

A.F.R.

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:145591-DB

Court No. 40

WRIT- C NO. 22963 OF 2024

DYNAMIC INFRACON PVT. LTD.

V.

STATE OF UTTAR PRADESH AND OTHERS

With

WRIT- C NO. 20023 OF 2024

M/S BENGAL WOOD & ALLIED PRODUCTS

V.

STATE OF UTTAR PRADESH AND OTHERS

For the Petitioner : Sri Shashi Nandan, Senior Advocate assisted by
Sri Udayan Nandan, Advocate

For the Respondents : Sri Manish Goyal, Additional Advocate General
assisted by Ms. Akanksha Sharma, Standing
Counsel for the State and Sri Navin Sinha, Senior
Advocate assisted by Sri Nikhil Agarwal, Sri
Manmohan Singh and Sri R.P. Singh, Advocate for
respondent Nos.6 to 18

Last heard on August 23, 2024

Judgment on September 6, 2024

HON'BLE SHEKHAR B. SARAF, J.

HON'BLE MANJIVE SHUKLA, J.

(Pronounced by Hon'ble Shekhar B. Saraf, J.)

1. The instant connected petitions have been filed under Article 226 of the Constitution of India by the Dynamic Infracon Pvt. Ltd. (Petitioner in Writ-C No. 22963 of 2024) and M/s Bengal Wood & Allied Products (Petitioner in Writ-C No. 20023 of 2024) seeking quashing of the entire tender process held in pursuance of e-bid tender document dated May 28, 2024 issued by Superintending Engineer, PWD, Prayagraj Circle, Prayagraj

(hereinafter referred to as respondent No.2). The Petitioners have further prayed for some other numerous reliefs in accordance with their satisfaction through their respective petitions.

FACTS

2. Factual matrix of the present case is delineated below:

- (a) The petitioner is a Private Limited Company (in Writ-C No. 22963 of 2024) & Sole Proprietorship Firm (in Writ-C No. 20023 of 2024) engaged in the business of supply of Sal wood sleepers and edgings and have previous experience in the supply of said products at the earlier Kumbh Mela held in Prayagraj, Uttar Pradesh.
- (b) On May 28, 2024, the Sal Sleeper Purchase Committee through the Office of the Chief Engineer, PWD, Prayagraj Zone, Prayagraj issued an e-bid document wherein it invited applications from interested Government institutions/corporations/firms/contractors/business entities either individually or as joint venture/consortium for supply of sal wood sleeper and edgings for construction of Pontoon bridges in the Maha Kumbh Mela, 2025 that was to be held in the city of Prayagraj, Uttar Pradesh.
- (c) As per the bid document, the process of selection consists of two stages namely, technical bid and financial bid. The financial bids would be open at a subsequent stage for only those bidders, who were successful in the technical bid.
- (d) The date of commencement of the bidding process was fixed as May 27, 2024 and the last date of submission of the bidding documents was fixed as June 11, 2024 and thereafter, the technical bids were to be opened on the same day itself. However, on May 27, 2024, the Competent Authority issued a corrigendum, whereby the last date for the opening of the technical bid was extended to June 12, 2024.

- (e) The petitioner in Writ-C No. 22963 of 2024 submitted its technical as well as financial bid at the rate of Rs.2,26,900 per cubic meter for the supply of Sal wood sleeper and edgings on June 12, 2024 and was found eligible in the technical bid. Out of total 12 bidders who submitted their technical bids, 11 bidders (including petitioner) were found to be qualified for the financial bid which was opened on June 15, 2024 wherein the contract was granted in favor of 5 bidders at the rate of Rs.1,58,000/- per cubic meter who were designated as L-1 to L-5 because L-2 to L-5 agreed to supply the required product at the same rate quoted by the L-1 bidder (a consortium of 3 entities namely Dhoramnath Traders, Shraddha Timber Stores and Vasant Timber Mart) that is at the rate of Rs.1,58,000/-. The Petitioner was placed at L-10 in the bidding process.
- (f) On June 28, 2024, after the completion of the bidding process, the Letter of Award ('LoA') was granted in favor of 5 bidders who were placed at L-1 to L-5 in the financial bids to supply Sal wood sleepers and edgings at Maha Kumbh Mela, 2025.
- (g) Therefore, the petitioner being aggrieved by the conferring of LoA to the L-1 to L-5 without allegedly following mandatory condition of the e-bid document dated May 28, 2024 has approached this Court seeking the aforementioned reliefs through the present Writ Petitions.

