

**Court No. - 40**

**Case :-** WRIT - C No. - 15519 of 2023

**Petitioner :-** M/S Jai Hanuman Construction Jagdish Saran

**Respondent :-** State Of U.P. And 9 Others

**Counsel for Petitioner :-** Abhinav Gaur, Sanjay Dwivedi, Sr. Advocate

**Counsel for Respondent :-** C.S.C., J.P. Singh, Pushkar Mehrotra, V.K. Singh

**Hon'ble Mahesh Chandra Tripathi, J.**

**Hon'ble Prashant Kumar, J.**

**(Delivered by Hon'ble Prashant Kumar, J.)**

1. Heard Shri Anoop Trivedi, learned Senior Advocate assisted by Shri Vibhu Rai, Abhinav Gaur and Ami Tandon, learned counsel appearing for the petitioner and Shri Manish Goel, learned Additional Advocate General assisted by Mr. Ajit Sinha along with Mr. Anurag Khanna assisted by Ms. Devika Kapoor, learned counsel appearing for the respondents.

2. By means of the instant petition, the petitioner has prayed for the following reliefs :-

“(i) issue an appropriate writ, order or direction quashing the order dated 24.04.2023 passed by respondent no. 6 declaring the responsive bids in the tender.

(ii) issue an appropriate writ, order or direction quashing the decision dated 25.04.2023 passed by respondent no. 6 declaring the result of financial bids.

(iii) issue an appropriate writ, order or direction commanding the respondents concerned to constitute a High Level Committee to enquire into the fraud committed anyhow to get the contract awarded to respondent no. 10 by manipulating the data on Prahari website.”

3. The respondent no. 5 had issued an advertisement/notice inviting tenders on 15.12.2022 for expansion and beautification of Ahraura Madihan Lalganj Road which is a State Highway No. 150 in District-Mirzapur. This project was to be completed within a period of 18 months. The bids so invited were to be submitted on the official website between 31.01.2023 to 19.01.2023. It was provided in the **Notice Inviting Tender**<sup>1</sup> that the technical evaluation of bids will be done using “Prahari” Software having URL-<http://wms.uppwd.gov.in/prahari/>. The bidders were supposed to upload all kinds of information and documents at Prahari Software. After uploading all kinds of information and documents on the <http://etender.up.nic.in> website, the bidders were supposed to

<sup>1</sup> (for short “NIT”)

download the technical sheet and uploaded the scanned copy of the technical sheet on e-tender portal i.e. <http://etender.up.nic.in>.

4. The petitioner claims that he had duly submitted its technical bid online on 21.01.2023 on Prahari website and the technical sheet was then downloaded and re-uploaded on the e-tender website i.e. <http://etender.up.nic.in>.

5. The result of the analysis of technical bids and documents in the said bid on the Prahari website were declared online on 23.01.2023 in which, the technical bid of the petitioner was declared as “responsive” in all respects.

6. Thereafter, all of the bidders were granted 72 hours to submit their objections, if any, on the technical bids and documents submitted on Prahari website by other bidders. Various objections were raised by the other bidders on the veracity & authenticity of documents uploaded by the petitioner.

7. The Tender Evaluating Committee after evaluating the objections, declared the bid of respondent no. 10 as “responsive” and the bid of the petitioner as “non-responsive” on the ground that there were certain discrepancies in respect of the invoices provided by the petitioner. It is worthwhile to mention that out of eight bidders, only bid of two bidders were found to be “responsive”. The petitioner objected to the decision of the Tender Evaluating Committee. He submitted that earlier his bid was “responsive” on the Prahari App but the Tender Evaluating Committee had malafidely declared as “non-responsive”.

