
(2013) 12 DEL CK 0003
In the Delhi High Court
Case No : Writ Petition (C) 5176 of 2013

C and S Electric Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2013) 12 DEL CK 0003

Hon'ble Judges : Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Arun Kathpalia, Mr. K. Datta and Mr. Rahul Malhotra, for the Appellant; Rajeev Mehra, ASG, Mr. S. Pushkarna, CGSC, Mr. Gaurav Sharma, Ms. Shruti Aggarwal, Kartikeya Bhargava, Vikash Sharma and Mr. Inderjeet Singh, for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.—The petitioner has filed the present petition inter alia praying for quashing the decision of respondent no. 2 to open the respective commercial bids submitted by respondent no. 3 and respondent no. 4. The petitioner further seeks a declaration that the said respondents stand disqualified from entering into a contract with the Government of India for upgrading 40 MM L-70 Guns deployed by the Indian defence forces. It is alleged that respondents nos. 3 and 4 had failed to meet the technical parameters and specifications as prescribed under the Request for Proposal (hereinafter referred to as the "RFP") and by the Defence Procurement Procedure, 2005 (hereinafter referred as the "DPP, 2005"). And, the equipment provided by respondents nos. 3 and 4 had failed the tests/trials/evaluations as conducted in terms of the RFP. The petitioner has also sought a declaration that the petitioner is the only single successful vendor and consequently, has also prayed for a direction to respondent no. 2 to start negotiations with the petitioner in respect of the commercial bid submitted by the petitioner. The subject matter of the present petition relates to the contract for upgrading the 40 MM L70 Guns which had been procured more than 30 years

ago and have been deployed as anti aircraft weapons by the defence forces since their induction several years ago. At the relevant time, when these guns were procured, the aircrafts which these guns were required to target flew at sub-sonic speeds. The aircrafts currently used in combat include supersonic fighter jets and thus, it was felt necessary to upgrade the extant 40 MM L70 guns to be effective against aircrafts flying at supersonic speeds.

2. The Ministry of Defence, Government of India issued an RFP dated 22.07.2005, in consonance with the provisions of DPP, 2005, for upgrading 40 mm L-70 guns (minimum quantity being 200 nos. and maximum being 436 nos.) to track down aircrafts flying at supersonic speeds. The RFP provided for a "Single Stage Two Bid System" whereby the vendor was required to submit the technical and commercial offers together, but in 2 (two) separate sealed envelopes. As per clause 17 of the RFP, the technical offer was to be evaluated, by a Technical Evaluation Committee (TEC), to confirm that the equipment being offered met the essential parameters. As per clause 18 of RFP, if the equipment of the vendor was cleared by the TEC, the same would be subjected to various trials/tests/evaluations. After completion of the trials/evaluations, the commercial offer of the vendors whose equipment was found compliant, would be opened. The vendor offering the lowest quote (L1) as determined by the committee would be called for the negotiations.

3. The RFP was issued to 15 vendors on 22.07.2005 out of which 5 vendors responded to the RFP and submitted their technical and commercial proposals on 15.12.2005. The technical proposals were evaluated and 4 vendors including the petitioner, respondent no. 3 and respondent no. 4 were found to be compliant by the Technical Evaluation Committee (TEC). The report of TEC was approved in January 2008. Thereafter, one of the vendors expressed his inability to participate in the trials which left only the petitioner, respondent no. 3 and respondent no. 4 (collectively referred to as "short listed vendors") in the fray.

4. In April, 2008 two guns each were handed over to the short listed vendors for developing prototypes which were to be tested with respect to various parameters and in varied conditions. The trials commenced on 30.08.2009 and were finally completed in November, 2011. The upgraded prototypes of the guns were subjected to various trials/tests/evaluations which are briefly indicated as under:-

a. User Trials - Phase-I User Trials/Summer Trials were conducted between 30.08.2009 to 12.09.2009 and Phase-II Users Trials/Winter Trials were conducted between 14.12.2009 to 22.12.2009. Confirmatory User Trials were conducted between 01.06.2010 to 10.06.2010 under the supervision of Col. Sabayasachi Kole and all the three vendors passed the Confirmatory User trials.