CONTENTIONS OF THE PETITIONER

3. Sri Shashi Nandan, learned senior counsel appearing on behalf of the petitioner has made the following submissions:

- (i) According to clause 5(d) and 5(e) of the e-bid document issued by the respondent No. 2, the bidder must have at least 1000 cubic meters of Sal wood/Sal sleepers/Sal edgings at the time of bidding and in the case of a consortium, the lead member of the consortium must have 51% of the said quantity.

- (ii) Dhoramnath Traders, the respondent No. 6, who is the lead member of the L-1 consortium gave an undertaking that it has more than 1000 cubic meters of Sal wood edgings available with it. However, a report dated June 24, 2024 of the Assistant Range Officer, Raipur, Chhattisgarh shows that the total stock available with the respondent No. 6 was only 386.878 cubic meters.
- (iii) A letter dated July 10, 2024 was issued by the Range Officer, Forest Range, Raipur, Chhattisgarh that a further inspection for proper verification of the stock is needed to be carried out and on July 31, 2024, in pursuance of the same, the Principal Chief Conservator of Forest passed an order for the constitution of a committee headed by the Divisional Forest Officer, Raipur Chhattisgarh to conduct an inquiry into the matter and submit its report within 7 days from the date of the constitution of the committee. However, the inquiry regarding stock of the respondent No. 6 is yet to be completed and in spite of this fact, the contract has been awarded in favor of the respondent Nos. 6 to 21.
- (iv) The lead member of L-1 consortium was not qualified to participate in the bidding because it did not possess the required 51% of 1000 cubic meters of Sal wood edgings at the time of bidding as per the condition of the e-bid document.
- (v) According to clause 6(g) of the e-bid document, the appropriate committee had to carry out a physical inspection of the stock of the bidders at the time of opening of the technical bid. However, no physical inspection was carried out by the committee either before, during or after opening of the technical bid and the quality and quantity of stock of the bidders was never inspected or verified.
- (vi) Clause 6(g) of the bid document is an essential and mandatory condition which could not have been ignored by the concerned

committee and without following the said condition, no contract could have been granted in favor of the respondents.

- (vii) The petitioner had written two letters dated June 22, 2024 and June 24, 2024 asking for the physical verification of the stock. However, no reply was given to the said letters.
- (x) Clauses 5(d), 5(e) and 6(g) of the e-bid document were essential conditions dealing with the eligibility of the bidders and they had to be meticulously followed.
- (xi) The objection raised by the respondents with regard to the eligibility of the petitioner that it does not have the requisite qualification for succeeding in the e-bid process is totally misconceived as it is clear from the undertaking of the petitioner that at the time of bidding, the petitioner had a stock of 1,425.894 cubic meters of the Sal wood.
- (xii) To buttress his arguments, counsel for the petitioner has relied upon the judgments of the Supreme Court in cases of **B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.** reported in **(2006) 11 SCC 548** and **W.B. SEB v. Patel Engg. Co. Ltd.** reported in **(2001) 2 SCC 451**.

CONTENTIONS OF THE RESPONDENTS

4. Sri Manish Goyal, learned Additional Advocate General and Sri Navin Sinha, learned Senior Advocate appearing for the State and respondent Nos. 6 to 18 respectively have made the following submissions:

- (i) According to clause 5(d) and clause 5(e) of the e-bid document the prospective bidder had to have at least a stock of 1000 cubic meters of Sal Wood/Sal sleepers/Sal edgings at the time of bidding and in case of a consortium the lead member should have at least 51% of the Sal Wood/Sal sleepers/Sal edgings. The cumulative requirement of 1000 cubic meters of the stock was in respect of the total stocks of all the members of the consortium.

