**(2013) 10 GUJ CK 0112**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 13924 of 2013

Confident Dental Equipments Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

**Date of Decision :** 04-10-2013

**Acts Referred:**

**Citation :** (2014) 1 GLH 649

**Hon'ble Judges :** R.R. Tripathi, J;R.D. Kothari, J

**Bench :** Division Bench

## Judgement

R.R. Tripathi, J.—Petitioner-one Confident Dental Equipments Limited along with Shri Rajeev Shetty is before this Court being aggrieved by inaction of respondent No. 2-Gujarat Medical Services Corporation Limited who invited the tenders for purchase of 550 dental chairs. The grievance of the petitioner is set out in Para 2 of the petition which is reproduced for ready perusal:-

2. By way of present petition, the petitioners seek to challenge the illegal, arbitrary, malafide and irrational and colorable action of the respondent No. 2 in not awarding the contract to the petitioners and instead issuing the Acceptance Letter in favor of the respondent No. 3. The petitioner was found eligible in all technical scrutinizes. The petitioner is the lowest bidder and had offered to supply @ of Rs. 1,05,541/- per Dental chair. Whereas the decision has been taken and Acceptance Letter has been issued in favour of the respondent No. 3 for purchasing the Dental Chair @ of Rs. 1,15,000/- and that too, despite the fact that the respondent No. 2 is not eligible and it was declared after first technical evaluation and demonstration that its product does not confer with the specifications demanded. The price difference between the offer of the petitioner and the respondent is Rs. 9,458.13 per Dental chair and in all Rs. 52,01,971.50 for 550 Dental Chairs. Thus the decision and action of the respondents is not only illegal, arbitrary, violative of Article 14, colorable, based on extraneous consideration and for collateral purposes, but also amounts to favoritism and is also contrary to larger public interests as it entails unnecessary financial burden

on the public exchequer and amounts to illegal profiteering by respondent No. 3 at the expense of public exchequer to the tune of Rs. 52,01,971.50.

The matter was heard at length. Learned Senior Advocate Mr. Mihir Joshi for the petitioner submitted that it is a settled law that in the matters of awarding contract or for that reason awarding tender, there are professed standards and any deviation from such professed standards is not warranted and, therefore, not acceptable to law. In the present case, the learned Senior Advocate submitted that the tenders were invited and as a first step the technical scrutiny was to take place which did take place by the Committee appointed by respondent No. 2 i.e. Gujarat Medical Services Corporation. The Committee consisted of as many as 13 members. That Committee submitted its report, a copy of which is produced at Annexure-R-2/2. The names of the members of the Committee are set out on the first page of the report. These 13 members were the nominees of four indenters. It is on record that the tenders were invited for purchase of in all 550 dental chairs. Of which 469 dental chairs were indented by Additional Director Medical Education having three Education colleges one at Siddhpur, second at Jamnagar and third at Ahmedabad. 50 dental chairs were indented by Additional Director Health, 28 dental chairs were indented by Additional Director Medical Services and three were indented by GMERC.

2. Learned Advocate Mr. Mitul Shelat for the respondent No. 2 was requested to verify from the record and tell us the division of these 13 members of the Committee nomination wise. Learned Advocate for respondent No. 2 stated that first three were (at page 92, Annexure-R-2/2) nominated by GMERC. So far as No. 4 and 11 to 13 are concerned, they are the persons who were nominated by Additional Director Medical Services and persons at serial No. 5 to 10 were nominated by Additional Director Medical Education.

2.1. Learned Advocate for respondent No. 2 further stated that six persons whose names are at serial No. 5 to 10, who were nominated by Additional Director Medical Education were the same, who happened to be the members of the Committee which was required to prescribe the specification of the item under purchase i.e. dental chair. The learned Advocate for respondent No. 2 stated at the bar that Additional Director Medical Education deemed it proper to renominate those very persons as members of the Committee which was to undertake the technical scrutiny of the item under purchase i.e. dental chair.