8. An allegation of *mala fide* was made by the petitioner on the ground that, in the Tender Evaluating Committee, respondent no. 9 who was the Superintending Engineer and was handling the tender evaluation, had been promoted, so the Engineer-in-Chief *vide* letter dated 01.03.2023 requested respondent no. 9 to handover the entire tender evaluating work to Shri Yogendra Singh who was then supposed to complete the tender process on his behalf. It is further alleged that in spite of the direction of the Engineer-in-Chief to hand over the tender process to Yogendra Singh, respondent no. 9 continued with the tender evaluation and took decision which was illegal and *mala fide*. The learned counsel

for the petitioner further made an allegation that certain documents which were uploaded by him, had been deleted from the Prahari Website.

9. On the representation of the petitioner, the State Level Tender Committee gave an opportunity to the petitioner to get verified the original invoices/agreement of certain machineries which was submitted by him on which the other bidders had objection. The State Level Committee relegated *vide* its order dated 26<sup>th</sup> March, 2023 and asked the District Level Committee to look into the matter. The petitioner appeared before the District Level Committee and gave all information sought by the Committee.

10. The District Level Committee, in response to the directions of the State Level Committee, had taken a view to open the financial bid of the companies, which were responsive. Since, the technical bid of the petitioner was not “responsive”, hence, the bid of the petitioner was not opened. The bid of the other bidders who were technically “responsive” were opened. The bid of the respondent no. 10 was found to be “responsive” and most suitable and accordingly, the contract was awarded to him.

Learned counsel for the petitioner further relied on the judgement passed by the Hon’ble Supreme Court in the matter of **M.P. Power Management Company Limited, Jabalpur v. Sky Power South-East Solar India Pvt. Ltd.**<sup>2</sup>, wherein, the Hon’ble Apex Court has defined the scope of judicial review of an action by the State in matter arising from a contract. The court held that, to find out whether an act is arbitrary or not, the Court must carefully attend to the facts and the circumstances of the case. The duty of the Court is to ascertain whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is an absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non- application of mind without due regard to the rights of the parties

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<sup>2</sup> 2023 (2) SCC 703

and public interest may be a clear indicator of arbitrary action. A wholly unreasonable decision which is little different from a perverse decision under the ‘Wednesbury’ doctrine would qualify as an arbitrary decision under Article 14 of the Constitution of India. Ordinarily violating a part with the consequences of its breach under a contract may not be an arbitrary decision.

11. Per contra, Shri Manish Goel, learned Additional Advocate General appearing on behalf of respondent nos. 1 to 8 submitted that the allegations levelled by the petitioner in this writ petition is absolutely baseless. The petitioner was not technically qualified as per the tender conditions, and after the bid was evaluated by the Tender Evaluating Committee, his bid was found “non-responsive” on several counts. The relevant part of the Tender Evaluating Committee by which the bid of the petitioner held to be “non-responsive” are enumerated herein under :-

Sl. No.	Conclusion on the objections of the other bidders against the petitioner	
1.	Character Certificate	Responsive
2.	Experience Certificate	Responsive
3.	Eight water-tankers have been shown, whose invoices/lease agreement are false.	Non-responsive
4.	The name shown of the lease agreement of the tractor was of Rajesh Kumar Singh whereas in the registration certificate, name was shown Navdeep.	Non-responsive
5.	R.C. of the same water tankers have been shown at Sl. Nos. 5 & 2.	Non-responsive
6.	The notary affidavit of lease of water tanker.	Responsive
7.	The invoices dated 27.04.2012 of Vibrator Soil Compactor is of more than ten years	Non-responsive
8.	The notary affidavit dated 06.01.2023 shows that the truck was taken on rent	Responsive
9.	Bidder has uploaded the same invoices at two places at Sl. No. 1 and 4.	Non-responsive
10.	The invoices of the same machine has been uploaded as water tankers	Non-responsive
11.	The bidder has submitted the receipt of the lease of machines for road marking	Responsive
12.	Bidder has uploaded the invoice and lease-deed of Mini Tandem Roller	Responsive
13.	The bidder has uploaded the Gen. Set of 120 KVA and 40 KVA, though the Prahari App is asked for 62.5 KVA	Non-responsive
14.	The name in the invoice of front end loader is shown as Jai	Non-responsive