- (ii) Substantiating the aforementioned arguments, counsel for the respondents placed reliance on the record dated June 7, 2024 which shows that the total stock available with the respondent No. 6 is 1,131.97 cubic meters which consists of 913.609 cubic meters of Sal wood logs and 218.361 cubic meters of Sal wood edgings and the said record had been duly certified by the Assistant Forest Range Officer, Raipur, Chattisgarh. Hence, the respondent No. 6 (lead member of the consortium) fulfilled the criteria of minimum 510 cubic meters which is equivalent to 51% of the total requirement of 1000 cubic meters at the time of bidding as per clause 5(d) and clause 5(e).
- (iii) The inquiry report, certifying the stock as on June 24, 2024 was an ex-parte inspection and ex-parte report, pursuant to which a show cause notice dated June 25, 2024 was issued. Consequently, the Range Officer after duly verifying the stocks, the registers maintained as prescribed, purchases during the period as well as the sales, subsequently came to the conclusion that the stock of month of May as certified by the Assistant Range Officer on June 7, 2024 was correct and there was no discrepancy in the certificate issued by the Assistant Range Officer.
- (iv) The petitioner had not approached this court with clean hands as it itself is not eligible to participate in the tender proceedings in view of the clause 5(d) of the qualification criteria for eligible bidders, which envisaged at least 1000 cubic meters of stock of Sal Wood at the time of bidding but as per the registration certificate dated January 4, 2024, the licensed capacity has been specified as 500 cubic meters only for the petitioner which had been issued by the Divisional Forest Officer, Raipur.

- (v) The rate of Sal Wood quoted by the petitioner was at Rs.2,26,900/- per cubic meter as against the rate quoted by L-1 which was Rs.1,58,000/- per cubic meter.
- (vi) The condition of physical inspection of the stock stipulated in clause 6(g) of the e-bid document was only an auxiliary/ancillary/non-mandatory condition of the technical bidding process. As evident from a conjoint reading of clauses 6(g) and 6(h) of the said e-bid document particularly the contents of clause 6(h) that the physical inspection by the purchase committee or its representative was subject to if "purchase committee requires", it can be inferred that there was a discretion which was given to the purchase committee for the requirement of physical inspection.
- (vii) The further reading of part 2 relating to financial bid would make it absolutely clear that the requirement of physical inspection is not a condition precedent for opening of the financial bids. The bidders were only required to furnish details as per the tender document.
- (viii) A conjoint reading of clauses 6(g), 6(h) and 6(i) would clearly establish that the condition of physical inspection of the stock of Sal round logs was only an auxiliary and ancillary condition and not a mandatory condition and was left to the discretion of the Purchase Committee to conduct the physical inspection.
- (ix) In the e-bid document it is stated that the "Purchase Committee" is the only authority created for the purposes of conducting the entire tendering process and there is no other authority constituted by the order of the Principal Secretary, PWD . As the Purchase Committee has uniformly dispensed with the requirement of carrying out physical inspection in respect of all the bidders, it cannot be said that it had not fulfilled the requirements of various clauses of the technical as well as the

financial bid. Hence, there was no arbitrariness on the part of the State.

- (x) The Sal sleeper purchase committee had been given the exhaustive powers under the bid document to facilitate the entire tendering process including the firm right to change the terms and condition in the Request for Proposal(RFP).
- (xi) To buttress the arguments, counsel for the respondents have placed reliance upon umpteen judgments of the Apex Court such as **Tata Motors Ltd. v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST)** reported in **2023 SCC OnLine SC 671** ; **Balaji Ventures (P) Ltd. v. Maharashtra State Power Generation Co. Ltd.** reported in **2022 SCC OnLine SC 1967**; **Directorate of Education v. Educomp Datamatics Ltd.** reported in **(2004) 4 SCC 19**; and the judgment of Allahabad High Court in **Jai Hanuman Construction Jagdish Saran v. State of U.P.** reported in **2023 SCC OnLine All 2033**;

