय अपर महानिदेशक, (परियोजना क्षेत्र दिल्ली)
केंद्रीय लोक निर्माण विभाग

विषय:- Enlistment of Contractors Guruji Elevator for registration in Class – I,
B&R category in CPWD – regarding.

संदर्भ:- Online application of Guruji Elevator dated 14.02.2022

Online application of Guruji Elevator has been received in this office for enlistment in Class – I, B&R category in CPWD vide Dy. No. 530 dated 15.02.2022.

The agency has not submitted Enlistment Processing Fee Receipt.

The agency has paid the fees on 09.02.2022; hence Enlistment Rules 2021 is applicable in the present case.

On scrutiny of the application the following observation has been observed:

First Completed Eligible Work: Page No. 19

1	Name of Work;	Running & Maintenance of Lift installed in residential and non-residential bldg at GTB Hospital Complex, Shahdara, Delhi (SH:- Running Operation of lift).
2	Agreement number	109/EE(E)/HMED East/CPWD/GBH/2018-19
3	Agreement amount	Rs. 4,85,42,532/-
4	Actual cost of work done	Rs. 7,27,69,385/-
5	Stipulated date of start	17.01.2019
6	Stipulated date of completion	16.01.2021
7	Actual date of completion	17.04.2021

Second Completed Eligible Work: Page No. 32

1	Name of Work;	RMO Lifts Installed at various Building at L N Hospital, New Delhi. (SH:- Running and Operation of lift).
2	Agreement number, date	50/EE(E)/CPWD/HMED(C)/2017-18
3	Agreement amount	Rs. 4,01,18,464/-
4	Actual cost of work done	Rs. 7,20,34,790/-
5	Stipulated date of start	17.08.2017
6	Stipulated date of completion	16.08.2019
7	Actual date of completion	15.04.2020

Financial Soundness for Building and Road Category:

Banker's Certificate issued from Central Bank of India, Akshardham vide their letter No. Nil dated 03.01.2022 submitted as per Annexure V-1 of Enlistment Rules 2021 and the amount is Rs. 1200 (lakhs) which is more than 1000 (lakhs) (Page 57).

Average Annual turnover (Certificate) is not as per Annexure-V-2.

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9. It is case of the Respondents that the work which the Petitioner has



undertaken are primarily related to running and maintenance of lift or labour component which would not come within the parameters listed in Rule 2.2 of the Rules for Enlistment of Contractors in CPWD, 2021.

10. The scope of interference in Administrative Orders under Article 226 of the Constitution of India has been settled by the Apex Court in a number of Judgments. The Apex Court in Sarvepalli Ramaiah v. District Collector, Chittoor, (2019) 4 SCC 500 has observed as under:

"40. Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extraordinary power of judicial review.

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42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.

43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact."



11. Though the Impugned Orders do not give the reasons, the counter affidavit filed by the Respondents gives the reasons as to why the Petitioner has not been enlisted as a Class – I building and road category.

12. This Court in Manmeet Singh vs. South Delhi Municipal Corporation, **2020 SCC OnLine Del 763** has already taken a view that the fact that in matters relating to contract and grant of tender, if the files along with the counter affidavit gives sufficient reasons then the fact that the Order rejecting the grant of tenders or otherwise may not be set aside only on the ground that the Order does not contain any reasons. the relevant portion of the said Judgment reads as under:

"34. In the above context, we may usefully refer to the decision of a Division Bench of this court in Ghanshyam Das Aggarwal (supra) authored by His Lordship, Justice R.C. Lahoti, as he then was, wherein, the court was called upon to examine the action of the respondent/DDA of refusing to accept the bids of the highest bidders in respect of industrial plots put on a public auction. Relying on the decision in CWP No. 250/1995 entitled Dr. Bosechandani v. DDA, Kumari Shrilekha Vidyarthi v. State of U.P., reported as 1991 Supp (1) SCC 14 : AIR 1991 SC 37 and Kusum Lata Khajanchi v. DDA, reported as (1995) 35 DRJ 480, the court rejected the plea of the petitioner therein that there were any mala fides involved or that he had been singled out for being excluded for allotment on the ground of hostile discrimination. It was held that the terms and conditions of the public auction did not contemplate that reasons for rejecting the highest bid



be communicated to the concerned bidders and in the absence of any rule or terms and conditions in the tender document, reasons need not be assigned in the sense of being communication to a party. We may usefully extract below, para 15 of the captioned decision:—

