

(2024) 04 CHH CK 0049

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 786, 809 Of 2022

FTA HSRP Solutions Private Ltd.

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 24-04-2024

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19(1)(g), 26, 226
Central Motor Vehicle Rules, 1989 — Rule 50
Indian Penal Code, 1860 — Section 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : CHH

Hon'ble Judges : Ramesh Sinha, CJ; Ravindra Kumar Agrawal, J

Bench : Division Bench

Advocate : Siddharth Agrawal, Shobhit Mishra, Sangharsh Pandey, Aman Preet Singh Rahi, Abhinav Sharma, Vaibhav Shukla, Rohan Sharma, Mahima Malhotra, Himanshu Yadu

Final Decision : Dismissed

Judgement

1. Since the facts and issue involved in both the above writ petitions are similar, they are being considered and decided by this common judgment.

2. The petitioner-FTA HSRP Solutions Private Ltd. in WPC No. 809/2022 has prayed for the following reliefs:

"10.1 That, this Hon'ble Court may kindly be pleased to allow the present writ petition and direct the Respondent No. 3 to produce entire records of the present case.

10.2 That, this Hon'ble Court may kindly be pleased to issue a writ to quash and set aside the decision of the Respondent No.03 to reject the bid of the Petitioner pursuant to the invitation for Bids bearing Tender No. TD/02/TC dated 13.11.2021 and the subsequent corrigendum, in the interest of justice.

10.3 That this Hon'ble Court may kindly be pleased to put on hold the execution

of the Contracts with successful bidder and if the contracts have already been executed, to issue orders to stay all subsequent proceedings of the tender process.

10.4 That, any other order/relief which this Hon'ble Court may deem it, proper and just in the facts and circumstances of the present case may also kindly be awarded to the petitioner in the ends of justice & equity.

10.5 That, the cost of the petition may kindly also be awarded to the petitioner."

3. The petitioner-Celex Technologies Pvt. Ltd. in WPC No. 786/2022 has prayed for the following reliefs:

"(i) Call for the entire records of the present matter, more particularly records pertaining to the Invitation for Bids bearing Tender No. TD/02/TC dated 13.11.2021, for the kind perusal and consideration of this Hon'ble Court; and/or

(ii) Issue a writ of mandamus or other appropriate writ, order or direction quashing and setting aside the decision of the Respondent No. 2 Authority to reject the Bid submitted by the Petitioner pursuant to the Invitation for Bids bearing Tender No. TD/02/TC dated 13.11.2021; and/or

(iii) Issue a writ of mandamus or other appropriate writ, order or direction quashing and setting aside the e-mail dated 05.02.2022 whereby the Petitioner was informed about the rejection of the bid submitted by it pursuant to the Invitation for Bids bearing Tender No. TD/02/TC dated 13.11.2021; and/or

(iv) Pass such other Orders or Directions as it may deem it."

4. Both the petitions arise from invitation of bids bearing Tender No. TD/02/TC dated 13.11.2021 and the subsequent corrigendum issued by the Transport Commissioner, Government of Chhattisgarh, for implementation of the project for assembling, establishing, procuring technology, designing, developing, producing, embossing, aising and ittings of High Security Registration Plates (for short, the HSRPs) in the State of Chhattisgarh. The petitioners in both the petitions are Companies registered under the Companies Act, 1956 and are engaged in manufacturing, supplying and aising HSRPs. The petitioners participated in the tender loated by the respondent-Transport Department of the State of Chhattisgarh. They are aggrieved by rejection of their bids. In WPC No. 809/2022, the petitioner came to know about the rejection of his bid from the portal of the Chhattisgarh Transport Department and the petitioner in WPC No. 786/2022, came to know regarding rejection of his bid through e-mail dated 05.02.2022.

5. The facts, in brief, are that the Transport Department of the State of Chhattisgarh issued invitation for bids (for short, IFB) for for implementation of the project for assembling, establishing, procuring technology, designing, developing, producing, embossing, aising and ittings of High Security Registration Plates (for short, the HSRPs) in the State of Chhattisgarh. The

petitioners submitted their respective bids pursuant to the aforesaid IFB as they fulfilled all eligibility criteria as specified in the IFB. The petitioner (in WPC No. 786/2022) received a letter from CG E-Proc System Team informing that its bid has been rejected at the techno-commercial stage for not meeting with the eligibility criteria, though the e-mail does not specify as to which eligibility criteria has not been met. Similarly, the petitioner (in WPC No. 809/2022) came to know regarding rejection of his bid through the web portal of the Department on 04.02.2022 which did not contain any reason except that "bidder not meeting eligibility criteria". Both the petitioners requested the Department for providing the reason for rejection of their bids, through e-mail (dated 04.02.2022 in WPC No. 809/2022) and letter dated 04.02.2022 (in WPC No. 786/2022). In addition, the petitioner in WPC No. 786/2022 also requested that the tender process be kept in abeyance in the intermittent period. The financial bids were opened on 07.02.2022 and the present petitions namely WPC No. 786/2022 and 809/2022 came to be filed on 09.02.2022.

6. Mr. Siddharth Agrawal, learned Senior Advocate appearing for the petitioner-FTA HSRP Solutions Pvt. Ltd. {in WPC No. 809/2022} would submit that there are eight eligibility/qualificatory criteria provided in the IFB dated 13.11.2021, five technical criteria provided in Clause 1.1 and three financial criteria provided in Clause 1.2. The petitioner meets all such criteria as demonstrated herein below:

Eligibility Criteria

Petitioner's status with respect to the criteria

Clause 1.1.1: The Sole Bidder / Lead Bidder and Consortium Member shall be a company, duly registered under the Indian Companies Act, 1956 or a Consortium of not more than two members of which one shall be specifically nominated as the Lead Bidder. The consortium member shall be a company registered under the Indian Companies Act, 1956. The Lead Bidder must satisfy all the technical qualification requirements specified in this tender. In case of consortium, Lead Bidder shall be severally liable during the bidding process and during the currency of the contract period in accordance with the terms of contract. The bid shall be signed by the authorized signatory.

The Petitioner is a Private Limited Company. A Copy of the Certificate of Incorporation of the Petitioner Company is attached herewith as Annexure P/6. A Copy of the Company Master Data as on 06.02.2022 of the Petitioner Company obtained from the MCA Website is attached as Annexure P/7.

Clause 1.12: The bid is open to only those applicants who have been issued Type Approval Certificate (TAC) for manufacturing High Security Registration Plates for Motor Vehicles from the test agencies approved and authorized by the Govt. of India as per Rule 50 of the Central Motor Vehicles Rules, 1989 and HSRP order 2018. The Sole Bidder / Lead Bidder (in the case of Consortium) shall possess a valid TAC in its own name.

The Petitioner Company has been issued Type Approval by the CSIR- Central Road Research Institute, New Delhi. A Copy of the Type Approval Certificate of the Petitioner dated 05/11/2012 is attached as Annexure P/8.

Clause 1.1.3: The Sole Bidder / Lead Bidder (in the case of Consortium) shall own a HSRP manufacturing unit in India with minimum monthly production capacity of 5 (Five) lakh HSRP.

The Petitioner Company has 3 HSRP manufacturing lines in the heart of Gandhinagar, Gujarat through which it can produce 20 Lakh Blank HSRP per month. A Copy of the relevant document demonstrating that the Petitioner has the capacity to manufacture 20 Lakh HSRP per month are attached as Annexure P/9 (Colly).