ANALYSIS AND CONCLUSION

5. We have heard the counsel appearing for the parties and perused the material on record.

6. Before carrying out analysis, we are delineating the relevant clause of the e-bid document herein below:

“5. Qualification Criterion for Eligible Bidders

(d). The Bidder must have stock of at least 1000 (One Thousand) cubic meter of Sal wood / Sal Sleepers / Sal Edgings at the time of bidding. The Bidder shall have to provide the documentary evidence of invoice and GST payment. The source of timber has to be legal for which the Bidder will have to produce the relevant document to the Sal Sleeper Purchase Committee. The Bidder will have to produce undertaking/Affidavit about the stock.

(e). The Bidder can be a single entity or a consortium of not more than five member entities, where the Lead Member shall meet at least 51% requirement of the entire qualification criterion mentioned in this RFP. The nomination(s) by all other members of the Consortium / JV shall be supported by a Power of Attorney, as

per the format at Appendix-XI, signed by all such other members. Other Member(s) shall meet at least 10% requirement of all the qualification criteria mentioned in this RFP and the Consortium / JV as a whole shall cumulatively / collectively fulfill the 100% requirement of the said qualification criteria.

6. Submission of Bids

(g) Technical bids upon opening will be evaluated and all documents/details furnished by the bidder will be scrutinized. The Bid Evaluation Committee or any of its representative will carry out physical inspection of stock of Sal round logs. The technical bids will be evaluated on the basis of scrutiny of submitted documents and physical inspection of the stock of the bidders.

(h) Only those bidders whose technical bids upon opening are found in order with regard to correct documentation shall be subjected to physical inspection by the Purchase Committee or its representative, if Purchase Committee requires.”

7. The argument raised by Sri Shashi Nandan, Senior Advocate appearing on behalf of the petitioner stands on two foundational pillars. Firstly, his argument is that the applicants were required to have 1000 cubic meters of stock (Sal wood/Sal sleepers/Sal edgings), if the applicant was an individual, and in the case of consortium, atleast 51 % of the 1000 cubic meters of stock should have been possessed by the lead member. The second limb of his argument is that at the time of opening of the technical bid, physical inspection of stock was required to be carried out by the Bid Evaluation Committee as per clause 6(g) of the e-bid document. Once the said physical inspection of stock was carried out as per clause 6(g), the Bid Evaluation Committee was to look into the technical bid on the basis of scrutiny of documents and physical inspection of the stock of the bidders. Sri Shashi Nandan has relied on the report dated June 24, 2024 of the Assistant Range Officer, Raipur, Chattisgarh to indicate that the concerned respondent who has been chosen as L1 was not an eligible bidder as per clause 5(d). In fact, he submits that the stock maintained by the respondent No. 6 (Dhoramnath traders) is only 386.878 cubic meters as per the said report. Secondly, he has submitted that the petitioner had written two letters dated June 22, 2024 and June 24, 2024 to the State authorities requesting them to carry out a physical inspection of the stock as per clause 6(g) but the same was never done in contravention of the said clause of the tender

document. He submitted that this was a mandatory requirement that had not been fulfilled and accordingly, the entire process that has been initiated and carried out by the State authorities is arbitrary, capricious, whimsical and without any basis in law.

8. Per contra, Sri Manish Goyal, learned Additional Advocate General appearing on behalf of the State and Sri Navin Sinha, learned Senior Advocate appearing on behalf of the respondent Nos. 6 to 18 have debunked the entire argument made by the petitioner submitting that the petitioner is only trying to create a cloud over the entire matter without bringing on record any factual data that could indicate that the State authorities have acted in contravention of the terms and conditions in tender document. Sri Navin Sinha has placed on record a report dated June 7, 2024 which was duly certified by the Assistant Forest Range Officer, Raipur, Chattisgarh and also subsequently affirmed by Range officer, Forest division, Raipur vide letter dated July 4, 2024 showing that the total stock with the lead member of L-1 namely Dhoramnath Traders was 1,131.97 cubic meters consisting of 913.609 cubic meters of Sal Wood logs and 218.361 cubic meters of Sal wood edgings.