*“15. The observation made by the Supreme Court is binding on us, but we do not think it is going to make any difference in the case at hand. Firstly, the Rules and the Terms and Conditions of the Public Auction did not contemplate reasons for rejection of highest bid being communicated to the concerned bidders. There is a distinction between existence of reasons and assigning of reasons (see *Shrilekha Vidyarthi* (1991) 1 SCC 212 : AIR 1991 SC 537 Pr. 13 and *Liberty Oil Mills* (1984) 3 SCC 465 : AIR 1984 SC 1271) The former is a requirement of natural justice, the latter is a dictate of law. **Reasons need not be assigned in the sense of being communicated to a party unless required to be so done by any Rule having force of law. Secondly, the reasons could have been made available if asked for. Thirdly, the reasons for rejection though not communicated and though not asked for by the petitioners before filing the petitions have been made available in the Court in response to the show cause notice issued and it would serve no useful purpose if we may dispose of the petitions merely by directing the respondents-DDA to communicate the reasons to the petitioner. The reasons now having been made known to the petitioners, they have been heard thereon.** Whatever they had to say on such reasons they have said and we have also tested the validity of the reasons and have found nothing*



unreasonable therewith. That is an end of the matter.”

(emphasis added)

35. Again, in a recent decision in *Silppi Constructions Contractors v. UOI* reported as 2019 SCC OnLine SC 1133, where the Supreme Court was seized of a tender matter, on the aspect of not furnishing of reasons for rejecting the technical bids of the petitioner therein, it was observed as follows:—

“25. That brings us to the most contentious issue as to whether the learned single judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a state within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. The Respondent nos. 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done.”

(emphasis added)

36. Even in the instant case, no rule or terms and conditions in the tender documents have been pointed that casts an obligation on the respondent/SDMC to furnish reasons for recalling the entire e-auction tendering process, nor have the petitioners approached the respondent/SDMC seeking any reasons for



rejection of their bids. Instead, they have filed the present petitions with a grievance against the communication dated 19.6.2020. The reasons for recalling the NIT have been elaborated in the counter affidavit of the respondent/SDMC and a copy of the Report of the Committee, constituted by the Commissioner, SDMC has also been placed on record (Annexure R/3). Once the reasons for cancelling the tender process have been brought to light and we have considered the arguments advanced on behalf of the petitioners, questioning the validity of the said reasons, the grievance of the petitioners in this regard does not survive. It is now for this court to examine the reasons that persuaded the respondent/SDMC to scrap the tender."

13. It is also well settled that the author of a document is the best person to interpret the rules and conditions mentioned in the document. The Apex Court in Agmatel India (P) Ltd. v. Resoursys Telecom, (2022) 5 SCC 362, after relying on a number of judgments on the interpretation of a document has held as under:

"24. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject-matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be refer to the three-Judge Bench decision of this Court in Galaxy Transport Agencies [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808 : 2020 SCC OnLine SC 1035] wherein, among others, the said decision in Afcons Infrastructure [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.,



(2016) 16 SCC 818] has also been considered; and this Court has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.

25. This Court referred to various decisions on the subject and stated the legal principles as follows : (Galaxy Transport Agencies case [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808 : 2020 SCC OnLine SC 1035] , SCC paras 14-20)

“14. In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] , this Court held : (SCC p. 825, para 15)

‘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.'

15. In the judgment in Bharat Coking Coal Ltd. v. AMR Dev Prabha [Bharat Coking Coal Ltd. v. AMR Dev Prabha, (2020) 16 SCC 759] , under the heading "Deference to authority's interpretation", this Court stated : (SCC p. 776, paras 50-52)

'50. Lastly, we deem it necessary to deal with another fundamental problem. It is obvious that Respondent 1 seeks to only enforce terms of NIT. Inherent in such exercise is interpretation of contractual terms. However, it must be noted that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes.

51. In the present facts, it is clear that BCCL and C1-India have laid recourse to clauses of NIT, whether it be to justify condonation of delay of Respondent 6 in submitting performance bank guarantees or their decision to resume auction on grounds of technical failure. BCCL having authored these documents, is better placed to appreciate their requirements and interpret them. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818]

52. The High Court ought to have deferred to this understanding, unless it was patently perverse or mala fide. Given how BCCL's interpretation of these clauses was plausible and not absurd, solely differences in opinion of contractual interpretation ought not to have been grounds for the High Court to come to a finding that the appellant committed illegality.'



16. Further, in the recent judgment in *Silppi Constructions Contractors v. Union of India* [*Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489] , this Court held as follows : (SCC pp. 501-02, para 20)

‘20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.’

17. In accordance with these judgments and noting that the interpretation of the tendering authority in this case cannot be said to be a perverse one, the Division Bench ought not to have interfered with it by giving its own interpretation and not giving proper credence to the word “both” appearing in Condition No. 31 of the NIT For this reason, the Division Bench's conclusion [*New JK Roadways v. State (UT of J&K)*, 2020 SCC



OnLine J&K 733] that JK Roadways was wrongly declared to be ineligible, is set aside.