(Before the Environmental testing of the Modules, in a meeting held on 26.06.2010, it was instructed to vendors that the same hardware/equipment that was subjected to the user trial has to be submitted without any modification or

change to any of the subsystems. The minutes were circulated on 30.06.2010.)

b. Environmental Testing/DGQA Evaluation of all Modules except Optronicsight was conducted from 15.07.2010 to 04.10.2010 and all the three vendors failed the DGQA test. Environmental testing of the Optronicsight was scheduled from 08.09.2010 to 22.09.2010, but actually it was extended.

c. Bump Test was conducted on 08.11.2010 at 40g severity.

d. EMI/EMC testing of the complete gun was scheduled from 23rd August to 12th September, 2010 but stretched much beyond the schedule and respondents nos. 3 and 4 were not successful in the tests.

e. Maintainability Evaluation was conducted from 01.09.2010 to 21.09.2010 and all the three vendors passed.

(A meeting was held on 31.01.2011 with the representatives of all the three vendors, whereby all the participants agreed for conducting the Confirmatory Technical Evaluation by providing equal opportunity to all the three vendors who were found to be non-compliant in various tests on various aspects.)

f. Confirmatory DGQA Evaluation Test & EMI/EMC Test & MET were conducted between April to July 2011 and all the vendors who were non-compliant in the respective tests were held to be compliant and qualified in the Technical Evaluation Trial. (as per respondent, all the three vendors qualified but disputed by petitioner)

g. Re-confirmatory User Trial were conducted from 14.11.2011 to 18.11.2011 to evaluate one GSQR parameter of maximum speed of Air Target & Laser Range Finder (LRF) which could not be tested during the initial user trial stage and the test of tracking of Supersonic Aircraft. (as per respondent all the three vendors qualified but disputed by petitioner)

5. The General Staff (GS) Evaluation Report was approved by DG (Acq.) Ministry of Defence on 30.11.2012 and all the three vendors were entitled to participate in the commercial evaluation process. A Contract Negotiation Committee (hereinafter referred to as "CNC") was constituted in December 2012 under the chairmanship of the Joint Secretary & Acquisition Manager (Land Systems), Ministry of Defence to evaluate the commercial bids. The commercial bids of all the three vendors were opened by the CNC on 31.07.2013 in the presence of their respective representatives and the commercial offers noted by the CNC are:-

(i) M/s. Bharat Electronics Ltd. (respondent no. 3) quoted Rs. 594,63,01,650.

(ii) M/s. L & T (respondent no. 4) quoted Rs. 594,82,39,463.

(iii) M/s. Controls and Switchgears Electric Ltd. (petitioner) quoted Rs. 729,11,78,100.

After the scrutiny of the bids, BEL was declared as L-1 as the bid of BEL was the lowest and was invited for negotiations by a letter dated 24.09.2013 of the

Ministry of Defence. Aggrieved by the same, the petitioner has filed the present writ petition.

6. It is contended by the learned counsel for the petitioner that the decision of respondents nos. 1 and 2 in opening the commercial bids of respondents nos. 3 and 4 and declaring respondent no. 3 as L-1 is discriminatory, illegal, arbitrary, unfair, unreasonable and is in violation to the provisions of RFP and DPP, 2005. It is contended by the petitioner that the prototype submitted by respondent no. 3 for trials did not conform to the specifications inasmuch as the "Optronic Sight" was required to be "Modular" in design in terms of the paragraph no. 1 of Appendix-A of the RFP, however, the design of the Sight as offered by respondent no. 3 was not "Modular".

7. It is urged that the guns fielded by the respondents nos. 3 and 4 failed to qualify the technical evaluation trials and consequently, were disqualified from participating in the commercial bidding process.

8. It is contended by the learned counsel for the petitioner that the specified Bump Test criteria for the Optronic Sight was specified to be 4000 bumps at 40g as per the Appendix-A to letter dated 15.06.2009 of Director General of Army Air Defence, however, the Bump Test criteria was unjustifiably and arbitrarily lowered to 25g after respondent no. 3's sight failed to meet the test corresponding to 40g acceleration carried out at CQA(I) Dehradun in November-December 2010, being the first round of Bump Test.

9. It is contended by the learned counsel for the petitioner that the Modules offered by the vendors/bidders for environmental testing by DGQA were required to be the same as those in the upgraded guns offered for field evaluation trials, however, respondent no. 3 had made physical design changes to the Inverter Module as well as the Battery Charger Module prior to submitting the same for environmental testing. It is contended that the Battery Chargers and Inverters are important power supply modules and their capability of charging the upgraded guns of respondent no. 3 was tested in 2010 during the confirmatory trials and therefore, carrying out changes to these modules was in clear violation of paragraph 29 of the DPP, 2005 (technical offer once submitted should not be materially changed) and these design changes called for an ab-initio re-evaluation of the guns in field trials. This contention was also highlighted by the petitioner in its letter dated 15.07.2011.