	Hanuman Industries but the bidder is M/s Jai Hanuman Construction.	
15.	The invoice of the front end loader is not uploaded	Non-responsive
16.	The invoice of Dozer is not uploaded	Non-responsive
17.	The invoice of bitumen sprayer is not uploaded	Non-responsive
18.	In the invoice of Bar Bending & Cutting machines, the name of owner is shown as Jai Hanuman Industries whereas, the bidder is Jai Hanuman Construction Company.	Non-responsive
19.	The lease of Bar Bending & Cutting machines was uploaded	Responsive
20.	Pan Card and Mark-Sheet of technical persons was uploaded.	Responsive
21.	The Mark-Sheet and C.V. of technical person Kripal Singh was uploaded but his Pan Card was not uploaded.	Responsive.

12. In altogether, the bid of the petitioner were held to be “non-responsive” on twelve counts. The petitioner never had the requisite technical capabilities to carry out the contract which were the pre-requisite as per the conditions of the notice inviting tender. The counsel for the State further submits that, on the representation made by the petitioner, the State Level Committee gave a chance to the petitioner to give a reply on the points, by which, his bid was held to be “non-responsive” (though the same, was not required) and after considering the representations, out of the twelve counts of “non-responsive”, only one count of “non-responsive” for the front end loader and bar bending machine was changed into as “responsive”, however, still on eleven counts, the bid of the petitioner remained to be “non-responsive”. Since, the bid of the petitioner remained “non-responsive” so the financial bid of the petitioner was not opened.

13. Learned counsel for the State submits that the allegation levelled by the petitioner in the instant petition is devoid of any merit though, he has alleged *mala fide* but there was nothing on record to prove the same. In fact, the bid of the petitioner was found to be “non-responsive” as he did not qualify the mandatory conditions. The entire tender process was done in the most transparent manner, wherein, all the bidders were asked to put the details on the website and other bidder was given an opportunity to object on the same. The action of the respondents was absolutely above board. Once the financial bids were opened, the bid of the respondent no. 10 was found to be most suitable and responsive and accordingly, the tender was awarded to him. After awarding the tender

respondent no. 10 has proceeded with the work and has already completed a substantial portion of work. Hence, it will be in no one's interest to entertain the writ petition of the petitioner who is technically not qualified and has no ground to challenge the tender proceedings. The State has the power to frame qualifying conditions. Further, the tender procedure are not opened to the judicial scrutiny.

14. Mr. Ajit Sinha, Senior Advocate along with Mr. Anurag Khanna, Senior Advocate assisted by Ms. Devika Kapoor, appeared on behalf of respondent no. 10. Mr. Sinha submitted that the writ petition filed by the petitioner is not maintainable, as he had not come to the Court with clean hands. He could not prove any of the allegations levelled by him, especially the allegation that the documents were deleted from the Prahari App. Mr. Sinha submits that as per Clause 3.1 of the G.O. dated 25.08.2020, the objections to the bids of the bidders can be uploaded on Prahari App within 72 hours. The committee would be responsible for the disposal of the objections to the bids. The petitioner had raised five objections against respondent no. 10 whereas, respondent no. 10 had raised 23 objections against the petitioner within the stipulated time. It was on 01.03.2023 that the District Level Committee after considering the objections, took a decision which was uploaded on 04.03.2023 wherein, six bidders were declared "non-responsive" and two were declared "responsive".

15. The petitioner was found to be "non-responsive" on twelve counts. On the representation of the petitioner, the State Level Committee had referred the matter back to the District Level Committee to re-examine the objections with regard to the invoices of the machinery of the petitioner and to take decision after re-evaluation of the original invoices. The District Level Committee sought original invoices and other documents to verify the ownership. The documents produced by the petitioner were without GST invoices and the machines were not in the name of the petitioner-company. On 14.04.2023, an internal departmental communication was issued wherein, the petitioner was declared "responsive". A disciplinary proceeding was initiated against the Executive Engineer who has issued the letter, and later he was found to be guilty of the same.