2.2. It is required to be stated that the respondent No. 3, for the reason best known to him, deemed it proper to make allegations against these six members mentioned at serial. No. 5 to 10 about their integrity only at the stage of filing of 3rd affidavit affirmed on 20th September, 2013. Though the petition was filed on 03rd September, 2013 and the notice was issued by this Court on 03rd September, 2013 returnable on 05th September, 2013. After the notice of this Court was served, the respondent No. 3 filed the first affidavit on 09th September, 2013 and the second affidavit was filed on 17th September, 2013. It assumes significance because the allegations are made against the member of the Committee for the first time in the third affidavit affirmed on 20th September, 2013.

(emphasis supplied)

2.3. Learned Senior Advocate for the petitioner invited the attention of the Court to the report submitted by the first Committee at Annexure R-2/2. The report pertains to dental chair of the petitioner which bears brand name of ''Confident Dental Equipments Limited'' and the name of the model is ''Mookambika''. The learned Senior Advocate submitted that the Committee, after examining the chair (in technical scrutiny), was pleased to make following remark:--

1. It has spittoon fitted on the rotatable base and this concept of designing the Dental Chair facilitates four handed dentistry and also suitable for left handed operator.

2. It has autoclavable suction tubings which help in better hygiene maintenance & infection control.

3. Has LED light with reflector which is an advantage for clinical use.

3. The Committee''s report for the dental chair of respondent No. 3 is at Annexure R-2/2/2 (page 96) wherein against item No. 4 which is titled as "Ceramic Spittoon fitted on the rotatable base with Autowater Connection for glass and spittoon, the Committee has said ''Yes'' but rotatable base not mentioned and final remarks are to the effect, ''ceramic spittoon-Yes-rotatable base- No. '' So far as this particular requirement is concerned, it assumes significance for the reason that learned Senior Advocate Mr. Devan Parikh appearing for respondent No. 3 with all vehemences at his command tried to convince this Court and accept the interpretation put by the learned Advocate on the requirement mentioned in item No. 4 i.e. ceramic spittoon fitted on the rotatable base with auto water connection for glass and spittoons.

3.1. Learned Senior Advocate for respondent No. 3 shifted the adjective "rotatable" from "base" to "spittoon". The learned Advocate submitted that respondent No. 3 is in manufacturing of dental chair for last 25 years. He has been supplying such chairs to all Dentists and Dental Clinics. The learned Senior Advocate submitted that "base" consists of the ''unit'' and "unit" is not supposed to be rotatable. The learned Senior Advocate submitted that the reason behind this is that "spittoon" should reach to the patient permitting him to spit whenever he wants or required to while he is under treatment. The learned Senior Advocate for respondent No. 3 also submitted that for all these years the spittoons are kept rotatable, fixed on a base, which is not rotatable. This feature has continued to serve the patients and no complaint is received. Therefore even if this condition is there, it has to be considered to be a ''minor'' in nature and any variation therein cannot be the ground for disqualifying the dental chair of respondent No. 3.

3.2. Despite all herculean effort and all possible gymnastic exercise, the Court is not able to accept the submission made by learned Senior Advocate Mr. Devan Parikh for respondent No. 3. Even by simple rule of grammar if the condition provides that "a spittoon be fitted on the rotatable base" i.e. it conveys the meaning that the base should be rotatable, and not the spittoon. Even according to the learned Senior Advocate for Respondent No. 3, spittoon was always rotatable. It is an advancement of designing technology and that is why the tender requires a ''base'' to be ''rotatable''. This finds support from the remark made by the expert Committee consisting of 13 members who all are supposed to be dealing with dentistry. It is in so many words stated that "it has spittoon fitted on the ''rotatable base'' and this concept of designing the dental chair facilitates four handed dentistry and also suitable for left handed operator." Thus it is clear that petitioner came forward with a new idea by designing the ''rotatable base''. It is clear from the literature which is placed on record pertaining to both chairs i.e. chair of petitioner as well as chair of respondent No. 3. Even as a layman so far as dentistry is concern, the Court is able to appreciate that in the chair of respondent No. 3, the unit, which works as base of spittoon is on the left side of the chair and is fixed. In such situation when Doctor wants to undertake any operation, while on the left hand side of the chair, it will not be very convenient and comfortable. Whereas in the matter of chair of the petitioner the unit which is the, base being rotatable, it will be possible to move it which will make it possible for the Doctor to have four handed dentistry, meaning thereby it will be possible for the Doctor and his assistant to attend the patient simultaneously.

