(2014) 12 P&H CK 0201

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 20209 of 2014

Brij Gopal Construction Co. Pvt. Ltd. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:
Constitution of India, 1950 — Article 14, 226, 229
Right to Information Act, 2005 — Section 18

Citation : AIR 2015 PH 27

Hon'ble Judges : Ashutosh Mohunta, Acting C.J.;Raj Rahul Garg, J

Bench : Division Bench

Advocate : Ashok Aggarwal, Senior Advocate, Alok Jain and Amit Aggarwal, Advocate for the Appellant; Shalini Attri, D.A.G., D.V. Sharma, Senior Advocate and Eshjyot Walia, Advocate for the Respondent

Judgement

Ashutosh Mohunta, Actg. C.J.—The present writ petition has been filed against the impugned order dated 27/08/2014 (Annexure P 23) vide which construction of outfall drains master SWD Leg-I and Leg-II with RCC box drain from railway culvert No. 47 and railway culvert No. 50 up to Nazafgarh drain and providing external storm water drainage of sector 37C, 37D and sector 99 to 115 Gurgaon has been ordered to be re-tendered after finalisation of the technical scheme for execution of this project by HUDA.

2. The facts of the case in brief are that Haryana Urban Development Authority issued DNIT vide memo No. 6729-6828 dated 27/06/2014 inviting E-tenders with regard to work estimating Rs. 264.90 crores from the eligible contractors/ firms enlisted in appropriate class/category on the approved list of HUDA, PWD B&R, PHED, MES, CPWD Central government and state government Department and undertaking of CPWD Central government and State government Department for the work of construction of outfall drains master SWD Leg-I and Leg-II with RCC box drain from railway culvert No. 47 and railway culvert No. 50 up to Nazafgarh drain and providing external storm water drainage of sector 37C, 37D and sector 99 to 115 Gurgaon. The eligibility criteria for participating in

the said tender is culled out herein below:-

Eligibility Conditions:-

Average Annual financial turnover during the last three years ending 31st March of the previous financial year of the agency/contractor should not be less than as under:-

Experience of having successfully completed similar nature of works during last seven years ending lay of month previous to the one in which tenders are invited should be either of the following:-

One similar nature of completed work costing not less than 80% of the estimated cost of the work.

OR

Two similar nature of completed works costing not less than 50% of the estimated cost of the work.

OR

Three similar nature of completed works costing not less than 40% of the estimated cost of the work.

iii) Financial net worth of bidder shall not be less than 25% of contract value as on 31st March of the previous financial year and should be certified by the Regd. Chartered Accountants.

The net worth shall be worked out as under:-

Net Worth = (Paid Up Equity = Reserves) - (Revaluation Reserves + Misc. Expenditure not written off and accrued liabilities).

iv. Solvency i.e. Evidence of access to line (s) of credit and availability of other financial resources facilities 25% of contract value, duly certified by the Bankers (not more than 3 month old).

v. Joint Ventures are not allowed.

vi. The certificate of performance that the contractual agency is not associated directly or indirectly with HUDA or any other entity that has prepared the design, specification & other documents of project.

In addition to the above, the following shall also be applicable:

a. Definition of similar nature work shall be as under:-

(b) The satisfactory performance certificate of the works already executed must be taken from the client for whom the bidder has executed the works and it should be signed by the Officer not below the rank of Executive Engineer or equivalent officer. The same may also be verified, if required, by the office of Executive Engineer before allotment of work.

(c) The bidder must have the following number of Engineer on rolls at least for a period of six months before opening of tender: For works with estimated cost between Rs. 5 Crore to Rs. 50 Crore....2 Nos. Degree Holders and 2 Nos. Diploma Holders For works with estimated cost between Rs. 50 Crore to Rs. 100 Crore........3 Nos. Degree Holders and 4 Nos. Diploma Holders For works with estimated cost above Rs. 100 Crore.... 4 Nos. Degree Holders and 5 Nos. Diploma Holders.

(d) If the rates are found to be on higher side, negotiations shall be carried out with lowest bidder only. In case the lowest bidder refuses to reduce his quoted rates, tenders may be re-invited.