Clause 1.1.4: The Sole Bidder / Lead Bidder (in the case of Consortium) must have Technical Experience in executing/executed High Security Registration Plate Project for at least 5 whole States/ Union Territories in India for a minimum period of one year, in last five financial years. The scope of such contract should be for implementing HSRP in all RTO's / DTO's of the respective State / Union Territory.

The Petitioner has been executing the HSRP project in 5 (five) whole States for one or more years in the last five years. A Copy of the Agreements and Certificates demonstrating that the Petitioner has been executing the HSRP project in 5 (five) whole states for one or more years in the last five years is attached as Annexure P/10 (Colly).

Clause 1.1.5: The Sole Bidder / Lead Bidder (in the case of Consortium) shall possess a valid Conformity of Production Certificate (COP) on the date of submission of the Bid and must have completed minimum Ten

(10) Conformity of Production (COP) cycles.

The Petitioner possesses a valid COP and has completed 32 COP cycles. A Copy of the COP certificates of the Petitioner are attached as Annexure P/11.

Clause 1.2.1: The Sole Bidder / Lead Bidder (in the case of Consortium) of the consortium must have total average annual turnover of Rs. 20 Crores in the last three financial year (Le.2018-2019, 2019-2020 and 2020-2021) from HSRP business. Chartered Accountant certified Balance sheets and certificate shall provided.

The Petitioner Company has a Turnover of over Rs. 100 Crores. A Copy of the Chartered Accountant certified Balance Sheets and certificates of the Petitioner for the last three FYs is attached as Annexure P/12. (Colly)

Clause 1.2.2: The Bidder must have net worth of at least Rs.10 Crores as on 31st March, 2021. Original Certificate from Chartered Accountant shall be provided.

The Petitioner Company has a net worth of over Rs. 50 Crores. A Copy of a Certificate dated 14/12/2021 of a Chartered Accountant certifying the Net Worth of the Petitioner is attached as Annexure P/13.

Clause 1.2.3: The Sole Bidder / Lead Bidder and Consortium Member shall submit the attached herewith as Annexure P/14 copy of their PAN, GST and (Colly). ITR filed for last financial year, ie., 2019-2020

A Copy of the PAN, GST and ITR filed for the last FY of the Petitioner is attached as Annexure P/14 (Colly).

7. Mr. Agrawal further submits that aforesaid table clearly establishes that the petitioner meets all the eligibility criteria and is qualified to participate in the tender process initiated by the Transport commissioner. Even after the submission of tender form and EMD amount, the petitioner's bid as per the terms and conditions provided under tender document, the Transport Commissioner acted mala fide, perversely, capriciously and in whimsical manner and rejected the tender bid of petitioner which is prejudicial to petitioner's rights and interest and is clearly untenable in the eyes of law. The act of the Transport Commissioner is highly unjust and unfair to petitioner's right and in highly unjustified and whimsical manner, despite possessing and attaching all the requisite qualification documents in the bid, his bid was rejected without assigning any just and proper reasons for the arbitrary and illegal rejection of the petitioner's bid, which is contrary to due process of law and is violative of principles of natural justice as enshrined in Article 14 and Article 19(g) of the Constitution of India. A public authority carrying out a tender process cannot reject bids arbitrarily without assigning any reasons even if such a wide power is provided for in the tender documents. This has been upheld in various Apex and High Court judgments. No notice or any prior information or any opportunity of hearing was served to the petitioner before rejecting its bid. The respondent authorities have rejected the bidders who have quoted lesser prices just to favour the bidders of their choice because of which the vehicle owners will have to pay exorbitant rates of HSRP which is evident from the price bid available on the government portal (Annexure P/15). Moreover, the Transport Commissioner has not rejected the bid of other bidders who are named in the FIR for the offences under Section 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act for their contract with the State of Meghalaya for having rigged the tender process by submitting collusive bids through entities controlled by him and got approved exorbitant rates for supply of HSRPs in the State of Meghalaya, 4 to 5 times more than the rates in rest of India, with the collusion of unknown officials of the Transport Department of Government of Meghalaya, which is evident from Annexure P/16.

8. Mr. Gagan Gupta, learned Senior Advocate appearing for the petitioner {in WPC No. 786/2022} submits that the petitioner is a private Company incorporated under the provisions of the Companies Act, 1956 engaged in the business of manufacturing, supplying and fixing HSRPs. The petitioner has been

supplying and aixing HSRPs in the State of West Bengal under a Concession Agreement with the State of West Bengal, wherein the petitioner in the year 2010 was awarded a contract for the supply of HSRPs pursuant to what was the first fully transparent tender process for the supply of HSRPs in India. The petitioner has also been supplying and aixing HSRPs in several other States under agreements with several motor vehicle manufacturers like TVS Motor Company Ltd, Tata Motors Ltd, Mahindra & Mahindra Ltd, Hyundai Motor India Ltd, Honda Cars India Ltd., BMW India Pvt. Ltd., Jaguar Land Rover India Ltd, India Yamaha Motor Pvt. Ltd., India Kawasaki Motors Pvt. Ltd., Honda Motorcycle and Scooter India Pvt. Ltd. etc. The petitioner also participated in the tender process pursuant to the aforesaid IFB. The petitioner also meets the eligibility criteria which has been detailed in paragraph 8.16 of the petition.

9. On 07.02.2022, inancial bids were opened and L-1 has been declared. On comparison of the prices ofered by various bidders, it was found that the price bid by the L-1 bidder was substantially higher than the price bid by the petitioner. The weighted average of the price bid by the L-1 bidder is 31.58% higher than the price bid by the petitioner. Therefore had the bid of the petitioner not been illegally and arbitrarily rejected, the petitioner would have been the L-1 bidder and would have been awarded the contract. At the price bid by the L-1 bidder, the successful bidder(s) would generate from the project, a revenue of about Rs. 53.05 Crores higher than the what would be generated at the price bid by the Petitioner, at the expense of the public. Mr. Gupta further relies on the decision of the Supreme Court in Union of India v. Dinesh Engineering Corpn. {(2001) 8 SCC 491} to contend that a public authority carrying out a tender process cannot reject bids arbitrarily without assigning reasons even if such a wide power is provided for in the tender documents. He further relies on the decision rendered in Ravi Yashwant Bhoir v. Collector {(2012) 4 SCC 407}.

10. The interim application iled by the petitioner was rejected by this Court vide order dated 18.02.2022 {in WPC No. 809/2022} which reads as under:

"Heard Mr. Prafull N. Bharat, learned senior counsel for the petitioner assisted by Mr. Shobhit Mishra. Also heard Mr. Chandresh Shrivastava, learned Additional Advocate General, appearing for respondents 1 to 3 along with Mr. Vikram Sharma, learned Deputy Government Advocate and Mr. Aman Preet Singh Rahi, learned counsel appearing for respondent No.4.

The petitioner participated in a tender being Tender No. TD/02/TC dated 13.11.2021 for assembling, establishing, procuring technology, designing, developing, producing, embossing, aixing and itting of High Security Registration Plates ('HSRP', for short). The bid of the petitioner came to be rejected at the stage of techno-commercial evaluation on account of not meeting the eligibility crietria. The reasons, however, were not disclosed, as to why the bid was rejected.

Subsequent to the order dated 17.02.2022, Mr. Shrivastava has iled aidavit on

behalf of the respondents 1 to 3 indicating the reasons for which bid of the petitioner came to be rejected.

It is stated that because of non-compliance of Clause 1.1.4 read with Clause 4.3.1 (xi), Clause 1.2.3 (PAN and ITR not submitted), Clause 4.3.1 (xxiv) (Certificate of Laser Printing not submitted), 6.8 (undertaking not submitted) of the Instructions to Bidders (for short, ITB) and Annexure (xix) (undertaking not submitted) . It is also pointed out that bid document fee was not paid as per the tender requirement.