3.3. The learned Senior Advocate for the petitioner submitted that what follows it important. This report is dated 11.06.2013. With this report, rejection of tender of respondent No. 3 was communicated, who, then immediately made a representation to the Managing Director, a copy of which is produced at Annexure R-2/3 (page No. 100) and stated in the communication as under (relevant para):--

However, we hereby request you to please appoint any Natural Authority or persons (The Natural Authority persons should not included any member or person from Government Dental College & Hospital Ahmedabad) to reexamine the chair in our presence and confirm that whether our Dental Chair having Ceramic Spittoon fitted on the rotatable base or not? As mentioned in the tender. We are ready to pay all expenses of this re-examination of Dental chair by Natural Authority or persons as asking by us.....

4. On this letter being received by Managing Director i.e. respondent No. 2, decided to get technical examination done by a new Committee.

4.1. At this juncture, it will be appropriate to place on record that we inquired from learned Advocate Mr. Shelat appearing for respondent No. 2 that is there any particular tender condition or any other source empowering Managing Director for having a new Committee appointed.

 

4.2. The learned Advocate fairly stated that the entire tender document is on record and he at the most can refer to and rely upon Para 23 of part (I); ''General'' which may be considered as a source of power empowering Managing Director.

4.3. It would be appropriate to reproduce Para 23, which reads as under:-

The technical scrutiny of the items will be carried out by a committee of experts nominated by the Managing Director, which may also include demonstration/ sample testing and the report of the scrutiny committee shall be final and binding upon the tenderer. In case there is a discrepancy in the claim made by the tenderer and the specifications shown in the product literature/circuit diagram/photograph, reliance will be placed on the specifications shown in the product literature/circuit diagram photograph, ignoring the claim of the tenderer. Any change or alteration in the product literature/circuit diagram/photograph must be authenticated by the manufacturer and an affidavit from the manufacturer for supplying the item as altered or changed should also be submitted failing which such changes/alterations will be ignored.

(emphasis supplied)

4.4. On careful reading of Para 23, this Court is of the opinion that Managing Director had no power or Authority for constituting a new Committee.

5. On this short ground, this petition can be allowed and relief prayed for can be granted but least it be said that other contentions are not considered, the Court considered other contentions raised by the petitioner.

6. At this juncture, it will be important to put it on record that the new committee constituted by the Managing Director consisted of only three members. A copy of communication dated nil, July 2013 from the Director Medical Health Services and Medical Eduction and Research is produced at Annexure R-2/4 wherein three experts are nominated to constitute the committee. It is important to note that all these three persons are from private medical colleges and none of them is from the Government College or Department. Besides none of them is nominated by the indenters.

6.1. It is submitted by learned Advocate for the respondent No. 2 that they can be said to be nominated by the indenters because they were nominated by the office of the Commissioner of Medical Services and Medical Education who is the head of Additional Director Medical Education, Additional Director Health and Additional Director Medical Services. But then this aspect is not in question. What is required to be considered is whether Managing Director-respondent No. 2 had an Authority to appoint a new Committee. In absence of such power the nomination made by any indenter is of no consequence and cannot save the illegality which crept in by appointing new Committee.

6.2. The learned Senior Advocate for the petitioner submitted that this new Committee gave its report and the chair of respondent No. 3 was also reported to be, "acceptable" as set out in the report dated 25.07.2013, a copy of which is produced at Annexure-R-2/5/2. At this juncture, it is relevant to note the remark made against column No. 4 i.e. "Ceramic Spittoon fitted on the rotatable base with Autowater connection for glass and spittoon. The remark is "Base was fixed, spittoon was rotatable" and the final report is, "the chair is acceptable."