10. It is further contended by the learned counsel for the petitioner that the upgraded guns of respondent no. 3 failed to track air targets flying at supersonic speed. As per paragraph no. 2(d) of Appendix-A of the RFP, the Laser Range Finder was to be effective to air targets flying at speeds upto 450 m/s. It is alleged that in the trials that were conducted, there was a huge angular difference between the location of the aircraft and the direction in which the barrel of the gun upgraded by respondent no. 3 was pointing.

11. It is further contended by the learned counsel for the petitioner that the

vendors were required to demonstrate the performance of the upgraded guns separately with the Flycatcher Radar System as well as with the USFM Radar System, since the extant L-70 guns could operate with either of these two systems. It is alleged that while the petitioner demonstrated successful interface and performance/operation with the Flycatcher System as well as the USFM Radar, respondent no. 3 could not demonstrate that its gun interfaced with the USFM Radar and therefore, it is contended that respondent no. 3 stood disqualified due to non-compliance of the paragraph 6(a) of Appendix-A to the RFP.

12. We have heard the counsel for the parties at length.

Re: Contention that the equipment/gun offered by respondent no. 3/4 does not conform to the specification as prescribed.

13. According to the petitioner, the upgraded gun offered by respondent no. 3 is not complaint with the specification as, it is contended, that Optronic Sight offered by respondent no. 3 is not Modular.

14. The petitioner's contention that the Sight offered by BEL is not Modular is premised, solely, on the fact that the Sight is permanently fixed on the gun and this according to the petitioner implies that the sight is not Modular. This assumption is controverted by the respondent who has handed over a printout giving pictures of various components that constitute the Sight offered by respondent no. 3. A bare perusal of the same indicates that the Sight offered by BEL is made up of separate independent components which when assembled together constitute the sight. Each of the components is a separate functional unit, for example, the Laser Range Finder, CCD Camera Thermal Imager, TI Sight, etc. are separate components which are assembled to constitute the Optronic Sighting System. These according to the respondent are separate modules which can be replaced in the event any of the modules breaks down. It is not necessary to replace the entire sighting system in the event any of its constituent modules malfunction or are damaged. Thus, according to the respondents the Sight offered by respondent no. 3 is modular and the fact the Sight is fixed on the gun would not be relevant to determine whether the Sight is modular or not. As opposed to this, the petitioner has assumed modular sighting system to mean a sighting system which is not fixed on the chassis on which the gun is mounted.

15. We are unable to accept the view that a Sighting System being removable is the sine qua non of a Modular Sight. The term Modular cannot be understood to mean that the stand on which the Sight is mounted and/or the Sight cannot be permanently anchored on the Chassis of the gun. The contention that a fixed sighting system by definition would not be Modular, is without any basis. The expression "Modular" would necessarily mean that sighting system should be made of independent modules that can be replaced independently. In other words, in the event that the Sight suffers some damage, it would not be

necessary to change the entire sight but the relevant module(s) that are damaged. In this view of the matter, we find that the contention that the Sight provided by respondent no. 3 is not Modular, is erroneous and misconceived.

Re: Contention that the equipment/gun offered by respondent nos. 3/4 failed the trials/tests.

16. The petitioner has contended that the guns fielded by respondents nos. 3 and 4 failed the tests conducted during trials and, accordingly, the financial bids submitted by respondents nos. 3 and 4 should not be considered. The guns furnished by respondents nos. 3 and 4 are alleged to have failed the tests in following respects:-

(i) The Optronic Sight of the upgraded gun fielded by respondent no. 3 is alleged to have failed the "bump test" of severity of 40g.

(ii) The upgraded guns of respondents nos. 3 and 4 were successful in interfacing with the Flycatcher Radar (Tactical Radar), however are alleged to have failed to interface with the USFM Radar (Fire Control Radar).

(iii) The guns are alleged to have failed to track aircrafts at supersonic speeds.

(iv) The guns allegedly failed to qualify EMI/EMC Trials.