Mr. Prafull N. Bharat, learned senior counsel for the petitioner, submits that the petitioner fulfills the eligibility criteria as laid down in Clause 1.1.4 and to demonstrate that the petitioner has the requisite qualification, he has drawn our attention to pages 36, 37 & 38 of the writ petition and accordingly, submits that the ground for rejection on account of non-compliance of Clause 1.1.4 is wholly misconceived. He submits that all that is required under clause 1.1.4 is that it must be executing HSRP for at least 5 whole States/Union Territories in India for a minimum period of one year, in last five financial years, at least in one make of vehicle. With regard to non-furnishing of Income Tax Return and PAN Card, he has submitted that the same were duly uploaded. With regard to Clause 4.3.1 (xi), he submits that since the petitioner fulfills the eligibility criteria in terms of Clause 1.1.4, necessarily, there is compliance of the clause and the ground for rejection on account of non-conforming to Clause 4.3.1(x) does not stand. With regard to alleged non-compliance of Clause 4.3.1 (xxiv) for non- furnishing of certificate of Laser Printing, it is submitted by him that such a certificate is not required as the machine offered by the petitioner itself has in-built laser printing mechanism and such a clause is relevant only for those tenderers, whose machine does not have in-built laser printing mechanism. With regard to Annexure (xix), he submits that there is no requirement of submitting the same at the stage of techno-commercial evaluation in terms of Clause 4.3.1. It is also contended that certificate in terms of Clause 6.8, which provides that the project will be implemented by the contractor himself, is also not required to be submitted in terms of 4.3.1. Mr. Bharat submits that the bid of the petitioner is less than the bid of the respondent No. 4 and if the respondent No.4 is awarded the contract in stead of the petitioner, the people of the State will have to bear extra burden. In substance, Mr. Bharat submits that technical bid of the petitioner has been rejected on irrelevant and extraneous grounds in order to sub-serve the interest of blue-eyed tenderer, namely, respondent No. 4 and therefore, an interim order is called for restraining the respondent/ State authorities from proceeding with the tender process.

Mr. Shrivastava submits that the documents on which Mr. Bharat has placed reliance to contend that the petitioner meets the eligibility criteria as laid down Clause 1.1.4, demonstrate, on the face of it, that the petitioner falls short of the requirement prescribed. He submits that the petitioner has dealt with only one make of vehicle, namely, Suzuki Motorcycle and Scooters, while there are

hundreds of makes of vehicles in the country, and therefore, by no stretch of imagination can it be said that as required under Clause 1.1.4, the petitioner has been implementing HSRP in all RTOs/DTOs of the respective States. It is submitted by him that, the respondent No. 4 had the experience of implementing HSRP in all RTOs/DTOs as required and respondent No. 4 was the only agency through which all makes of vehicles were registered in the RTOs and DTOs of the States in which it was offered the contract. He has also submitted that it is not correct as submitted by Mr. Bharat that Clause 6.8 does not come into picture at this juncture, inasmuch as Clause 6.8 itself provides that an undertaking that the project would be implemented by the contractor himself, shall have to be enclosed in the technical bid, which the petitioner, admittedly, had not complied with. It is also contended that the petitioner has submitted its tender document fee by way of demand draft of AXIS Bank, instead of a Nationalized Bank, as required under the ITB. He has also submitted that annexures are part of tender documents and admittedly, the petitioner has not submitted Annexure (xix), an undertaking. With regard to non- furnishing of ITR and PAN card, it is submitted that the tendering process is undertaken by a different agency and the documents submitted by said agency do not contain the ITR and PAN card in respect of the petitioner. It is submitted that the aforesaid agency has not been made a party respondent in this proceeding.

Mr. Rahi has endorsed the submissions of Mr. Shrivastava. In addition, he submits that the plea taken by the petitioner that it has uploaded the ITR and PAN card is a false plea taken. He submits that the documents submitted by the tenderer can be downloaded subject to fulfillment of certain conditions and the respondent No. 4 had downloaded the tender documents of all the competing bidders including that of the petitioner. He submits that the petitioner had only given the balance -sheet of profit and loss for the years 2019-2020 and 2020-2021. He has also submitted that when the petitioner was implementing HSRP only in respect of Suzuki Motorcycles and Scooters, the same does not fulfill the requirement as there are more than hundred makes of vehicles in the country.

Issue notice on motion, returnable in 10 weeks.

List along with WPC No. 786/2022.

As all the parties are represented, no formal steps are called for.

At the outset, it will be appropriate to take note of 1.1.4, Clause 1.2.3, Clause 4.3.1(xii) & (xxiv) and Clause 6.8, which are extracted hereinbelow :-

"1.1.4 The Sole Bidder/Lead Bidder (in the case of Consortium) must have Technical Experience in executing/ executed High Security Registration Plate Project for at least 5 whole States/Union Territories in India for a minimum period of one year, in last five financial years. The scope of such contract should be for implementing HSRP in all RTO's/DTO's of the respective State/Union Territory.

1.2.3 The Sole Bidder/ Lead Bidder and Consortium Member shall submit the copy of their PAN, GST and ITR filed for last financial year, i.e. 2019-2020.

4.3.1 TECHNICAL BID documents are as following :

xxx xxx xxx

xii. Current Contract Commitment/Works in progress in India as shown in Annexure XIII.

xxx xxx xxx

xxiv. The Sole Bidder/Lead Bidder (in the case of Consortium) should also enclose documents relating to the tie-up or the approvals from the testing agency for sourcing of the following:

1. Relective Sheeting.
2. Aluminum Plates.
3. Hot stamping Foils
4. Holograms
5. Laser Printing
6. Snap Locks

Prices should not be indicated in the technical bid in any form.

6.8 No Subletting/ Sub contracting

Being a High Security Project, the contractor shall be required to implement the Project by himself. Sub- contracting / sub-letting Franchise will not be allowed under any circumstances. An undertaking to this effect must be enclosed with the Technical Bid that the project will be implemented by the Contractor himself."

Annexure (xix), which is also not submitted, is extracted hereinbelow.:-

"Annexure XIX

UNDERTAKING

I/We, hereby solemnly airm and undertake that

I/we has/have NOT been :-

- a) convicted of cognizable offence by any Court of Law with imprisonment for a term exceeding one year, or
- b) imposed a penalty of rupees one crore or more for violation of the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) (since repealed) or the Foreign Exchange Management Act, 1999 (42 of 1999); or
- c) detained under the National Security Act, 1980, (65 of 1980) or the Narcotic

Drugs and Psychotropic Substances Act, 1985, (61 of 1985); or

d) adjudged guilty by the Stock Exchange Board of India or any other such Financial Regulatory Boards or Tribunals or Agencies; or

e) found to be associated in any manner with an organized crime syndicate or its associate or with any Association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, (37 of 1967) or any other law for the time being in force; or

f) found to be connected with activities prejudicial to the National Security, is not considered for selection as manufacturer or vendor for supply of High Security Registration Plates.

.....

Signed by an Authorized Officer of the Bidder

.....

Title of Officer

.....

Name of the Bidder

.....