3. In pursuance to the said E-tender floated by HUDA, petitioner company being an interested party and fulfilling the conditions of the DNIT (Annexure P-1), submitted its online bid on 15/07/2014. Likewise two other firms namely M/s. IVRCL Ltd. and M/s. Larsen and Toubro Ltd. also submitted their bids online. The technical bids of all the 3 bidders were scrutinised by the 5th respondent and in the same M/s. IVRCL failed to qualify the technical bid on having failed to furnish proof with respect to having executed two works of similar nature with completed cost of not less than 50% of the estimated cost of tendered work. Thus, in this way, the petitioner company and M/s. Larsen and Toubro Ltd. were the only technically qualified players left in the playing field.

4. Financial bids of the petitioner company as well as M/s. Larsen and Toubro Ltd. were opened and the bid of the petitioner was found to be lowest at Rs. 298.47 crores as against Rs. 342.96 crores submitted by L2. Accordingly, comparative chart of the same was displayed online on 18/07/2014 reflecting the estimated rate, the quoted percentage, L1 and L2 bidders etc.

5. Suspecting some foul play in not allotting the said tender to the petitioner despite it being the lowest bidder, the petitioner through its representative approached the office of respondent No. 4 so as to enquire with regard to the fate of its tender, however no plausible explanation was given to it by the respondents but they kept on delaying the matter on the pretext that the same was pending consideration with the higher authorities. On 04/08/2014, petitioner received an email through which it was asked to appear before Principal Secretary to Government of Haryana, Department of Town and Country Planning on 05/08/2014 at 12 noon for discussion/clarifications. However the said meeting did not fructify as the respondent authorities kept harping on the delay caused in execution of the past projects which was not even in the scope of the present tender in question. On this the petitioner sought time to furnish requisite information, if required. The petitioner sought information under the Right to Information Act, 2005 vide letter dated 04/09/2014 w.r.t. fate of its tender and to its reply by the respondents was astonished to find that the respondents are predetermined to thwart the entire process of tendering which is evident on perusal of noting dated 25/07/2014, which is reproduced herein below:-

"Prima-facie there seems to be some irregularities in ignoring the bid of IVRCL Ltd. Without calling for the clarification regarding its experience. IVRCL Ltd. is a big company having annual average turnover of more than Rs. 5000 crores and should not have been ignored without proper verification leaving the field open to a comparatively small bidder namely M/s. BGCCPL because everyone knows that the rates of Larsen & Toubro Ltd. shall certainly be higher than that of this small bidder. Many emails have been received from Radhakrishnan Nair on behalf of IVRCL inter alia alleging that a certificate of experience submitted by M/s. BGCCPL is not proper because it has been issued by the subcontractors of HSIIDC that is M/s. Ramky Infra while it should have been given by HSIIDC only. In addition, it has been alleged that in a similar work being executed in HUDA, M/s. BGCCPL has been issued a notice under Clause 2. Therefore, the comments on the complaints should be given by HUDA and all the 2 bidders may be called for discussions/clarifications before me at 12:00 noon on 5.8.2014. At the time of discussions, CA, CE (NCR), concerned SE and XEN should also be present."

6. In pursuance to the above noting, the work under tender was ordered to be re-tendered vide impugned order dated 27/08/2014 (P 23) and hence the present writ petition.

7. Ld. counsel for the petitioner argued that in pursuance to the bid submitted by it, petitioner was found to be the lowest bidder at Rs. 298.47 crores as against Rs. 342.96 crores submitted by M/s. Larsen and Toubro Ltd. The very fact that the petitioner was found to be the lowest bidder, apparently reveals that it was technically sound and eligible to undertake the work in question. It was further argued that, even after re-negotiation with M/s. Larsen and Toubro Ltd. the final offer made for undertaking the work in question was 1% rebate on the quoted price as is apparent on perusal of letter dated 12/08/2014 (Annexure P-25) and still despite the same, the petitioner was the lowest bidder by long way and hence was fully eligible and entitled for allotment of the said tender. It was further vehemently argued by the Ld. counsel for the petitioner that M/s. IVRCL is a blacklisted firm and was not even eligible to participate in the said tender. It was for this reason, that it was disqualified from the tender by the respondents. Reference in this regard was made to Annexures P-16 to P-20. He further argued that due to extraneous gains and considerations the respondents have arbitrarily chosen to re-tender the work in question vide the impugned order on a flimsy ground that the technical scheme for execution of this project is yet to be finalised by them, despite the fact that the petitioner is fully qualified and eligible to undertake the said work being the lowest bidder for the same. Elaborating the said submission, he referred to communication dated 21/01/2013 (Annexure P-26), communication dated 14/08/2014 (Annexure P-28), communication dated 28/08/2014 (Annexure P-30), communication dated 14/08/2014 (Annexure P-31) and communication dated 21/08/2014 (Annexure P-32) to submit that the technical and administrative clearances in other tenders allotted by HUDA have always been taken from the competent authority after issuance of the tender. He further argued that the impugned order is without jurisdiction, as under Clause