7. Learned Senior Advocate for the petitioner submitted that what follows is important. The respondent No. 2 proceeded further with the tender of the petitioner. The price bid was opened and the price quoted by the petitioner was compared with the other two tenderers who were declared to be ''qualified'' by the new Committee. The ''price comparative statement''-is produced at Annexure-R-2/6. It reveals that the price quoted by the petitioner is Rs. 1,08,727.28 and the price quoted by the respondent No. 3 is Rs. 1,25,286.76 and the price quoted by third successful tenderer M/s. Varun Traders, Ahmedabad is Rs. 1,66,944.91. But there is a note below that statement and that note is relevant for the purpose of appreciating yet another important deviation and therefore, the same is reproduced:-

M/s. Suz-Dent is the Gujarat based SSI, CSPO & NSIC registered unit & Company also has valid ISO certificate. If its product is selected by BLC as per Tender Terms & Condition No. 9(ii) M/s. Suz-Dent becomes eligible for 15% price preference but after addition of taxes, other charges & CMC. (Rs. 1,25,286.76-Rs. 16,309.09 (15% of L1''s Final Total (Basic + Tax + Other charges + CMC)=Rs. 1,08,977.67).

8. What is important to note is, even after 15% price preference, the price of respondent No. 3 remained higher than that of the petitioner. Learned Senior Advocate for Respondent No. 3 submitted that the difference in price is negligible. The price of petitioner''s chair was Rs. 1,08,727.28 and after 15% price preference, the price of chair of the respondent No. 3 is Rs. 1,08,977.67. What follows is a well thought and well designed action of respondent No. 2 which leads this Court to draw one and only one inference that respondent No. 2 was determined to grant tender in favour of respondent No. 3 alone. This is clear from the report submitted by second BLC committee dated 13.08.2013, the same is produced at Annexure R-2/7.

Dated: 04.10.2013

Per: Mr. Ravi R. Tripathi, J.:-

8.1. It is recorded in these minutes that the meeting took place at 4:00 pm on 13.08.2013 at the office of Commissioner (Health) Medical Services, Medical Education and Research having its office at Block No. 5, Dr. Jeevraj Mehta Bhawan, Gandhinagar. In these minutes, it is recorded that, ''from amongst accepted offers, L-1 is M/s. Confident Dental Equipments Limited, Ahmedabad and they have quoted the price of their brand/model as Confident/Mookambika for Rs. 98,217.00 + Rs. 6,069.81 (Excise & other duties @ 6.18%) totaling to Rs. 1,04,286.81 (FORD). Beside that the party has quoted CMC for first year Rs.

 

551.69, for second year Rs. 551.69, for third year Rs. 1,112.36, for fourth year Rs. 1,112.36 and for fifth year Rs. 1,112.36, total coming to Rs. 4,440.47."

8.2. It is recorded in the same minutes that, ''thereafter the party was called for negotiations and party reduced its basic price to Rs. 95,000/-.'' The learned Senior Advocate for the petitioner submitted that the petitioner is at loss as to once the petitioner was called for negotiations and in those negotiations the petitioner reduced its basic price to Rs. 95,000/-. What for the Authority was waiting in placing the order for supplying the tender goods-dental chair with the petitioner. The reason, though not stated, can be read in the minutes itself. It is recorded in the following paragraphs that, ''out of the accepted offers L-2 is that of M/s. Suz-Dent (India) Pvt. Ltd. (Ahmedabad). It is an SSI-CSPO registration bearing unit of Gujarat State. It has valid ISO certificate and as is also of the State Government of 1997. The firm is entitled to get 15% price preference. But this firm M/s. Suz-Dent (India) Pvt. Ltd.. Ahmedabad has requested for price preference and price matching. In this regard, taking into consideration the representation, necessary exercise of calculation of the aforesaid benefits (price preference and price matching) so as to decide the eligibility of the firm for detailed discussion and for taking decision, it is unanimously resolved that the same should be placed in the next meeting of BLC.