9. With regard to the objection raised by the senior counsel appearing on behalf of the petitioner that the inspection was not carried out as per clause 6(g), it is to be noted that the Purchase Committee (Bid Evaluation Committee) had uniformly waived off the requirement of carrying out the physical inspection in respect of all the bidders and not for some of the applicants. Ergo, no case has been made out regarding any arbitrary or malafide action on the part of the State authorities. The authorities, upon checking the documents submitted by the applicants and using their discretionary power under clause 6(h) of the e-bid document did not carry out inspection of any of the applicants. In fact, vide letters dated June 19, 2024 and June 22, 2024 they had also written to the petitioner to bring down the rate to the rate quoted by the L-1 that is Rs.1,58,000/- per cubic meter.

10. Counsel appearing on behalf of the State submitted that the private respondents/applicants have brought down their rates to Rs.1,58,000/- per

cubic meter as per the demand of the State authorities and in light of the terms and conditions, the allocation was made to all the applicants who have brought down their rate to Rs.1,58,000/-. They further submitted that there was no arbitrariness as the documents submitted by the applicants were found to be in order, and therefore, the Committee did not carry out any inspection.

11. Before concluding on the issue at hand, one may examine the law laid down by the Apex Court on the issue of interference by writ courts in tender matters. The Supreme Court in the case of **Directorate of Education v. Educomp Datamatics Ltd.** reported in (2004) 4 SCC 19, reiterating the view contemplated in **Tata Cellular v. Union of India** reported in (1994) 6 SCC 651 has espoused on the scope of judicial review in terms of tender prescribing eligibility criteria and held that the interference by the writ courts is open only when the action of the State authorities is arbitrary, discriminatory or biased but not merely because the court feels that some other term would have been more preferable. Relevant paragraphs of the judgment are quoted herein below:

“9. It is well settled now that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their 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 in depth by this Court in Tata Cellular v. Union of India [(1994) 6 SCC 651]. After examining the entire case-law the following principles have been deduced:

“94. The principles deducible from the above are:

(1) The modern 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.

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

(emphasis supplied)

13. Directorate of Education, Government of NCT of Delhi had invited open tender with prescribed eligibility criteria in general terms and conditions under tender document for leasing of supply, installation and commissioning of computer systems, peripherals and provision of computer education services in various government/government-aided senior secondary, secondary and middle schools under the Directorate of Education, Delhi. In the year 2002-03, 748 schools were to be covered. Since the expenditure involved per annum was to the tune of Rs. 100 crores, the competent authority took a decision after consulting the Technical Advisory Committee for finalisation of the terms and conditions of the tender documents providing therein that tenders be invited from firms having a turnover of more than Rs. 20 crores over the last three years. The hardware cost itself was to be Rs. 40-45 crores. The Government introduced the criterion of turnover of Rs. 20 crores to enable the companies with real competence having financial stability and capacity to participate in the tender, particularly in view of the past experience. We do not agree with the view taken by the High Court that the term providing a turnover of at least Rs. 20 crores did not have a nexus with either the increase in the number of schools or the quality of education to be provided. Because of the increase in the number of schools the hardware cost itself went up to Rs. 40-50 crores. The total cost of the project was more than Rs. 100 crores. A company having a turnover of Rs. 2 crores may not have the financial viability to implement such a project. As a matter of policy the Government took a conscious decision to deal with one

firm having financial capacity to take up such a big project instead of dealing with multiple small companies which is a relevant consideration while awarding such a big project. Moreover, it was for the authority to set the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. The provision of the terms inviting tenders from firms having a turnover of more than Rs. 20 crores has not been shown to be either arbitrary or discriminatory or actuated by malice.”