Date

A perusal of the documents at pages 35, 36 and 37 of the writ petition goes to show that the petitioner has implemented HSRP scheme for only Suzuki motorcycles and scooters in 05 States since 01.04.2019. It appears to us that implementation of HSRP in all RTOs/DTOs, prima facie, would mean registration of all makes of vehicles and not limited to only a particular make of a vehicle and therefore, prima facie, the petitioner does not meet the scope of contract as visualized under Clause 1.1.4 in implementing HSRP in all RTOs/DTOs. Admittedly, the petitioner has not furnished any undertaking as required under Clause 6.8. There is dispute also with regard to submission of PAN Card and Income Tax Return.

In that view of the matter, we are of the opinion that petitioner has failed to make out a case for grant of an interim order as prayed for and, accordingly, the prayer for interim order is rejected."

11. The interim application filed by the petitioner was rejected by this Court vide order dated 16.02.2022 {in WPC No. 786/2022} which reads as under:

"Heard Mr. Sanjay Hegde, learned senior counsel assisted by Mr. Ishan Verma, learned counsel for the petitioner.

Also heard Mr. Chandresh Shrivastava, learned Additional Advocate General

alongwith Mr. Vikram Sharma, learned Deputy Government Advocate, appearing for respondents No.1 and 2.

The L-1 bidder had submitted an application, registered as I.A. No.02 of 2022, for impleading it as a party respondent.

This application is not opposed.

M/s Real Mazon Indian Ltd. 304, Building No.26, Nirmal Tower, Barakhamba Road, Connaught Place, New Delhi-110001, is arrayed as respondent No.4.

I.A. No.02 of 2022 is allowed and disposed of.

The Registry will make necessary incorporation in the cause-title.

We have also heard Mr. Aman Preet Singh Rahi, learned counsel, who appears for respondent No.4.

The petitioner participated in a tender being Tender No.TD/02/TC dated 13.11.2021 for assembling, establishing, procuring technology, designing, developing, producing, embossing, aising and itting of High Security Registration Plates ('HSRP', for short). The bid of the petitioner came to be rejected at the stage of techno-commercial evaluation on account of not meeting the eligibility criteria. The said rejection was communicated to the petitioner on 05.02.2022 by an e-mail.

The writ petition is iled, essentially, to set aside the decision of the respondent No.2 to reject the bid submitted by the petitioner in respect of subject tender and the e-mail dated 05.02.2022, whereby such decision of rejection was communicated to the petitioner.

In the e-mail, by which the rejection was communicated to the petitioner, no reason for rejection was assigned.

It would be relevant to note that when the matter had come up for consideration on 11.02.2022, the case was ixed today for further consideration and Mr. Shrivastava had submitted that till today, no work order will be issued to L-1 bidder.

The respondents No.1 and 2 had iled a reply-aidavit on 14.02.2022.

In the return iled by the State, it is stated at paragraph-9 that the petitioner was declared disqualified in view of non-fulilling the eligibility criteria and non-compliance of Clauses 1.1.4, 4.3.1(xi) and 6.8 of Instructions to Bidders, for short, ITB. It is further stated that bid document fee was also not paid as per tender requirement.

Mr. Hegde submits that the petitioner meets the eligibility criteria as laid down in Clause 1.1.4, and to buttress his contention, he draws our attention to Annexure P/14 at pages No.157 and 158 as well as to a certiicate issued by the TVS Motor Company at page No.159. In the certiicate, it is stated that the petitioner has

been executing HSRP project and has been supplying HSRP for all the vehicles manufactured/sold by TVS Motor Company Limited through its dealer network since 01.04.2019 in 9 States/Union Territories of India, including in the State of Chhattisgarh. Relying upon Annexure P/14, it is contended by him that the ground of rejection for non-compliance of Clause 1.1.4 is wholly misconceived.

With regard to the plea taken in the reply-aidavit regarding the other grounds for rejection of the technical bid of the petitioner, namely, Clauses 4.3.1(xi) and 6.8, it is contended by him that such Clauses do not come into picture for consideration at the stage of techno-commercial evaluation and therefore, placing reliance on such Clauses is wholly unwarranted. It is submitted that the technical bid of the petitioner has been rejected on extraneous consideration in order to sub-serve the interest of a cartel. Contention is also advanced to the effect that a comparison of the price quoted by the petitioner and the L-1 bidder would go to show that the price offered by the L-1 bidder is higher than the price of the petitioner by 33.62%, 43.65% and 26.36%, in respect of 2 Wheeler, 3 Wheeler and 4 Wheeler, respectively. On the basis thereof, he contends that people of Chhattisgarh who will have to bear extra cost if the contract is settled with the respondent No.4 instead of the petitioner. Accordingly, he prays for an interim order directing the respondents not to award the contract pursuant to the Tender No.TD/02/TC dated 13.11.2021 during the pendency of the writ petition.

Mr. Shrivastava submits that from the very beginning, the petitioner was aware that it did not fulfill the eligibility criteria as laid down in Clause 1.1.4 and that is why in the pre-bid meeting held on 22.11.2021, the petitioner had raised a query with regard to Clause 1.1.4. The query raised by the petitioner would demonstrate that the petitioner does not meet the eligibility criteria and that is why the petitioner had prayed for reduction of experience limiting the same to only one State/Union Territory in India, instead of 5, as laid down in Clause 1.1.4.

It is contended that the petitioner had submitted the tenderdocument fee by way of Demand Draft of ICICI Bank instead of a Nationalized Bank as required under the ITB. He has also submitted that it is not correct as submitted by Mr. Hegde that Clause 6.8 does not come into frame at this juncture inasmuch as Clause 6.8 provides that an undertaking that the project would be implemented by the Contractor himself shall have to be enclosed with the technical bid, which the petitioner had not complied with. With regard to Clause 4.3.1(xi), it is submitted by him that the said Clause has to be read alongwith Clause 1.1.4. He contends that the certificates produced from various original equipment manufactures do not meet the criteria in absence of any certificate from the Regional Transport Officer / District Transport Officer.

Mr. Rahi basically adopts the arguments advanced by Mr. Shrivastava. He, however, contends that, admittedly, the petitioner had not submitted bid document fee as required and as such, the State authorities ought to have rejected the bid of the petitioner outright instead of considering its technical bid. He points out that the instant tender was issued under Clause 5(ii), which deals

with 6 supply of HSRP including the third registration mark on old vehicles after placing the registration mark, of the Motor Vehicles (High Security Registration Plates) Order, 2018 issued by the Ministry of Road Transport, which came into force from 01.04.2019. It is submitted by him that the document submitted by the petitioner at page No.157 goes to show that the petitioner was dealing with only 16 original equipment manufactures, whereas, there are more than 100 original equipment manufactures in our country and therefore, it cannot be said that such a certificate conforms to Clause 1.1.4 which requires that the scope of contract should be for implementing HSRP in all Regional Transport Offices / District Transport Offices of the respective State/Union Territories. Accordingly, he submits that no case is made out for grant of any interim order.

Issue notice on motion, returnable in 10 weeks.

No formal steps are called for with regard to the respondent Nos. 1, 2 and 4, as they are duly represented.

Steps on respondent No. 3 by registered post with A/D. Clause 1.5 is in respect of pre-bid meeting and accordingly, as indicated in the tender notice, pre-bid meeting was held on 22.11.2021.

At the outset, for the purpose of consideration of interim prayer, Clause 1.1.4, Clause 4.3.1(xi) and Clause 6.8 are extracted hereinbelow:

"1.1.4. The Sole Bidder / Lead Bidder (in the case of Consortium) must have Technical Experience in executing/executed High Security Registration Plate Project for at least 5 whole States/ Union Territories in India for a minimum period of one year, in last five financial years. The scope of such contract should be for implementing HSRP in all RTOs / DTOs of the respective State / Union Territory."