16. The allegations of certain documents being deleted from the website, is completely baseless as the copy of the E-1 Sheet uploaded by the petitioner was found to be intact. The allegation of the petitioner that he was declared “responsive” on all grounds, is completely baseless and contrary to records.

17. The allegation of *mala fide* against respondent no. 5 as alleged by the petitioner was also baseless as it was not respondent no. 9 who had finalised the tender proceedings but the same was done by Mr. Yogendra Singh, Superintending Engineer, Mirzapur who took charge on the post, re-evaluated the tender and after re-evaluation it was he who found the bid of the petitioner to be “non-responsive” on eleven counts.

18. Mr. Sinha and Mr. Khanna further placed reliance on the judgement passed by the Hon’ble Supreme Court in the matter of **Tata Cellular v. Union of India**<sup>3</sup>, and submitted that the terms of the invitation to tender, is not open for judicial scrutiny as these decisions are made qualitatively by experts. It is further submitted that the decision of the tender committee can only be tested by the application of Wednesbury Principle of reasonableness.

19. Mr. Sinha further relied on the judgement passed by the Hon’ble Supreme Court in the matter of **National High Speed Rail Corporation Ltd. v. Montecarlo Limited & Another**<sup>4</sup>, wherein, the Hon’ble Supreme Court has held that the court should be extremely careful in exercising the powers in the tender matters. He has also placed reliance on the judgements passed the Hon’ble Supreme Court in **Afcons Infrastructure Ltd v. Nagpur Metro Rail Corporation Limited & Anr**<sup>5</sup>, and **N.G. Projects Ltd. v. Vinod Kumar Jain & Anr**<sup>6</sup>. and **MaaBinda Express Carrier and Anr v. North-East Frontier Railway and Ors**<sup>7</sup>. The other judgements cited by Mr. Sinha also follows the same ratio.

20. Heard learned counsel for the parties and perused the records.

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3 (1994) 6 SCC 651

4 (2022) 6 SCC 401

5 2016 (16) SSC 818

6 (2022) 6 SCC 127

7 (2014) 3 SCC 760

21. In the instant petition, the petitioner has challenged the tender proceedings primarily on three grounds, which are being dealt below :-

(A) That the petitioner was declared “responsive” but was later, held to be “non-responsive”. This averment made by the petitioner is not correct as in the beginning, when the petitioner uploaded the bid in the Prahari App initially, the bid was “responsive” believing all the documents uploaded by the petitioner to be true. However, as per Clause 3 of NIT, an opportunity was given to all the bidders to raise objections on the bids of their competitors. Objections were raised against the technical bids of the petitioner, after the scrutiny of the objections, the Tender Evaluating Committee found the bid of the petitioner to be “non-responsive” on twelve counts. On the representation of the petitioner, the State Level Committee relegated it back to the District Level Committee to look into the grievance of the petitioner on one of the issues. After considering the representation of the petitioner, the District Level Committee found the bid to be “responsive” on one count only, however, on the remaining eleven counts, the bid of the petitioner remained “non-responsive”. It seems that the petitioner in connivance with the Executive Engineer got the “responsive” certificate. On inquiry being made, it was found that the Executive Engineer has unauthorisedly and illegally issued a letter on 15.04.2023. Against this Executive Engineer, a disciplinary proceeding was initiated and he was found to be guilty. The petitioner cannot take advantage of the fraud which has been perpetuated by the Executive Engineer and of course, for the benefit of the petitioner. Hence, the bid of the petitioner was rightly declared as “non-responsive” and the allegations of the petitioner that his bid was “responsive”, is not correct. The bid still remained “non-responsive” on eleven counts.