20 of the tender document (Annexure P-1), the authority to approve or reject the tender rests with the Chief Engineer-I, HUDA, Panchkula whereas in the present case impugned order has been passed by Executive Engineer and thus the impugned order deserves to be set aside.

8. Per contra, it was argued by the Ld. Senior counsel for the respondents (HUDA) that the reasoning for re-tendering the work in question set out in the impugned order is just and plausible and that no prejudice would be caused to either of the parties, in case the work in question is re-tendered. Reliance in this regard is placed upon the full bench decision of this Court in the case of Subash Chand versus state of Haryana and others [2007 (3) RCR (civil) 548] to say that the state government can reject the lowest tender by assigning valid reasons. He further placed reliance on the judgment of the Hon''ble Supreme Court of India in the case of the The Haryana State Agricultural Marketing Board and Others Vs. Sadhu Ram, to contend that right to reject or approve the bid rests with the respondents and the same can be cancelled, approved re-tendered without prior notice to the successful candidate/bidder. In the present case, since the technical scheme has not been approved for work under the tender, therefore the respondents are well within their rights to order re-tender of the same after finalisation of the technical scheme and hence the impugned order being fully justified and well reasoned, does not call for any interference by this Court by exercise of its powers under writ jurisdiction.

9. We have heard the learned counsel for the parties and have gone through the records of the case.

10. Undisputedly, Haryana Urban Development Authority issued DNIT dated 27/06/2014 inviting E-tender w.r.t. work estimating Rs. 264.90 crores from the eligible contractors/firms enlisted in appropriate class/category for construction of outfall drains Master SWD Leg-1 and Leg-II with RCC box drain from railway culvert No. 47 and railway culvert No. 50 up to Nazafgarh drain and providing external storm water drainage of sector 37C, 37D and sectors 99 to 115, Gurgaon. The petitioner along with M/s. Larsen and Toubro Ltd. and M/s. IVRCL Ltd. participated in the said tender being interested party. The petitioner on fulfilling the conditions of DNIT, submitted its online bid on 15/07/2014. During the process of scrutiny of the technical bids of the said three firms, petitioner and M/s. Larsen and Toubro Ltd. qualified the technical bid but M/s. IVRCL Ltd. failed to qualify the technical bid on having failed to furnish proof with regard to having executed two works of similar nature with completed cost of not less than 50% of the estimated cost of tendered work. Resultantly, only 2 bidders namely the petitioner and M/s. Larsen and Toubro Ltd. qualified the eligibility criteria while M/ s. IVRCL Ltd. was ousted from the zone of consideration for the said tender by the respondents.

11. Accordingly financial bids of the petitioner as well as M/s. Larsen and Toubro Ltd. were opened wherein the petitioner was found to be the lowest bidder at Rs. 298.47 crores as against Rs. 342.96 crores submitted by M/s. Larson and Toubro

Ltd.

12. First dealing with the case of M/s. IVRCL Ltd., a perusal of the record would show that the said firm has withdrawn its earnest money and is a blacklisted firm as is apparent from Annexures P-16 to P-20 on account of having delayed various projects allotted to it and on failing to meet the deadline for completion of the said projects. The stock of the said company has shown a downward trend since 2010 in the Bombay Stock Exchange and the said company has incurred a loss to the tune of Rs. 716.78 crores during the financial year 2013-14. Even the Jharkhand High Court has issued notices to CBI, enforcement directorate and income tax Department for filing status report w.r.t. investigation being carried out against M/s. IVRCL in a public interest litigation, wherein the State Government had awarded contract worth Rs. 280 crores to the said company despite it being already blacklisted before the award of contract. Even the office noting of the respondents (Annexure P-21) reveals that the said firm has not only withdrawn its earnest money for the work in question but its earlier contract has also been terminated for slow progress of water supply scheme by the Government of Jharkhand. On going through the documents annexed with the writ petition, we are of the considered opinion that the technical bid of M/s. IVRCL Ltd. has rightly been rejected and the firm has been disqualified for allotment of the work in question on account of having withdrawn its earnest money.