"4.3.1. TECHNICAL BID documents are as following :

xxx xxx xxx

xi. Current Contract Commitment/ Works in progress in India as shown in Annexure XIII".

"6.8 No Subletting / Sub contracting Being a High Security Project, the Contractor shall be required to implement the Project by himself. Sub-contracting / sub-letting Franchise will not be allowed under any circumstances. An undertaking to this effect must be enclosed with the Technical Bid that the project will be implemented by the Contractor himself."

It will now be appropriate to take note of the query raised by the petitioner in the pre-bid meeting that took place on 22.11.2021.

In the query, the petitioner sought for amendment of Clause 1.1.4 to reduce experience of HSRP project to one State / Union. It had given a list of HSRP manufactures, who have experience of working in at least one State, but does

not have experience of working in 5 States. In the said list, the petitioner is at Sl.No.1. It is stated therein that in view of the said Clause, the aforesaid manufacturers including the petitioner will be ousted from participating in tender process and it will allow participation of only three HSRP manufacturers.

In response to the said query, the reply was to the effect that IFB condition shall prevail.

On perusal of the query, prima facie, it is difficult to accept the contention of Mr. Hegde that there was no admission of the petitioner that it does not meet the eligibility criteria as laid down in Clause 1.1.4. Admittedly, the petitioner has also not furnished any undertaking as required under Clause 6.8. Though contention is now advanced that the petitioner meets the eligibility criteria, on perusal of the materials on record, we are of the considered opinion that no case for grant of an interim order, as prayed for, is made out and, accordingly, the prayer for interim order is rejected."

12. Both the petitioners challenged the said orders before the Supreme Court in Special Leave Petition (C) No. 4565/2022 and 4380/2022, respectively, which were dismissed vide order dated 01.08.2023.

13. The lowest bidder in this IFB was the M/s. Real Mazon India Ltd. and as such, vide order dated 16.02.2022, it was also directed to be impleaded as respondent No. 4 in both these petitions.

14. In WPC No. 809/2022, the State/respondent had filed an affidavit on 17.02.2022, stating the reasons for disqualification of the petitioner. It was submitted that the Tender Evaluation Committee had duly scrutinized and evaluated the bids submitted and as per the evaluation made, it was found that the petitioner could not make compliance of Clause 1.1.4 read with 4.3.1 (xi), 1.2.3 (PAN and ITR not submitted), 4.3.1 (xxiv) (certificate for Laser Printing not submitted), Annexure (xix) (undertaking not submitted), 6.8 (undertaking not submitted) and the bid document fee was not as per the requirement and accordingly have declared the petitioner as disqualified.

15. It was further submitted in the affidavit that as per Clause 1.1.4 of the IFB, the petitioner lacked the eligibility criteria and was well aware of the said fact much prior to the rejection of his bid. The said submission is fortified from the fact that as per tender, a pre-tender meeting was held on 22.11.2021 wherein the petitioner had also raised issues with respect to Clause 1.1.4 and has made suggestions, however, the same was rejected and it was stated that IFB condition shall prevail. On 22.11.2021 in the pre-bid meeting, the petitioner and other prospective bidders were present wherein specifically M/s Celex Technology Private Limited had raised objection with respect to Clause 1.1.4 and has objected on the count that the said condition could not be fulfilled by list of HSRP Manufacturers who have experience of working in at least one State but not have experience of 5 States. The said objection was also discussed in the pre-bidding meeting on 22.11.2021 wherein the petitioner was also present however the said

contentions were rejected and uploaded on 06.12.2021 making aware of everyone regarding requirement of Clause 1.1.4. The petitioner was well aware that he does not fulfill the said eligibility requirement and have participated in the tender and on being rejected making contentions that 'reasons' have not been assigned. There is a material suppression in the pleadings of the petitioner with regard to participation in the pre-bid meeting held on 22.11.2021 and in light of the said submissions made in the affidavit, the State had prayed for dismissal of the writ petition.

16. In response to the aforesaid affidavit, the petitioner-FTA HSRP Solutions Pvt. Ltd. has filed a counter-affidavit on 05.05.2022 stating that a bare perusal of the affidavit filed by the State would show the arbitrary and unjustified reasons for disqualification of the petitioner-Company from the subject tender process. As per the said affidavit, due to the non-compliance of Clause 1.1.4 read with 4.3.1(xi), 1.2.3 (PAN and ITR not submitted), 4.3.1(xxiv) (certificate for laser printing not submitted), Annexure (xix) (undertaking not submitted), 6.8 (undertaking not submitted) and the bid document fee was not paid as per the requirement and accordingly the petitioner-Company was disqualified from the tender process. The rejection of bid of the petitioner on the above mentioned grounds is arbitrary and illegal. The ground of non-compliance of clause 1.1.4 is not tenable as according to the eligibility criteria of the tender document, there are 82 vehicle manufactures, for whom the petitioner-Company is implementing HSRPs in five or more States covering all RTOs/ DTOs. The respondent No. 1 to 3 have misinterpreted the fact that the petitioner-Company is working for only one make of vehicle, namely Suzuki Motorcycles and Scooters, in five states, whereas there are hundreds of makes of vehicles in the country. It is pertinent to mention here that the petitioner-Company had only attached the experience letter issued by Suzuki Motorcycles India Pvt. Ltd. to showcase one example of the petitioner's relevant experience as required by clause 4.3.1 (xi) of the tender document, as in the tender document, the experience the respondent authorities sought was only with respect to the experience of the participating companies in HSRP for at least 5 States either be it for one manufacturing company or more than one that was not relevant as per clause 1.1.4. On bare reading of clause 1.1.4, it is evident that the respondent authorities were seeking the experience of HSRP for at least 5 States from the participating companies. As per the affidavit filed on behalf of the Transport Commissioner, Chhattisgarh, the Department has concluded that since the petitioner-Company had raised their objections to the said clause via the petitioner's letter dated 20.11.2021, titled pre-bid queries, the petitioner-Company already knew that it lacked the eligibility criterion required for the participation in the bidding process. However, the mere perusal of pre-bid queries submitted by the petitioner depicts that the petitioner had requested the Department to raise the entry bar and requisite experience for carrying out such a project in the State. The petitioner had requested the Department to modify the eligibility criteria and asked for the relaxation of 50 lacs HSRPs in the last 3 financial years from the participating bidders. Moreover, this

was not the only query the petitioner had submitted via the same letter. Further, the rejection of bid of petitioner on ground of non-compliance of clause 1.2.3 is also not tenable as the petitioner did not submit the same documents at the time of bid submission as these documents were not asked as per clause 4.3 of the Tender Document Documents submitted in the tender." "List of documents submitted in the tender". The petitioner had submitted all those documents which were asked as per clause 4.3.1 of the tender document which was relevant for technical bid only as it reads as "TECHNICAL BID documents are as following: " wherein the submission of the PAN card was not required. Further, the rejection of bid of petitioner on ground of non-compliance of clause 4.3.1(xxiv) is not tenable as according to the said clause requirement, the bidders were supposed to enclose the documents related to the tie-up or approvals from the testing agency for sourcing of the following: 1. Relective Sheeting 2. Aluminum Plates 3. Hot Stamping Foils 4. Holograms 5. Laser Printing and 6. Snap locks. Among the said items i.e., relective sheeting (RRS), aluminum plates, hot stamping foils, holograms, and snap locks are consumables and needs to be sourced regularly by the HSRP manufacturers. Hence the requirement for submission of vendor tie-ups for such line items is reasonable. However, the Laser printing on HSRPs is carried out by using a laser machine which is an integral part of the plant and machinery installed at the production facility. Once installed the machinery is not required to be sourced from any external party. Therefore, no vendor tie-ups for laser printing is required.