17. We consider it appropriate to examine the contentions of the petitioners in respect of each of the alleged deficiencies as indicated above. First of all, it is contended by the learned counsel for the petitioner that the specified Bump Test criteria for the Optronic Sight was specified to be 4000 bumps at 40g as per the Appendix-A to letter dated 15.06.2009 of Director General of Army Air Defence, however, the Bump Test criteria was unjustifiably and arbitrarily lowered to 25g after the Sight offered by respondent no. 3 failed to clear the said test. It has been explained by the respondents that the Bump Test criterion, as originally prescribed prior to the issue of the RFP was different in respect of different kinds of equipment submitted for trial. As per clause 18 of the RPF, the environmental testing was to be done as per the specifications prescribed in JSS 55555 (a document prepared by the Directorate General of Quality Assurance prescribing the quality standards and specification of various military equipment). In the JSS 55555, it is prescribed that if a system/module/subsystem is permanently fitted on the vehicle, the Bump Test criterion is only 250 m/s² which is equivalent to 25g severity. And, other systems which are not permanently fitted are to be subjected to Bump Test criterion of 400 m/s² which is equivalent to 40g severity.

17.1 The upgraded guns submitted by respondent no. 3 for trial had the "Electro Optic Sight" permanently mounted on the said guns. The Sight did not require to be dismounted and carried separately when the gun was relocated from one place to another, therefore, the Bump Test criterion applicable to the guns upgraded by the respondent no. 3 was of 25g severity and not 40g severity. Respondent no. 3 referred to the above specified parameter in a letter dated 25.10.2012 sent to the Controllerate of Quality Assurance and Army

headquarters, even before the conduct of the first Bump Test on 08.11.2010. Accordingly, the severity parameter of the Bump test was amended from 40g to 25g by the Controllerate of Quality Assurance by a letter dated 19.08.2010. In spite of this amendment, the first Bump Test of 40g severity was conducted on 08.11.2010.

17.2 It is contended that all these issues were also discussed with the representatives of all three vendors in a meeting held on 31.01.2011 and it was decided that "Electro Optic Sight" offered by the bidders would be subjected to evaluation against the particular parameters specified in JSS 55555 which was applicable based on the solution, for the carriage/transportation of the "Electro Optic Sight", given by the bidder. Consequent to the said meeting, all the vendors gave an undertaking that they will have no objection if after rectifying all the observations any one (or more) gets selected (short listed) based on the comparative merit of the upgrade in the light of the General Staff Qualitative Requirement for further procurement process. Thereafter, the "Electro Optic Sight" mounted on the guns upgraded by respondent no. 3 was subjected to tests against the correct "Bump Test" criterion of 25g and the "Electro Optic Sight" successfully underwent the said trial.

17.3 The reason as to why a higher severity test is prescribed for equipment that has to be removed from the gun and transported separate in comparison with the test prescribed for equipment that is fixed on the gun and does not require to be removed for the purposes of transportation has also been explained by the respondent. It has been further explained that the gun is itself mobile and in order to transport the gun, the wheels are attached to the chassis of the gun carriage and the gun is thereafter towed to its location. The carriage of the gun includes a shock absorbing system and thus a Bump Test of severity of 25g is sufficient. However, the Sights offered by the petitioner and respondent no. 4 could not withstand the vibration/shocks experienced during cross country movement and thus were required to be removed from the gun and transported separately in a carrying case. The severity of bumps is higher in such cases where the equipment is carried loosely and therefore they are required to be subjected to a Bump Test of 40g severity.

17.4 We are not required to examine the parameters of the test prescribed by respondent no. 2. The only question that is required to be considered is whether a different parameter is specified in respect of the bump test for a Sight which is fixed on the carriage than the one that is specified for a Sight that has to be removed and transported separately. This aspect of the matter is not disputed by the petitioner. On the contrary, the petitioner has contended that a fixed sight is not contemplated as per the RFP and therefore, the Bump Test had to be carried out at 40g. In view of the fact that in respect of equipment which is fixed on the gun, the applicable severity for a Bump Test is 25g cannot be disputed, the Sight offered by respondent no. 3 has passed the said test. Accordingly, we find no merit in this contention advanced by the petitioner.

18. The second reason why the gun offered by respondent no. 3 is alleged to be non compliant by the petitioner is that, according to the petitioner, the upgraded gun failed to interface with the USFM Radar System during trials. The upgraded gun fielded by respondent no. 4 is also alleged to be non-compliant in respect to this specification. In this regard, the respondents have submitted that it is incorrect that the upgraded gun furnished by respondent no. 3 was found to be non-compliant and did not interface with the USFM Radar. On the contrary, while the gun fielded by respondent no. 3 was compliant in this respect, the upgraded gun furnished by respondent no. 4 and the petitioner failed to interface with the USFM Radar during phase I of the trials. However, in the phase-II of the trials, the guns fielded by all the three shortlisted vendors were found to be compliant. Respondent no. 2 has also furnished a statement indicating the results of the trials conducted by the respondents. The relevant extract of the said summary is quoted below for ready reference:-

18.1 In view of the categorical statement made by the respondents, we do not find any merit in the contention that the gun fielded by respondent no. 3 did not comply with the requirement of interfacing with the USFM Radar System.