13. Now coming to the question as to whether the petitioner is entitled to allotment of the work in question or whether the respondents are justified in ordering re-tendering of the work?

14. Admittedly, the petitioner is qualified, eligible and lowest bidder for allotment of the work in question having bid for the same at Rs. 298.47 crores as against Rs. 342.96 crores submitted by M/s. Larsen and Toubro Ltd. It has also come on record vide letter dated 12/08/2014 (Annexure P-25) that even after re-negotiation with M/s. Larsen and Toubro Ltd. they were only able to give a rebate of 1% on its quoted bid to the respondents in case the said tender is allotted to them. Thus, it is apparent that even after re-negotiation, the petitioner continued to remain L1 with a fair margin. There are no allegations of malafide or incompetence levelled against the petitioner to undertake the work in question. The only reason spelt out in the office noting of the respondents (Annexure P-21) for not awarding the said work to the petitioner under tender is that its performance on earlier occasions for the work allotted by HUDA was unsatisfactory. However no documentary evidence is forthcoming on record by the respondents to support the said assertion. Further, a perusal of clause (ii) of the said office noting would reveal that the reason for delay in execution and completion of the work allotted to the petitioner was on account of delay in third-party inspection of the material. The delay was also attributable to the non-finalisation of the technical scheme within time by the respondents but the said buck has been passed on to the petitioner so as to deny allotment of the work in

question to it. Merely by saying that its work was found to be unsatisfactory on earlier occasions is not sufficient and a good ground to throw the petitioner out of the zone of consideration for allotment of the said work especially when it is the lowest bidder for the same, is fully eligible, qualified and has undertaken such nature of work in the past also for different organisations including the respondents. The delay caused in execution of the said works allotted to the petitioner on earlier occasion is also attributable to the respondents as well as third-party agencies as is apparent on perusal of clause (ii) of the office noting of the respondents, which is reproduced herein below:-

"The performance of L-I in HUDA allotted works is extremely unsatisfactory. In fact, in work pertaining to providing Master Water Supply Scheme (SWD), Sector 75-89, Faridabad, it has already been imposed 2% penalty under Clause-II. The work was supposed to have been completed on 11.4.2014 but till 7.8.2014, only 40% work has been completed. Moreover, in respect of other major work costing Rs. 124.70 crores pertaining to Master Sewerage Scheme of Sector 77 to 115, Gurgaon, the performance is less than 10% even though time limit for completion work has expired. In the reasons for delay, third party inspection agency M/s. Sri Ram Test House has been blamed for delay in inspection of material. Delay has also been attributed to delay in finalization of technical scheme but there is some delay on the part of this L-I contractor also for which it has been issued notice. Then there is gray area whether its experience certificate given by Ramky Infrastructure, who is the contractor of the HSIIDC, can be given any credence. It also needed to be ascertained by HUDA whether Ramky Infrastructure was allowed as per terms of contract to sublet this work to any other contractor or not but while evaluating the eligibility of L-I, same was no done by XEN, HUDA."

15. During the course of arguments, Ld. counsel for the petitioner passed on a copy of letter dated 25/11/2014 issued by the office of Superintending Engineer, HUDA, Circle-I, Gurgaon to contend that extension for completion of the work pertaining to Master Sewerage Scheme of sector 77 to 115, Gurgaon has been granted upto 01/07/2015, the delayed performance of which was taken as a factor against the petitioner company by the Principal Secretary. It is thus argued that since the delay in completion of the work was not attributable to the petitioner company, and the extension was granted by the respondents for completion of the earlier work allotted to it, thus, the delay factor taken against the petitioner company by the respondents for non-completion of the earlier works allotted to it, cannot be taken as a ground to deny the present tender to it and order re-tendering of the same vide the impugned order.