17. The certiicate submitted by L1 (Real Mazon) duly issued by SCANTECH LASER (P) Ltd. for providing uninterrupted service support for a period of 5 years is without any issuance date. In these circumstances, the certiicate submitted by L1 does not hold any sanctity and cannot be treated genuine. However, no objection is being raised by the Transport Department of Chhattisgarh. The certiicate submitted by 12 (Rosmerta Safety Systems), supposedly issued by AGILE Machinerries Pvt. Ltd. with a subject line commitment for uninterrupted supply of items, is without any reference number and date of issuance. It has neither been stamped by the issuing Company nor has the name or designation of the person who has signed the letter. Once again, the Transport Department of Chhattisgarh has not raised any concern in this regard. Since Rosmerta Safety Systems has already been declared as L2 in the said tender clearly indicates that the Transport Department has ?? objection to the submission of such fabricated certiicates.

18. Rejection of bid of petitioner-Company on ground of non-compliance of clause 6.8 is not tenable as the undertaking demanded in this regard is neither the part of "List of documents to be submitted in the tender," as per clause number 4.3, nor is it mentioned as the annexures duly attached in the tender document. (Annexure I till Annexure- XXIV]. Amongst many others, this is also an error in the Tender document, and the petitioner should not be punished for it. The rejection of bid of petitioner-Company on ground of non-submission of Annexure (XIX) is not tenable as the format of the agreement which has been

provided is the format which would be executed between the Government of Chhattisgarh and the successful bidder. There was no requirement to submit such a contract format at the time of the bid submission. Similarly, rejection of bid of petitioner on ground of non-submission of bid fee as per tender requirement as per the clause 4.3.1(xxi) wherein Earnest Money Deposit (EMD) of Rs. 35 lacs was required to be submitted by the bidders, is not tenable. The options given for the submission of EMD were Banker's Cheque / Bank Guarantee / Bank Demand Draft from any Nationalised / Scheduled bank (except Co-operative bank) payable at Raipur. When the respondent/State was ready to accept the EMD of Rs. 35 lacs in the form of Demand Draft from any Scheduled bank, then there should not be any reason for not accepting Demand Draft of Rs. 5000/- as tender fee from the Scheduled bank. This is again an error in the tender document which is being used as an escape route by the respondents for rejecting the bid application of the petitioner. It is pertinent to mention here that in the clause 4.3.1 (xxi) - EMD of Rs. 35 lac was asked, however in words it is written as Rs. Fifty Lakhs only and all the L1, L2 & L3 have submitted the EMD of Rs 35,00,000/- only and not of Rs fifty lakhs. It is submitted that the issue with respect to the Scheduled bank was pointed out by the Transport Department but the contradiction in mentioning the EMD amount was never pointed out as the successful bidders have only paid Rs 35,00,000/- as EMD. The petitioner specifically denies that it had suppressed any fact with regard to the participation in the pre-bid meeting held on 22.11.2021. The pre-bid queries were made for clarification before making the bid or before participating in the tender process but the queries in the pre-bid does not amount to any kind of admission for ineligibility to participate in the Tender Process. Lastly, it has been submitted that the respondent no. 01 to 03 have acted in arbitrarily and biased manner. The bid of the petitioner was rejected because of some shortcomings but the similar shortcomings of the other bidders were overlooked by the respondent authorities and declared some of them as successful bidders. The similar shortcoming of the other bidders which were overlooked by the respondent authorities are as follows:

L1-Real Mazon India Ltd.

Sl.No.

Particulars

Remarks

1

Declaration for no alterations/ corrections in the Bid Document Tender Pg No.3

Declaration is not submitted.

2

Clause 4.25 (d)

List of Court cases/ litigations in contractual matters not furnished. Undertaking

for disposal of old plates not enclosed in Bid

3

Clause 5.2.1(c)

Undertaking for disposal of old plates not enclosed in Bid.

4

Clause 4.3.1(xxiv)

Laser printing vendor undertaking is open ended without any issuance date

L2-Rosemerta Safety Systems Pvt. Ltd.

1

Clause 1.2.3

PAN of Consortium member is not attached and instead of it undertaking from consortium member and CA Certificate for PAN has been provided

2

Clause 4.3.1 (xxiv)

Laser printing vendor undertaking is open ended without any issuance date, Ref. No. and also stamp of the vendor is not affixed.

3

Clause 4.25 (d)

List of Court cases/litigations in contractual matters not furnished.

L3-Shimnit India Pvt. Ltd.

1

Declaration for no alterations/ corrections in the Bid Document Tender Pg No.3

Declaration is not submitted.

2

Clause 4.25 (d)

List of Court cases/litigations in contractual matters not furnished,

3

Clause 5.2.1 (c)

Undertaking for disposal of old plates not enclosed in Bid

4

Clause 4.3.1 (xxiv)

Laser printing vendor undertaking is issued with a date of 31.05.2005, Le more than 16 years prior to the submission of the bid. The letter in no way specifies that these supplies are continued on the bid submission date and nor does it mention the continuity of supplies for a period of 5 consecutive years as required in the bid document. For the perusal of the Hon'ble court the Laser printing vendor undertaking dated 31.05.2005 has been annexed as Annexure P-20.

5

Annexure XII

Undertaking was notarized before the signature of the Director of 13. The undertaking was signed on 02.12.2021 ie after the notary of the undertaking i.e. on 25.11.2021. For the perusal of the Hon'ble court the Undertaking as Annexure XII has been annexed as Annexure P- 21.

19. Accordingly, it is submitted that the bid of the petitioner has been rejected arbitrarily on the unreasonable and untenable grounds by the respondent authorities therefore the decision of the Transport Commissioner to reject the bid of the petitioner deserves to be quashed and set aside.

20. In WPC No. 786/2022, the State/respondents had iled return stating that the petitioner, vide e-mail dated 05.02.2022 through CG-E Proc System Team was informed that his bid was rejected at the techno-commercial evaluation stage on account of allegedly not meeting the eligibility criteria without assigning reasons and accordingly the same is challenged in the instant petition. The main thrust of the petitioner in challenging the communication dated 05.02.2022, was to the effect that no reason has been assigned while rejecting the bid of the petitioner. The terms and conditions mentioned in the IFB, more particularly clause No. 4.13 and 4.20 were relevant. Perusal of the said clauses of the IFB itself would reveal that the entire process of examination, clarification, evaluation and comparison of bid and recommendation for award of the contract is to remain confidential till the finalization as well the decision of the Transport Commissioner with regard to opening evaluation qualification and award is final and binding on all bidders. It is specifically mentioned in the condition of IFB that the right to reject any or all offers received from the bidders without assigning any reason is a specific condition provided in the IFB. The petitioner has not made any challenge to the terms and conditions of the IFB at the time of issuance of tender nor in the present writ petition and on the contrary, accepting the said condition has participated in the process of tender without any objection in that regard and hence is bound by the terms and conditions mentioned therein. The order impugned was passed in accordance with the said conditions and the petitioner is having no right to challenge the said process on the said count and is estopped from raising any such ground and accordingly the petition is liable to be dismissed. Mr. Sangharsh Pandey relies on the decision of the Supreme Court in