(B) The petitioner had alleged in the writ petition that the department, in collusion with the respondent no. 10 have deleted some documents which was uploaded by the petitioner in the Prahari App. This allegation made by the petitioner is absolutely frivolous and baseless. The E-1 Sheet which is being annexed with the writ petition demonstrates that the number of documents uploaded by the petitioner are exactly the same and nothing has been deleted. The petitioner has failed to demonstrate that any



tampering with the Prahari Portal has been done in the instant matter. In fact, the counsel for the State had stated that use of Prahari App is absolutely transparent and tamper-proof. Once the portal closes its windows to upload any documents by the bidders, no one can add or delete any documents from the portal and the same remains open to all for “read only” purposes.

(C) The petitioner, in the instant petition, has also alleged *mala fide* against respondent no. 9 suggesting that he was promoted and transferred out, still he continued with the bid evaluation procedure and had illegally granted benefit to the respondent no. 10. This allegation again is patently illegal and contrary to the records. The record shows that it was Mr. Yogendra Singh who was in the Tender Evaluating Committee and it was he who had evaluated the technical bid of the petitioner and found him to be “non-responsive”. Even the allegation of *mala fide* made by the petitioner is devoid of any merit and is completely baseless.

22. It is worthwhile to mention here that the bid submitted by the petitioner was technically “non-responsive” on twelve counts. However, on the representation of the petitioner and reconsideration of his documents, only one of the “non-responsive” bid turned into “responsive” bid but still on eleven counts, the bid of the petitioner was “non-responsive”. Hence, the financial bid of the petitioner was not opened and the financial bids of only the bidders who were technically qualified/responsive, were opened. After opening the financial bid, the bid of the respondent no. 10 was found to be most suitable and responsive, hence, the tender has been awarded to the respondent no. 10.

23. The petitioner herein has filed the instant petition seeking a direction to declare the bid of the petitioner as “responsive” and further sought a direction to open the financial bid of the petitioner.

24. We are aware that the tender conditions made in the Notice Inviting Tenders is a policy decision which cannot be interfered with by any court of law unless the conditions are absolutely arbitrary whimsically and be made for ulterior purposes. The tender matters are normally not amenable to judicial review, if the State acts within the bound of reasonableness. The State and State instrumentalities are free to draw out any conditions

for qualifications for tenders to ensure that the contractor has a capacity and resources to successfully execute the work.

25. If the State or its instrumentalities acts fairly in the tenders proceedings and thereafter award the contract, in that case, interference by the Court is very restrictive as no bidder can claim fundamental right to carry on business with the Government.

26. Wherever, there is a challenge of award of the tender, the Court only has to see whether the decision making process had any error or the authorities have exceeded their jurisdiction or has violated the principles of natural justice. In this case, there is nothing on record to show that the State or its instrumentalities have acted unreasonably, whimsically or with ulterior motive. There was no error in the decision making process neither the authorities have exceeded the jurisdiction nor there was any violation of natural justice.

27. The Hon'ble Supreme Court in the matter of **Tata Cellular v. Union of India**<sup>8</sup>, has held as under :-

*“(a) It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism.*

*(b) There can be no question of infringement of [Article 14](#) if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power.*

94. *The principles deducible from the above are : (1) The modem trend points to judicial restraint in administrative action.*

*(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) 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.*

*(4) 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.*

*(5) 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 or quasi-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.*

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<sup>8</sup> (1994) 6 SCC 651

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

28. The Hon’ble Supreme Court in the matter of **Directorate of Education & Ors v. Educomp Datamatics Ltd. & Ors**<sup>9</sup> has held as under :-

“It is well settled now that the courts can scrutinise the award of the contracts by the government or its agencies in exercise of its powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined by the Hon’ble Supreme Court in the number of decisions like *Tata Cellular (supra)*.”