16. After considering the argument raised by the Ld. counsel for the petitioner as well as on perusing letter dated 25/11/2014 issued by Superintending Engineer, HUDA, Circle-I, Gurgaon we are of the opinion that there is merit in the argument raised by the Ld. counsel for the petitioner. It is apparent on perusal of the letter dated 25/11/2014, that work pertaining to master sewerage scheme of

sector 77 to 115, Gurgaon was allotted to the petitioner company vide letter dated 16/01/2013 and the same was to be completed within 18 months i.e. upto 15/07/2014. The said date was recommended to be extended up to 01/07/2015 by the Executive Engineer, HUDA, Division No. 2, Gurgaon and accordingly the same was extended up to 01/07/2015 which thus makes it clear that the delay in completion of the work allotted to the petitioner company was not attributed to it, but was on account of other attending circumstances related to the office of the respondents and thus the said delay cannot be taken as a factor while assessing the competence of the petitioner company to undertake the present work in question under tender in reference, especially when it being the lowest bidder for the same is fully eligible, qualified and has undertaken such nature of work in the past also for different organisations including the respondents. The said letter dated 25.11.2014 is taken on record as Mark-X. The registry is directed to place the same at its proper place.

17. The only argument advanced without much impetus by the Ld. counsel for the respondents while justifying re-tendering vide the impugned order, was that since the technical scheme for the said project has not been finalised by the respondents therefore the respondents are well within their rights to order re-tendering as the same, as such, would not cause any prejudice or heart burning to either of the parties. While supporting the impugned order, he submitted that the same has been passed by assigning valid and relevant reasons and in support of the same relied upon the full bench decision of this Court in the case of Subash Chand, supra and The Haryana State Agricultural Marketing Board and others supra.

18. In our considered opinion, the impugned order has been passed ordering re-tendering in the present case only on the premise that ''the technical scheme for execution of this project has not been finalised'' by the respondents. The judgment cited by the Ld. counsel for the respondents in the case of Subash Chand (supra) in support of the impugned order, instead of helping its cause, rather goes in favour of the petitioner in as much as incompetency and unsatisfactory performance of the petitioner for undertaking the said work in question was not at all made the basis, while passing the impugned order by the respondents and hence the same is unsustainable in the eyes of law, on having been passed without assigning any valid reason but by giving erratic, irrational or irrelevant reasons. It is true that the State or its instrumentalities are free to enter into a contract with any person yet they cannot act whimsically and their freedom to enter into business etc. is subject to the condition of ''reason'', ''fair play'' and ''public interest''. That is why precisely, the equitable doctrine of ''promissory estoppel'' has been made applicable against the government, as against any other private individual, even in the cases where no valid contract in terms of Article 229 has been entered into between the parties.

In the case of the The Haryana State Agricultural Marketing Board and Others Vs. Sadhu Ram, cited by the Ld. Counsel for the respondents, the Hon''ble Supreme

Court therein was dealing with a peculiar situation wherein the reserve price of the plots to be auctioned by the agricultural market committee was not announced in the public notice and hence the 1st auction was cancelled and after undertaking all requisite formalities the 2nd auction was conducted through which third-party rights were created. Accordingly, the 1st auction participants impugned the public notice in which reserve price was not notified, before this Court in a batch of writ petitions. This Court while allowing the writ petitions directed the respondents therein to allot alternative plots to the auction participants. The said decision of this Court was set-aside by the Hon''ble Supreme Court of India by holding thus:-