(emphasis supplied)

8.3. Learned Senior Advocate for the petitioner vehemently submitted that there was no question of considering the claim of benefit of ''price matching'' in the meeting of BLC in its meeting held on 13.08.2013 because the said offer was made by the firm M/s. Suz-Dent (India) Pvt. Ltd., Ahmedabad only by its letter dated 14.08.2013. a copy of which is produced at Annexure R-1, page 196. What is important is how a letter dated 14.08.2013 can find reference in the minutes of meeting of BLC held on 13.08.2013. There is no reply from respondent No. 2 explaining this very crucial aspect of the matter which unwraps the bias conduct of Respondent No. 2. In letter dated 14.08.2013 the firm M/s. Suz-Dent (India) Pvt. Ltd., Ahmedabad has stated as under:-

We are enclosing herewith Copy of Government of Gujarat, Industries & Mines Department, resolution No. SPO/1095/2636/(97)/GH/Dated 23.09.1997 Rule No. 5 for Price matching for your ready reference and necessary action Please.

(emphasis supplied)

8.4. This Court is not able to understand as to by which technique/technology, a letter dated 14.08.2013 can be known to the Committee on 13.08.2013. This is nothing but a clinching proof of the irregularity in the conduct of the concerned Officers of respondent No. 2 who were Incharge of the Affairs. This leads the Court to believe that respondent No. 2 was not acting bonafidely and it was out to favour respondent No. 3 and award the contract, though in that process the public exchequer is made to suffer loss of approx. Rs. 52 lacs. Question is not that of the amount, question is also not that of the settled position of law under which-purchaser can always prefer a person who is not L-1. But then there has to be a valid reason for doing so. In the present case, the Court finds no reason. As discussed herein above, the Court has found that the chair of respondent No. 3 does not answer the requisite technical qualities as set out in the tender notice. Despite that possible all herculean efforts and gymnastic tactics are practiced to see that respondent No. 3 gets the order for the tender goods-dental chair. So far as attempt on the part of the learned Advocate appearing for respondent No. 3 is not surprising because appearing as an Advocate for respondents, he is expected to advance the cause of respondent No. 3. Learned Senior Advocate has put all novel interpretation on the ''phrase'' used in the ''tender condition.'' The tender condition specifically provides that "spittoon should be fitted on the rotatable base." The learned Senior Advocate has deemed it appropriate to argue that the aforesaid phrase should be construed to mean that, "the spittoon should be rotatable and the base can be fixed." The attempt on the part of the learned Advocate for respondent No. 3 to convince this Court to accept this interpretation and the attempt on the part of respondent No. 2 declaring the dental chair of respondent No. 3 acceptable are found to be match for each other.

8.5. The Court has found an additional reason to infer that respondent No. 2 was out to favour respondent No. 3 which is as follows. There was a ''purchase policy'' of the year 1993. The object of which was to give incentive to small scale industries. In that policy, it was provided that, the Government will be giving price preference to the small scale unit situated within the State of Gujarat. This will provide incentive to the small scale units situated within the state. This policy of the Government is explained by giving an illustration. The illustration is to the effect that, at the time of giving price preference, the price of the unit which is found to be L-1 (lowest-one) will be taken into consideration. Suppose price of L-1 unit is Rs. 100/- and price of unit B (Small Scale Unit of the State) is Rs. 110/-. For giving 10% price preference (of the price of L-1 unit which is Rs. 100/-), the calculation will be made in the following manner-i.e. B unit''s actual price-10% of price L-1 unit. To put it more clearly if unit L-1 has quoted ''x'' price and small scale unit of the State quotes ''y'' price, 10% of L-1 price will be deducted from ''y'' price of small scale unit of State. The figure so found will be taken to be the price of small scale unit of the State and on the basis of that price the Authority will decide whether it is lower than the price of L-1 unit. If that is so purchases will be made from the small scale unit of the State.