12. The Supreme Court in the case of **Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)** reported in **(2016) 8 SCC 622** has held that the issue of acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. The terms of Notice Inviting Tender (NIT) can not be ignored as being redundant or superfluous. Relevant paragraphs of the judgment are delineated below:

“47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or malafide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216] .

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 [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] . 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.”

13. The Supreme Court reiterated its view contemplated in **Central Coalfields Ltd.(supra)** in the case of **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.** reported in **(2016)16 SCC 818** and held that the decision making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision making process is malafide or intended to favor someone. Relevant paragraph thereof is delineated below:

“11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

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.”

14. In the case of **Silppi Constructions Contractors v. Union of India** reported in **(2020) 16 SCC 489** the Apex Court further observed that the Courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. Relevant paragraph of the judgment is quoted herein below:

“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.”

15. The Supreme Court in the case of **Tata Motors Ltd. v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST)** reported in **2023 SCC OnLine SC 671** has again emphasised that the Courts should not ordinarily interfere in matters relating to tender or contract. The relevant paragraphs of the judgment are quoted herein below:

“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 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.

53. The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in Jagdish Mandal v. State of Orissa, reported in (2007) 14 SCC 517 that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."

16. A coordinate bench of this Court in the case of **Jai Hanuman Construction Jagdish Saran v. State of U.P.** reported in **2023 SCC OnLine All 2033** also followed the views espoused by the Apex Court in the above cited judgments and held that the High Court should refrain from interfering in matters pertaining to tender matters unless the approach of State authority is highly arbitrary and mala fide in the eyes of law. Relevant paragraphs of the said judgment are quoted below:

“29. The Hon'ble Supreme Court in the matter of Directorate of Education v. Educomp Datamatics Ltd. 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).”

32. The Hon'ble Supreme Court in the matter of Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Limited, has held that the decision making process in accepting or rejecting the bid should not be interfered with unless it suffers from mala fide or is intended to favour someone, or there is perversity in the decision making process.

35. The Hon'ble Supreme Court in the matter of N.G. Projects Ltd. v. Vinod Kumar Jain [(2022) 6 SCC 127] 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

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.

36. The Hon'ble Supreme Court in a number of judgments 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.

37. 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.”

17. On an examination of the factual matrix with regard to the first limb of the argument raised by Sri Shashi Nandan that the lead member of the consortium was required to have 51% of the 1000 cubic meters, we find that though doubt has been raised by the petitioner, the same has been countered by counsel appearing on behalf of the respondents. Documents have been produced that indicated that Dhoramnath Traders, the lead member of the consortium was having total 1,131.97 cubic meters of Sal wood logs and Sal wood edgings. These kinds of factual disputes cannot lead to interference by a writ Court as is clearly enunciated by the judgements cited above.

18. With regard to the second limb of argument that inspection was mandatory as per clauses 6(g) and 6(h) of the e-bid document, we are of the view that the document has to be read as a whole and the said clauses have to be read together. Upon a conjoint reading of said two clauses, we are of the view that there was discretion with the Sal Purchase Committee to carry out inspection which they chose not to do for any of the applicants. The fact that they did not carry out inspection for any of the applicants removes any claim that may be made by the petitioner with regard to any arbitrary or mala fide action on behalf of the respondents.

19. In light of the above factual matrix and after examining the judgments cited above, it is clear that the writ Court is not required to find fault of the

authorities with a magnifying glass rather the Court should examine the decision making process and also leave room for interpretation of the contract by the authorities.

20. In the present case, the petitioner has failed to establish that the action of the authorities was contrary to public interest and within the realm of discrimination and unreasonableness, and accordingly, the writ petition cannot be entertained. As this Court has found that the action of the authorities is not arbitrary, discriminatory, *mala fide* or actuated with any bias, the Court does not wish to intervene in the matter.

21. Accordingly, the writ petitions are dismissed. There shall be no order as to costs.

06.09.2024

Kuldeep

(Manjive Shukla, J.)

(Shekhar B. Saraf, J.)