19. Thirdly, it is contended that the upgraded guns fielded by respondents nos. 3 & 4 failed to track aircrafts at supersonic speeds. This allegation is also controverted by the respondents nos. 1 and 2 and the user trial report furnished by the said respondents also indicates that the guns fielded by all the shortlisted vendors were found to be compliant in tracking air targets flying at zero to 400 meters per second. There is no material that has been furnished by the petitioner which would substantiate its allegation that supersonic aircrafts could not be tracked. Consequently, we are unable to accept that the upgraded guns of either of the shortlisted vendors were non-compliant in respect of tracking air targets as specified in the RFP.

20. The fourth reason on the basis of which the petitioner contends that the guns fielded by respondents nos. 3 and 4 are non complainant is that according to the petitioner the guns fielded by respondents nos. 3 & 4 failed to qualify the EMI/ EMC Tests. The respondent relied upon a letter dated 09.08.2013, wherein the petitioner had, inter alia, alleged that the upgraded gun provided by respondent no. 3 did not qualify in the EMI/EMC Tests conducted in December 2010. It is further alleged that subsequent changes had been carried out to ensure compliance. According to the petitioner, the said changes were not minor. The respondents have contended that in respect of "User Trials" which were conducted, all the three shortlisted vendors had failed the trials. Subsequently, confirmatory "User Trials" were conducted in June 2010 and the guns furnished by all the three shortlisted vendors were found to be compliant. The re-confirmatory "User Trials" were conducted in November 2011 and all the vendors were found to be compliant.

20.1 Insofar as EMI/EMC Trials are concerned, admittedly, the guns fielded by respondents nos. 3 and 4 were not successful in the trials. However, it was

pointed out that EMI/EMC Trials were only one of the three technical trials that were conducted. The other two being "DGQA Trials" and "Maintainability Evaluation" (MET). Whereas all the three shortlisted vendors were unsuccessful in the DGQA Trials, all the three shortlisted vendors were successful in respect of Maintainability Evaluation (MET). Thus, strictly speaking, none of the three shortlisted vendors had successfully completed the technical trials. Accordingly, confirmatory technical trials were conducted and all three shortlisted vendors are stated to have cleared the same. Insofar as EMI/EMC Trials are concerned, it was pointed out that a meeting to discuss issues relating to confirmatory technical trials was held between representatives of respondent no. 2 and all the shortlisted vendors, including the petitioner, on 31.01.2011. Paragraphs 3, 4, 8 & 9 of the minutes of the said meeting are relevant and are quoted below:-

3. Dir(Proc) informed the vendors that during the Technical Evaluation the equipment fielded by them was found non-compliant on various aspects. He sought a confirmation from the vendor reps that they did not have any objection if the non-compliant aspects of their equipment were discussed in the presence of all the vendor reps. Vendor reps confirmed that they had no such objection. Dir(Proc) then discussed each aspects on which the vendors were found non-compliant in the CQA(I), CQA(L), CQA(R), EMI/EMC evaluation and MET. The queries which were raised by the vendors were responded to by the reps of evaluating agencies.

4. Tests/Evaluation to be Done. The vendors sought a clarification on whether all tests/evaluation would be done again. Dir(Proc) clarified that the Confirmatory evaluation would be for only those parameters to which the equipment fielded by the vendors was non-compliant. However, additional tests would be conducted in case the test being conducted has some bearing on the result of other tests or if any repair/replacement of a component has been carried out. The same will be decided by the testing agency and will be intimated to the vendor before conduct of test.

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8. Commencement of Confirmatory Validation. Time required for rectification of observations and proposed schedule for conduct of evaluation was discussed and vendors were informed that the validation by CQA(R), CQA(L) and CQA(I) will commence from second week of Mar 2011 concurrently. It will be followed by EMI/EMC and MET evaluation. The details of the same will be communicated separately.

9. The Chairman then declared the meeting closed by impressing upon the vendors the urgent need to rectify the observations at the earliest and field the equipment for Confirmatory Technical Evaluation.