9. Now there is a new policy which is on record, at Annexure R-2/8. This new purchase policy is for the Small, Tiny Micro Industrial Unit of the State. In the policy of the year 1997, it is specifically-mentioned that, ''policy of 1993 is given a go-by'' i.e. by saying "radd karvama aave chhe" (in vernacular). The Court requested the learned Assistant Government Pleader appearing for the State of Gujarat and learned Advocate Mr. Shelat appearing for respondent No. 2 GMSCL to apprise the Court as to in what manner the price preference is calculated from the year 1997 till today i.e. 2013. Both the learned Advocates stated before the Court that, ''calculation is always made by deducting 10% or 15% as the case

 

may be of the price of L-1 unit from the price of the small scale unit of the State as stated in the affidavit filed at page No. 79, affirmed by one Dr. Ashok B Solanki on 06.09.2013''.

9.1. In the present case by an exception effort, the Committee decided to determine the price of respondent No. 3 by deducting 15% of the price of the small scale unit itself so as to see that its price becomes lower than the price of L-1 unit. What is important is not a word of explanation is stated for this second deviation of adopting a new mode of calculation for giving ''price preference''. The learned Senior Advocate for the petitioner emphatically submitted that any deviation from the ''professed path'' must be condemned by the Court and the exercise of granting tender to respondent No. 3 be quashed and set aside.

9.2. Learned Senior Advocate for the petitioner invited the attention of the Court to a very interesting fact in this matter i.e. Annexure ''O''. It is a certificate issued by a Chartered Accountant and it makes an interesting reading. The certificate is titled as:-

To Whom so Ever it May Concerned" "Chartered Accountant Certificate." It reads as under:-"After verifying relevant documents & records produced before me by M/s. SUZ DENT (INDIA) PVT. LTD. for Dental Chair & Unit. This is to certify that they have manufactured, imported, marketed, sold and exported supplied products as per given below:-

10. What is interesting is quantity of production by M/s. Suz-Dent (India) Pvt. Ltd. The Company manufactured 321 units in 2010-2011, 322 units in 2011-2012 and 323 units in 2012-2013. But when one looks at the ''price figures'' in year 2010-2011, the same were Rs. 3,81,75,490/- which became Rs. 6,70,04,683/- in 2012-2013 with increase of two units only. On the face of it, this is nothing but a clear case of manipulation so as to see that they are able to satisfy the required figure for getting the tender.

10.1. This was required to be done because the tender condition No. 5 provides as under:--

Bidder firm has to submit turnover certificate of Chartered Accountant for last two financial years. The turnover in one out of the two years should be atleast 50% of the total estimated value of the total purchase of store under tender enquiry.

10.2. Now it is a matter of record that, tender is for 550 dental chairs, and EMD @ 3% of total estimated value is Rs. 33 lacs as estimated value is Rs. 11 crores. From this one can understand as to why the turnover which was Rs. 3,81,75,490/- for 321 units is certified to be Rs. 6,70,04,683/- for mere 323 units. No doubt there is inflation in the market. The value of rupee is going down but then also the figure for 2012-13 cannot be justified. At same time the same cannot be accepted by this Court because 321 units were valued for Rs. 3,81,75,490/- in the year 2010-2011 and 323 units in the year 2012-2013 are shown to be of Rs. 6,70,04,683/-.

10.3. Infact this is a fit case wherein it is necessary for this Court to pass necessary orders against this Chartered Accountant for giving this certificate. The Court is of the opinion that it will be failing in its duty if it does not direct the Registry of this Court to send a copy of the certificate issued by the Chartered Accountant (Annexure ''O'' Page 78), to the ''Council of Chartered Accountants'' for its scrutiny and if deemed fit to take necessary action against the Chartered Accountant for having given this certificate. The certificate is issued by one Harshad J. Thakkar who is Proprietor of Harshad Thakkar & Co., (Chartered Accountants) bearing Registration Number M. 101638. Order accordingly. Besides this certificate is required to be deprecated because it says that, ''M/s. Suz-Dent (India) Pvt. Ltd. Has manufactured, imported, marketed, sold and exported supplied products.'' Though the question was that of investment in plant and machinery so as to entitle the unit to maintain its states as SSI unit (Small Scale Industrial Unit).