"12. Keeping the principles laid down in the aforesaid decisions of this Court in mind, let us, therefore, consider whether non-disclosure of the reserve price in the Public Notice is a ground on which the High Court could direct the authorities to allot alternative plots in favour of the respondents in exercise of its powers under Article 226 of the Constitution. At the risk of repetition, we may note that one of the conditions in the Public Notice was that the final authority to approve or disapprove the best offer in the auction was that of the Chief Administrator of the Board. It is true that the Chief Administrator of the Board rejected the offers without assigning any reason but Section 18 of the Act clearly provides that such rejection could be made without assigning any reason. Let us now consider whether the action on the part of the Chief Administrator of the Board canceling the auction was unfair, arbitrary and invalid. In our view, considering the facts and circumstances of the case, the action of the Chief Administrator of the Board was fair and the cancellation was not arbitrary. The second auction was held in respect of the plots in question on 20th of December, 2004 and from the said auction, although the reserve price was not mentioned, much higher offers were received by the appellants. Apart from that, we should not keep this fact out of mind that the amounts deposited by the respondents with the appellants were refunded to the respondents by account payee cheques, which were duly encashed by them. Such being the position, we neither find any malafide, unfairness or arbitrariness on the part of the Chief Administrator of the Board in rejecting the offers of the respondents nor do we find it a colourable exercise of power. That apart, in view of the decision of this court in Rajasthan Housing Board and another v. G.S. Investments and another [supra], since the final authority to approve the bids was with the Chief Administrator, it is obvious that a person who had made the highest bid in the auction did not acquire any right to have the auction concluded in his favour until the Chief Administrator had passed an order to that effect and the auction proceedings could always be cancelled. It is on record that the offers made by the respondents in the auction dated 8th of July, 2004 could not fetch the amount expected from the said plots and that is the reason a fresh Public Notice was issued by the appellants for a subsequent auction. The said auction was held and as noted herein earlier, from the said auction, the price fetched was much higher than the offers made by the respondents. That being the position and considering the fact that a subsequent auction was held and concluded, it was not open to the High Court to direct the allotment of alternative plots at the rate offered by the respondents treating the auction held on 8th of July, 2004 to be valid.

15. In view of the admitted fact that the money deposited by the respondents with the appellants was refunded to the respondents by account payee cheques which were duly encashed by them and in view of the admitted fact that subsequently, a second auction was held on 20th of December, 2004 in respect of the same plots which were put up for auction on 8th of July, 2004 and in the second auction, some other parties have now acquired interest in the said plots, it was not open to the High Court to direct the appellants, in the exercise of its writ jurisdiction, to allot alternative plots to the respondents only on the ground that the auction dated 8th of July, 2004 could not be cancelled by the Chief Administrator of the Board without assigning any reason and also on the ground that the reserve price was not disclosed in the Public Notice issued by the appellants."

The facts of the aforesaid case being distinct and peculiar to the one canvassed in the present case, the said judgment is not applicable to the facts of the present case as herein neither any third-party rights have been created nor there is a dispute with regard to the petitioner being the lowest bidder.

19. The Hon''ble Supreme Court of India in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, , has laid down essential guidelines to be followed while awarding a contract:-

"9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount importance are commercial considerations. These would be : (1) The price at which the other side is willing to do the work; (2) Whether the goods or services offered are of the requisite specifications; (3) Whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important; (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality; (5) past experience of the tenderer, and whether he has successfully completed similar work earlier; (6) time which will be taken to deliver the goods or services; and often (7) the ability of the tenderer to take follow up action, rectify defects or to give post contract services. Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction."

20. Further in the case of West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others, , the Hon''ble Supreme Court of India has held thus:-

"32. The submission that remains to be considered is that as the price bid of respondent Nos. 1 to 4 is lesser by 40 crores and 80 crores than that of respondent Nos. 11 and 10 respectively, public interest demands that the bid of respondent Nos. 1 to 4 should be considered. The project undertaken by the appellant is undoubtedly for the benefit of public. The mode of execution of the work of the project should also ensure that the public interest is best served. Tenders are invited on the basis of competitive bidding for execution of work of the project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and on the other hand it affords the appellant a choice to select the best of the competitors on competitive price without prejudice to the quality of the work. Above all it eliminates favouritism and discrimination in awarding public works to contractors. The contract is therefore, awarded normally to the lowest tenderer which is in public interest. The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance of rules and conditions cannot be ignored. It is obvious that the bid of respondent Nos. 1 to 4 is the lowest of bids offered. As the bid documents of respondent Nos. 1 to 4 stands without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, it cannot be directed to be considered along with other bid on the sole ground of being the lowest."

21. Another facet of the present case is that the impugned order has been passed by Executive Engineer (W) for Chief Administrator, HUDA, Panchkula whereas as per condition No. 20 of the document inviting E-tender (P-1), the authority to approve or reject the tender rests with the Chief Engineer-I, HUDA, Panchkula. Clause 20 reads thus:-

"20. The approval of the acceptance of tender will rest with The Chief Engineer-I, HUDA, Panchkula who does not bind himself to accept the lowest tender and reserves to himself the authority to reject any or all of tenders received without assigning any reasons."