National High Speed Rail Corporation Limited v. Montecarlo Limited and another {2022 SCC Online SC 111}. He would further submit that the present petition is further not maintainable at the behest of the petitioner on account of material suppression of facts, since the petitioner was already aware of the fact that he is ineligible as per the terms and conditions of the IFB. As per Clause 1.5 of the IFB, it has been specifically prescribed that prior to the process of bidding a pre-bid meeting was invited and the purpose of the same was to clarify all the issues and to answer questions on any matter that may be raised at that stage. As per date fixed i.e. 22.11.2021 the pre-bid meeting was organized and the queries raised by the prospective bidders and the response of the Department to the said queries were duly uploaded. The said submissions are relevant at this stage since the petitioner had specifically raised query with respect to Clause 1.1.4 of the IFB specifically admitting that he does not fulfill the said condition and have made a request to reduce the said experience clause, which was however turned down by the Department keeping the conditions mentioned in the IFB as intact. Mere perusal of the query raised by the petitioner would reveal that the said condition was duly within the knowledge and was aware of the fact that he does not fulfill the said criteria even prior to the participation in the tender process. The submissions of the petitioner that no reason has been assigned would get futile from the aforesaid fact which was well within the knowledge of the petitioner that he does not fulfill the requisite criteria and material suppression in this regard has been made by the petitioner in his pleadings which itself deprive him from discretionary relief under writ jurisdiction of this Hon'ble Court. The submission of the petitioner with respect to involvement of substantial public interest as the matter has a direct financial impact on lots of common citizen residing in the State on the count that the petitioner's bid is 31.58% lesser than the bid of the Company which has been declared as L-1 entity, is only to mislead and to get indulgence of the Hon'ble Court since the petitioner, prior to participating in the tender itself was well aware that he is ineligible and does not meet the requirement and as such has intentionally participated and quoted an amount so as to make out a ground to raise objection by way of present petition. The said submission is nothing but an attempt to mislead having no bonaide intention but only to stall the entire process of tender and inalization of the same, however, it is worthy to mention that regarding the price quoted by petitioner, the same are the petitioner's submissions as he being technically ineligible, Department has not opened his financial bid. The entire tender process was independent and transparent following the due procedure where in presence of representative of the bidders, the bids were opened on 17.12.2021. The evaluation committee subsequent to that reviewed documents submitted by the representative of the bidders and accordingly it was found that out of 5 bidders 3 were qualified and 2 bidders including the petitioner who have not submitted the documents in compliance of the bid document and were declared disqualified. The petitioner was declared disqualified having not fulfilled the eligibility criteria and non-compliance to Clause 1.1.4, 4.3.1 (xi), 6.8 and even bid document fee was not as per the requirement. Clause 1.1.4 deals with the technical qualification

where the bidder must have a technical experience in executing / executed High Security Registration Plate project for at least 5 whole States/ Union Territories in India for a minimum period of one year in last 5 financial years and the scope of such contract should be for implementing HSRP in all RTOs/DTOs of the respective State/ Union Territories. The said condition is admittedly a condition which the petitioner does not fulfill. The petitioner was well aware of the said condition much prior to participation in the present tender and the said clause was duly explained in the pre-bid meeting, however, despite being ineligible in that regard the petitioner participated and was accordingly declared ineligible which decision in no manner be termed as arbitrary or irrational. In the year 2001 the Central Government issued Motor Vehicles (New High Security Vehicle Registration Plates) Order 2001, the mandatory requirement of inclusion of HSRP was brought in existence, however, in execution of the same when the proceedings were drawn, the matter was challenged before the different Courts hampering the proper execution of the project throughout the country. As a result, subsequently the Hon'ble Supreme Court in the case of Maninderjit Singh Bitta Vs. Union of India {(2012) 1 SCC 707} have issued direction from time to time for implementation of HSRP project and sought affidavits from all the States showing compliance. Even in the said case at one stage, when it was found that the said project is being hampered on account of non-issuance of tender by some of the States for one reason or the other having the challenge made to the tender and award of contract, the Hon'ble Supreme Court vide its order dated 08.12.2011 has observed that in the interest of justice and to ensure proper implementation of the judgment and directions of this Court, as contained in its various orders in regard to manufacturing and issuance of the HSRP it is imperative for this Court to direct that it will be in the interest of things and even judicial propriety would demand that no High Court should pass any interim orders cancelling or staying the tender process in relation to implementation of the scheme." It is submitted that the said petition was subsequently disposed and now again the tenders are floated also in furtherance of HSRP project which the petitioner does not want to be executed having its own vested interest. Mr. Pandey further submits that it is well settled by law that the interference in the contractual matters is on limited grounds and finding the trend of challenge to each and every tender, the Hon'ble Supreme Court has dealt with the issue recently in the case of Uflex Limited v. Government of Tamilnadu and others {(2021) SCC Online SC 738} wherein it has observed that judicial review of contractual matters has its own limitations and the tenderer or contractor with grievance can always seek damages in a Civil Court.

21. The petitioner {in WPC No. 786/2022} had responded to the submissions made by the State vide its rejoinder filed on 09.08.2023. The petitioner has tried to distinguish the facts of this case from that of in National High Speed Rail Corporation Ltd. (supra). Reliance has been further placed on the decision of the Supreme Court in R.D.Shetty v. International Airport Authority {(1979) 3 SCC 489}, Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.

{(2007) 8 SCC 1}. In the rejoinder, it has further been submitted that the bid of the petitioner has been rejected by adopting a perverse interpretation to clause 1.1.4 of the IFB dated 13.11.2021, which is having no bearing whatsoever to a strict and literal construction of the clause. Restrictive interpretation of the said clause would mean that only bidders who have implemented HSRP projects in more than 5 whole States under agreements with State/Union Territory Governments would be violative of Article 14 of the Constitution of India for being arbitrary and having no nexus with the object sought to be achieved, besides treating equals unequally and thereby denying a level playing field.

22. Relying on the rejoinder affidavit, Mr. Gupta would also submit that the petitioner provides end-to-end solutions to the Motor Vehicle Manufacturers. The petitioner creates requisite infrastructure at the premise of the Motor Vehicle dealers and deploys manpower and machines in the premise of the dealer for embossing, hot-foiling, order booking and axing of HSRPs onto vehicles. Hence, there is no material difference whatsoever between activities and operations carried out in HSRP projects implemented pursuant to agreements with State Governments, and HSRP projects being implemented by the Petitioner pursuant to Agreements with OEMs/Motor Vehicle manufacturers. Further mere implementation of HSRP projects in multiple States itself doesn't establish adequate technical capacity and experience. A particular entity could be implementing HSRP projects in small states or UTs with small motor vehicle populations. On the other hand, a vendor like the petitioner has been implementing the HSRP projects across India for several reputed Motor Vehicle manufacturers as detailed in paragraph 19 of the rejoinder. In fact the petitioner is already supplying HSRPs to about 50% of all the new vehicles that are sold in Chhattisgarh. The petitioner therefore undoubtedly has the competence, capacity and experience to implement the project pursuant to the Tender No. TD/02/TC dated 13.11.2021. The competence and capability of the petitioner to manufacture HSRPs of the prescribed quality and standards already stands established with the obtaining of a type-approval certificate from a laboratory/institution /testing agency prescribed by/under Rule 50 of the Central Motor Vehicle Rules, 1989. Once such competence and capability have already been established in accordance with the statutorily prescribed rules, additional eligibility conditions prescribed under the garb of seeking to determine competence, serve no purpose whatsoever other than gate-keeping/restricting participation by competent manufacturers.