11. Next it comes to consider the capacity of Respondent No. 3 to manufacture the dental chairs. The learned Senior Advocate appearing for respondent No. 3 vehemently submitted that it has agreed to supply 550 dental chairs within the prescribed span of six weeks from the date of placing of order. A unit which manufactures 321 units in 2010-2011, 322 units in 2011-2012 and 323 units in 2012-2013 agrees to supply 550 chairs within six weeks from the date of placing of order. How this tall claim of respondent No. 3 is found acceptable by the officer/s of respondent No. 2-Gujarat Medical Services Corporation Limited is a question which remained unanswered. What an irony, a unit who claims to have a capacity to supply 550 chairs within six weeks still claims to be a small scale unit. Whether such glaring contradiction should not have come to the notice of respondent No. 2 who is specifically created to see that the Medical Services Corporation of State of Gujarat to get quality goods so as to provide the quality medical services to the mass of the State, also remains unanswered.

11.1. In this matter the Court has found that the whole thing to be fictitious, right from the stage of supply of technical details. The requirement was that spittoon should be fitted on rotable base. This is changed to "a rotatable spittoon on a fixed base." As if that is not enough the claim of respondent No. 3 is that it is supplying such chairs for the last 25 years. The Court has no reason to go into that past history of 25 years.

12. Learned Senior Advocate for the petitioner submitted that taking into consideration Clause-''g'' of condition No. 2 of general terms and conditions of the tender which reads as under; "Wrong/Fraudulent date submission may lead to disqualification/debar. Please ensure that you furnish correct data." In light of this clear term and condition the respondent No. 3 not only ought to have been disqualified but also debarred from participating in future tenders of GMSCL. The Court leaves it to the good senses of the Officers of respondent No. 2-GMSCL to take note of the observations made by this Court in this judgment and take

 

appropriate action against Respondent No. 3 as well against the concerned Officers. In light of the aforesaid discussion of facts, the Court did not deem it necessary to discuss all the decision cited by the learned Senior Advocates.

13. In view of the aforesaid facts, alteast three deviations are noted:--

(i) Opinion of Technical Evaluation Committee which consisted of 13 members at the first in stance was brushed aside and second Technical Evaluation Committee was constituted consisting of only 3 members and that to all these three members were from the private dental colleges. On the basis of this new committee, the dental chair of Respondent No. 3 was treated acceptable. No decision placed on record by which first committee was given a go by and new committee was constituted and its opinion was accepted. Only thing which has come on records that Respondent No. 3 made a representation and Managing Director of respondent No. 2 was moved by that representation and in the zeal of doing justice to respondent No. 3 (doing favouritism to Respondent No. 3), he ordered for constitution of new Committee, consisting of three members who gave certificate of acceptability to the dental chair of respondent No. 3.

(ii) The second deviation is about calculation of price preference wherein the method which was followed from 1997 till 2013 is given go bye and under the pretext of following illustration of 1993 policy, which too is given wrong interpretation. Again no justification for the same is coming on record.

(iii) That respondent No. 3 asked for price matching only by letter dated 14,08.2013, the minutes of the meeting held on 13.08.2013 states that as we have received a request for price preference and price matching, the detailed discussion will take place in the following meeting and the decision will be taken.

14. When one single deviation is sufficient to quash the acceptance of tender, in this case there are more than one, deviations as set out hereinabove-three deviations, each one of them warrants the acceptance of tender by respondent No. 2 to be quashed and set aside. Accordingly the act of acceptance of tender of Respondent No. 3 by Respondent No. 2 is quashed and set aside. Question comes who shall bear the cost of the expenses which are incurred from the public exchequer. Taking into consideration the fact that M.D. is instrumental to aforesaid deviations, it is directed that the entire amount of expenses incurred for the ''tender procedure'' should be recovered from the M.D. of respondent No. 2 (as he then was) from his personal capacity and it should be ensured that he does not pass on the burden to the Respondent No. 2 i.e. Gujarat Medical Services Corporation Limited. Rule is made absolute to the aforesaid extent with no order as to costs.