22. Even as per the reply of the respondents, "...... after the grant of administrative approval for execution of development works in HUDA, tenders are allotted by the Engineering Wing, HUDA as per delegated powers and there is no role of the Chief Administrator, HUDA or the Government in this regard." In the present case, there is no order approving, rejecting or re-tendering the work in question by Chief Engineer-I, HUDA, Panchkula, who is the only competent authority in this regard as per Condition No. 20 of document inviting E-Tender. Even no opinion was sought from him before ordering re-tendering in the present

case nor was any report sought for in this regard from him. Thus, it is apparent that the impugned order has been passed by the respondents for some malafide reasons and hidden motive for considerations. Thus in our considered opinion, the impugned order having been passed without jurisdiction by the Executive Engineer (W), HUDA in colourable exercise of its powers vested in him by law, deserves to be set-aside.

23. In the case of Lanco Constructions Ltd., Hyderabad Vs. Govt. of A.P., Irrigation and Command Area Development Depart., Hyderabad and others, , it was observed thus:-

"18. As already stated, the power of judicial review in administrative matters are to be directed in the process of taking decision and not the decision itself. If the decision is taken without there being any material or record or on the basis of irrelevant or extraneous matters it attracts the wrath of Article 14 of the Constitution of India and this Court is empowered to nullify such a decision. It is also not brought out in any of the correspondence that the petitioner had indulged in any corrupt practices. In the normal course of events he had submitted his bid, and the Government did not even allow the COT to apply its mind and withdrew the entire matter from him for the reasons best known to it. The report of the COT is also not available before taking a decision to cancel the tenders. The COT was never allowed to function and record his findings as contemplated in G.O. Ms. No. 234 dated 3-6-1987. The note of Additional Secretary was made the basis to believe the authorities conclusively that certain corrupt practices had crept which in fact were not borne out by any documents whatsoever including the note of the Intelligence Department. The administration of the Government must be fair and transparent and there should not be any scope for either suppression or suspicion. As already observed by me, the alleged note of Intelligence Department exceeded its normal limits and it contained incorrect information. The petitioner has no vested right to the award of work, but he has a right to claim that his bid should be considered objectively in a fair and proper atmosphere more especially when his bid was found to be lowest and recommended by the Superintendent Engineer and Chief Engineer. It is not the subjective satisfaction of the Government, but objective consideration in the requirement under Article 14 of the Constitution of India. Thus, the Government in the guise of public interest cannot act arbitrarily and unreasonably. Viewed from any angle, the inescapable conclusions are that the process adopted by the Government in rejecting the bid of the petitioner cannot be said to be fair and reasonable. I accordingly hold that the impugned proceedings are illegal and arbitrary.

19. The next question is what is the further course of action to be taken. In the normal course, the bids are required to be evaluated by the technical cell of the COT and the Commissionerate will have to take a decision either approving or rejecting the tenders. Since, in the instant case, the Commissionerate was not permitted to exercise the power granted to it. Therefore, it is necessary that the

matter should be dealt with by the Commissionerate in a proper atmosphere in accordance with the existing guidelines. Accordingly, the Government is directed to transmit the bids and connected documents in respect of Package XII to the 3rd respondent-Commissioner of Tenders. The Commissioner of Tenders shall evaluate the tenders received in respect of Package XII and take appropriate decision uninfluenced by the note of the Additional Secretary to Chief Minister and also the Intelligence Department including the opinions recorded by various officers. He shall come to fair and honest conclusions basing on the material available keeping in view the reports sent by the Superintendent Engineer and the Chief Engineer. The entire exercise shall be done within a period of four weeks from the date of receipt of a copy of this order.

20. The writ petition is accordingly allowed with the above directions. No costs."

24. In view of the above, we are of the opinion that the petitioner being a qualified, eligible and lowest bidder for award of the said contract by a long way to its next competitor (M/s. Larsen and Toubro Ltd.) is entitled for re-consideration of its case by respondent No. 4 un-influenced by the office noting and opinion of the Principal Secretary to Government of Haryana, Department of Haryana Town and Country Planning-respondent No. 1. Accordingly, we allow the writ petition, quash the impugned order dated 27/08/2014 (Annexure P-23) and direct respondent No. 4 (HUDA) to re-consider the case of the petitioner afresh within a period of four weeks in view of the observations made herein above and in view of the law laid down in Lanco Constructions case, supra. However under the facts and circumstances of this case, we leave the parties to bear their own costs.