20.2 All the shortlisted vendors also duly certified that they accepted the observations made by the evaluating teams during the conduct of the technical trials and further confirmed that all observations were "do-able". The certificate

dated 31.01.2011 submitted by the shortlisted vendors is quoted below:-

Certificate From M/s. Bharat Electronic Limited, M/s. Larsen & Toubro Limited and M/s. Control & Switchgear Electric Limited

1. We, M/s. Bharat Electronic Limited, M/s. Larsen & Toubro Limited and M/s. Control & Switchgear Electric Limited jointly certify:-

(a) That each one of us, i.e., M/s. Bharat Electronic Limited, M/s. Larsen & Toubro Limited and M/s. Control & Switchgear Electric Limited are participating with our upgraded product in the Trials of the Upgraded L-70 gun ordered by the Directorate General of Army Air Defence vide their letter 48049/UPG/GS/AAD-8 dated 13 Aug 2009.

(b) That the observations made by the Evaluating Teams during conduct of DGQA, MET and EMI/EMC on our upgraded product are factually and technically correct and the same are acceptable to us.

(c) That the observations are all "do-able" observations.

(d) That we have no objection to the fact that observations for all the vendors have been read out and discussed in the presence of reps of each of the vendors.

(e) That we will have no objection if after rectifying all the observations any one (or more) gets selected (shortlisted) based on the comparative merit of the upgrade in the light of the General Staff Qualitative Requirements for further procurement process.

(f) The decision on the selection as per Sub Para 1(e) above will be final and will be binding on each one of us. No further representation will be gone into/entertained.

2. Signed on 31st day of Jan 2011.

20.3 It is apparent from the above that the petitioner had consented for holding of confirmatory trials after all the shortlisted vendors had an opportunity to rectify the guns in respect of the observations made by the Technical Evaluation Teams. Accordingly, confirmatory technical trials were carried out and the guns fielded by all the shortlisted vendors were found to be compliant. In view of the fact that the petitioner had given its no objection for rectification of the observations made in the earlier technical trials and selection on the basis of comparative merit thereafter, it is now no longer open for the petitioner to make a grievance of any defect that may have been pointed out in respect of the guns fielded by respondents nos. 3 and 4 during the initial trials. The procedure adopted by respondents nos. 1 and 2 was neither unfair to the petitioner nor can be stated to be arbitrary or unreasonable in the given facts. The petitioner in any event cannot agitate the point of respondents nos. 3 & 4 failing to pass the EMI/EMC trials conducted earlier, in view of the fact that confirmatory trials were agreed to by all the three shortlisted vendors and, indisputably, the guns fielded by respondent no. 3 have been found compliant in the confirmatory technical

trials.

Re: Changes in the design made by respondent no. 3 subsequent to submission of the guns for trials

21. It is stated that the respondent no. 3 was permitted to make changes in the "Inverter module" and the "Battery Charger module" after submissions of the guns for trial. It is contended that both these modules are integral parts of the upgraded gun. The petitioner has contended that no design changes could be made once the respondent had submitted their upgraded guns for evaluation. In our view, this contention is also without merit in view of the decisions taken at the meeting held on 31.01.2011 wherein the defects in the power back up systems were discussed. All the three shortlisted bidders were permitted to carry out modifications and rectify the defects. The defects in the Generator Set and Inverter were specifically discussed at the above referred meeting held on 31.01.2011 and paragraph 5 of the minutes of the said meeting which is relevant to this aspect is quoted below:-

5. Trials of Generator Set and Inverter (Power Back UP) The vendor reps stated that the generators were only for the purpose of back up. Where as, the tests being conducted on them were very stringent since the items of the generator which were tested were declared non-compliant for miniscule variations. Rep CQA(L) clarified that the tests were conducted as per the specifications of the equipment provided by the vendor. Vendors should provide the exact specifications for confirmatory validation. Dir(Proc) suggested that the vendors may consider providing in service generators of same output and rating. Details of in service generator may be obtained from CQA(L).

All the three shortlisted bidders consented to the above decision by submitting a certificate as is quoted hereinbefore and it is not open for the petitioner to now make a grievance regarding the changes made by respondent no. 3 in respect of the power back up systems of the upgraded gun.

The process adopted by respondents nos. 1 and 2 with respect to evaluation of the upgraded guns was completely transparent and we find no infirmity with the same. The present petition is, accordingly, dismissed as being without any merit. The parties are left to bear their own costs.