18. Insofar as Condition No. 27 of the NIT prescribing work experience of at least 5 years of not less than the value of Rs 2 crores is concerned, suffice it to say that the expert body, being the Tender Opening Committee, consisting of four members, clearly found that this eligibility condition had been satisfied by the appellant before us. Without therefore going into the assessment of the documents that have been supplied to this Court, it is well settled that unless arbitrariness or mala fide on the part of the tendering authority is alleged, the expert evaluation of a particular tender, particularly when it comes to technical evaluation, is not to be second-guessed by a writ court. Thus, in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , this Court noted : (SCC pp. 531-32, para 22)

‘22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out.



The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. 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 blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences,



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

19. Similarly, in *Montecarlo Ltd. v. NTPC Ltd.* [*Montecarlo Ltd. v. NTPC Ltd.*, (2016) 15 SCC 272] , this Court stated as follows : (SCC p. 288, para 26)

'26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or



procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the Court should follow the principle of restraint. Technical evaluation or comparison by the Court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.'

20. This being the case, we are unable to fathom how the Division Bench, on its own appraisal, arrived at the conclusion that the appellant held work experience of only 1 year, substituting the appraisal of the expert four-member Tender Opening Committee with its own."

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



36. The same aspects apply to the observations regarding “contra proferentem rule” as referred by the High Court with reference to *United India Insurance [United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd., (2016) 3 SCC 49 : (2016) 2 SCC (Civ) 14]*. The said rule was referred by this Court while not accepting the argument made on behalf of the insured and while observing that the said rule had no application, when the language of the relevant clauses was plain, clear and unambiguous. We may, however, observe that even from the extracted part of the principles related with the “contra proferentem rule”, as reproduced by this Court from the *Halsbury's Laws of England*, it is clear that the said rule was applied in the case of ambiguity in the insurance policy because the policies are made by the insurer and its ambiguity cannot be allowed to operate against the insured. This rule, in our view, cannot be applied to lay down that in case of any ambiguity in a tender document, it has to be construed in favour of a particular person who projects a particular viewpoint. The obvious inapplicability of this doctrine to the eligibility conditions in a notice inviting tender could be visualised from a simple fact that in case of ambiguity, if two different tenderers suggest two different interpretations, the question would always remain as to which of the two interpretation is to be accepted? Obviously, to avoid such unworkable scenarios, **the principle is that the author of the tender document is the best person to interpret its documents and requirements. The only requirement of law, for such process of decision-making by the tender inviting authority, is that it should not be suffering from illegality, irrationality, mala fides, perversity, or procedural impropriety.** No such case being made out, the decision of the tender inviting authority (NVS) in the present case was not required to be interfered with on the



reasoning that according to the writ court, the product “smartphone” ought to be taken as being of similar category as the product “Tablet”.”

(emphasis supplied)

14. A perusal of the reply given under the RTI Act to the Petitioner belies the claim of the Petitioner. The work undertaken by the Petitioner is for running and maintenance of lifts installed in the residential and non-residential building at GTB Hospital Complex, Shahdara, New Delhi and RMO lifts installed at various hospitals at New Delhi. The cost of work done in both cases are about Rs.7,20,000/-. The conclusion arrived at by the Respondent that the work completed by the Petitioner does not fulfil the magnitude of work experience for enlistment in Class-I contractor in building and roads category in CPWD, i.e., the Petitioner must have three completed works of value not less than Rs.400 lakhs each or two completed works of value not less than Rs.600 lakhs each or one completed work of value not less than Rs.1200 lakhs each. When the matter was sent back to the Committee, the Committee has held that the contract for the work experience submitted by the Petitioner is only labour component and is not acceptable for eligible building work done. The Committee also found that although some extra items with material and labour component are found but they are of lesser quantum than the prescribed amounts. The counter extracts the reasoning of the Committee and even though the impugned order does not give any reasons, this Court is satisfied that there is no malafide in the decision taken by the Respondent not to enlist the Petitioner as a Class-I building and road category contractor. The Respondents are the best judge to decide who should be enlisted as Class-I building and road



category contractor with the CPWD. In the absence of any malafide or arbitrariness, this Court does not want to substitute its own conclusion to the one arrived at by the Committee as the decision making process has been fair, reasonable and transparent.

15. In view of the above, the Petitioner has not been able to satisfy this Court that the Impugned Orders which are under challenge in the present writ petition is so arbitrary warranting interference under Article 226 of the Constitution of India.

16. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 8, 2024

S. Zakir