29. In **Global Energy Ltd & Another v. M/s Adani Exports Ltd. & Ors**<sup>10</sup>, the Hon’ble Supreme Court has held as under :-

“10. The principle is, therefore, well settled that the terms of the invitation to tender are not open to judicial scrutiny and the Courts cannot whittle down the terms of the tender as they are in the realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice. This being the position of law, settled by a catena of decisions of this Court, it is rather surprising that the learned Single Judge passed an interim direction on the very first day of admission hearing of the writ petition and allowed the appellants to deposit the earnest money by furnishing a bank guarantee or a bankers' cheque till three days after the actual date of opening of the tender. The order of the learned Single Judge being wholly illegal, was, therefore, rightly set aside by the Division Bench.”

30. The Hon’ble Supreme Court in the matter of **Michigan Rubber (India) Ltd. v. State of Karnataka**<sup>11</sup> has held as under :-

“(a) the basic requirement of [Article 14](#) is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers. The State and the State instrumentalities are free to make any conditions or qualifications for tenders to ensure that the contractor has the capacity and the resources to successfully execute the work.

(c) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.”

31. The Hon’ble Supreme Court in the matter of **Afcons Infrastructure Ltd v. Nagpur Metro Rail Corporation Limited**<sup>12</sup>, has held that the decision making process in accepting or rejecting the bid should not be interfered with unless it suffers from *mala*

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9 2004 (4) SCC 19

10 2005 (4) SCC 435

11 (2012) 8 SCC 216

12 2016 (16) SSC 818

*fide* or is intended to favour someone, or there is perversity in the decision making process.

32. The Hon'ble Supreme Court in the matter of **National High Speed Rail Corporation Ltd. v. Montecarlo Limited**<sup>13</sup>, has held that the Court should be extremely careful in exercising its powers in the tender matters.

*“48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.”*

33. The Hon'ble Supreme Court in the number of judgements has held that writ court should refrain itself from imposing its decision over the decision of the employer as to, whether or not, to accept a bid of the bidder. The court does not have expertise to the terms & conditions. The Hon'ble Supreme Court should be more reluctant in interfering any contract involving technical issue as it has no expertise to adjudicate upon such issue. The Court should leave the technical issues to be dealt by the technical experts or by the State.

34. The Hon'ble Supreme Court in the matter of **N.G. Projects Ltd. v. Vinod Kumar Jain & Anr**<sup>14</sup>. has held that the construction of road is an infrastructure project and the court should not interfere unless the decision of the State was manifestly arbitrary or unjust. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in mind. Courts should be reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a *mala fide* manner, still the Court

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13 (2022) 6 SCC 401

14 (2022) 6 SCC 127

should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract.

35. The Hon'ble Supreme Court in a number of judgements has held that the Court would not normally interfere with the policy decision and in the matters challenging the award of contract by the State or public authorities unless the petitioner establishes that the action of the State Authorities was contrary to public interest and beyond the pale of discrimination or unreasonableness, the petition cannot be entertained. The Court further held that the Government or his undertaking shall have a free hand in setting up of the terms of the tender and only if it is arbitrary, discriminatory, *mala fide* or actuated with bias, the Court will interfere in the tender matters.

36. While considering the dispute wherein award of the tender has been challenged, the Court only has to see whether the decision making process had any error or the authorities have exceeded its jurisdiction or there was violation of rules of natural justice.

37. The Hon'ble Supreme Court in the number of decisions, has laid down parameters wherein, the High Court should not interfere in the tender matters unless the same is absolutely *mala fide* and the decision taken by the State is arbitrary. It has also laid down that the terms of invitation to the tender is not opened for judicial scrutiny because the violation of tender is in the realm of contract.

38. In the instant case, since the petitioner has utterly failed to make out a case of arbitrariness, *malafide* or the decision was intended to favour someone or the decisions suffered from any perversity, even the allegations made against the State Authorities of favouring a particular bidder has been found to be baseless and contrary to record. Hence, there is no merit in the writ petition.

39. Accordingly, the instant writ petition is **dismissed**.

**Order Date :- 12.10.2023**

Rama Kant