23. Mr. Gupta would also submit that the submission made on behalf of M/s. Real Mazon India Ltd. that the petitioner was dealing with only 16 original equipment manufactures, whereas, there are more than 100 original equipment manufactures in our country and therefore, it cannot be said that such a certificate conforms to Clause 1.1.4, is completely misplaced. The specifications for HSRPs is provided for in Rule 50 of the Central Motor Vehicle Rules, 1989 which applies irrespective of the OEM or the model of the vehicle. Hence, once a manufacturer has a Type-approval certificate, his competence to manufacture

HSRPs of the specified quality standards established, irrespective of the OEM or the model of the vehicle on which the HSRP is to be affixed. It follows from the mandate of Article 14 and 19(1)(g) of the Constitution that there ought to be a level-playing field for participants in the commercial field. This principle has been held to be applicable to tender conditions in the case of Reliance Energy Ltd. (supra). There would be no level-playing field if eligibility is limited only to bidders who have implemented HSRP projects under Agreements with State/UT Governments.

24. With regard to limiting participation to bidders who have implemented HSRP projects in 5 or more states under Agreements with State/UT Government would be contrary to the direction of the development of the law, Mr. Gupta would submit that HSRP as a form and manner of display of registration marks on Motor Vehicles was first introduced in the year 2001 by amending Rule 50 of the Central Motor Vehicle Rules, 1989. Between 2001 and 2018, supply and affixation of HSRP was carried out solely through vendors selected by State/UT Governments through Tender processes. Subsequently, by way of an amendment dated 04.12.2018 which came into effect on 01.04.2019, Rule 50 was amended to provide that in case of new vehicles, HSRP would be supplied by the Motor Vehicle manufacturers and affixed by the dealer of such manufacturer. In the case of old vehicles, an option was given to implement the project either through the dealers of the Motor Vehicle Manufacturers or HSRP manufacturers selected by the State Government. As a result of the aforesaid amendment, it has been conceived that eventually, all supply and affixation of HSRP would be carried out by the Motor Vehicle manufacturers or their dealers, either directly or through Type-approved HSRP manufacturers. The petitioner has implemented HSRP projects under agreements with Motor Vehicle manufacturers under this new regime. The Central Government explained the objective behind the aforesaid amendment to Rule 50 in an affidavit filed by it before the Hon'ble Supreme Court in *M.C. Mehta vs. Union of India* {WP(C) No. 13029 of 1985}.

25. The amended Rule 50 of the Central Motor Vehicle Rules, 1989 enables greater participation and competition in the business of supplying and affixing HSRPs. Limiting the eligibility to bidders who have implemented HSRP projects under Agreements with State/UT Governments alone, would be a regressive step that is at odds with and going against the direction of the development of the law.

26. The petitioner, suspecting that Clause 1.1.4 of the IFB dated 13.11.2021 may have been tailor-made to favour certain bidders, submitted certain pre-bid queries before the Transport Commissioner. The pre-bid queries were prepared by interpreting the aforesaid clause 1.1.4 to mean that the bidder would require experience in implementing HSRP projects in 5 whole States pursuant to concession agreements with State/UT Governments. It was stated in the queries that such a clause does not have any rational nexus with objective sought to be achieved and that any bidder who has a valid TAC, has sufficient manufacturing

capacity and has an experience of implementing HSRP project(s) even in one State/UT would be competent enough to undertake the project. Further, it was stated that since the HSRP project had been implemented by only a few State/UT Governments, only the three companies which were seemingly being favoured, would have implemented such a project under a Concession Agreement with a State/UT Government in 5 whole States for the period of one year in the last five years. In the aforesaid pre-bid queries, the petitioner had requested the Transport Commissioner to amend the tender in order to promote fair and open competition. However the said request was rejected by way of the report containing replies to pre-bid queries. It is pertinent to note that while rejecting the petitioner's request at the pre-bid stage, all that was stated in the pre-bid report was that "IFB condition shall prevail". There was no hint about how the tendering authority had itself understood and interpreted the clause. Subsequently, on a careful reading of Clause 1.1.4 and on consulting with legal expert(s), it was understood by the petitioner that on a plain and literal construction of Clause 1.1.4 the petitioner would be eligible to participate in the tender process on the basis of its experience in implementing HSRP projects for Motor Vehicle manufacturers/OEMs across the country. Hence, the petitioner submitted a bid clearly demonstrating its experience in implementing HSRP projects for Motor Vehicle manufacturers/OEMs in all RTOs/DTOs in 5 whole States for more than a year in the last five years. However, as suspected, the Transport Commissioner rejected the bid of the petitioner by adopting an interpretation to Clause 1.1.4 that is contrary to the plain words of the clause, and thereby found only the bidders who were suspected to be favoured to be technically fit. Since there is no ambiguity in the wordings of clause 1.1.4 of the IFB dated 13.11.2021 and a literal construction of the Clause does not in any manner indicate that the specified experience ought to have been obtained from agreements with State/UT Governments, in accordance with well-established principles of law, the clause ought to be given its plain and literal construction. The contents of the letter/query of the petitioner, raised during the course of the pre-bid meeting in the specific context of a genuine suspicion having arisen of the tendering authority seeking to favour certain bidders, is of no relevance whatsoever for the purposes of interpreting Clause 1.1.4 of the IFB dated 13.11.2021. Hence, the reliance placed upon it in the return dated 14.02.2021 is based upon a mistaken understanding of the principles governing interpretation a tender document. Furthermore, clause 1.5.4 of the IFB indicates an intention to not accord any weightage to the contents of the minutes of the pre-bid meeting for the purposes of the interpretation of the tender conditions.

27. Mr. Gupta would further submit that limiting participation to only persons who have implemented HSRP projects in 5 or more whole States under agreements with State/UT Governments would result in the favouring of three bidders with questionable track-records, There are eighteen type-approved High Security Registration Plate Manufacturers. However, as stated by the petitioner in the pre-bid queries, only three Companies have the experience of Implementing

HSRP projects in more than five whole States under agreements with State/UT Governments. On the other hand, with the amendment of Rule 50 of the Central Motor Vehicle Rules, 1989 in the year 2018, which has enabled greater participation in the market for the supply and acquisition of HSRPs, several other competent HSRP manufacturers have been implementing HSRP projects across the length and breadth of the country under agreements with OEMs/Motor Vehicle manufacturers. Such other manufacturers have thereby substantially enhanced their capacity. The petitioner is in fact one of the largest HSRP suppliers in the country and is implementing HSRP project across the country including in the State of Chhattisgarh where it is implementing the HSRP project inter-alia for Motor Vehicle manufacturers like TVS, Mercedes Benz, BMW Ampere, TATA, Mahindra & Mahindra, Skoda, Volkswagen, Toyota, India Yamaha Motors, Honda, Hyundai and Mercedes Benz etc. In fact the petitioner is already supplying HSRP to about 50% of all the new vehicles that are sold in Chhattisgarh. As suspected by the petitioner, it was only the three Companies who were sought to be favoured, who were found to be technically competent. It is submitted that all three companies have questionable track records as two out of the three companies (L-1 and L-3) are owned by a single individual. There are CAG Reports against the said two companies detailing how they had cartelized the activity of implementation of HSRP projects under State Tenders and how those companies have grossly abused the concessions given to them by State Governments. (Annexure Annexure R-2 and R-3). Further the third Company i.e., L-2 which is/ was implementing the project in the State of Delhi has serious allegations against it which have prima facie found to be a violation of Rule 50 of the Central Motor Vehicle Rules, 1989 by the Hon'ble Supreme Court in *Maninderjit Singh Bitta vs. Vijay Chibber* (2016) 14 SCC 72. It is to Companies with such questionable track record, whose misconducts have been noted by Constitutional bodies like the CAG and the Hon'ble Supreme Court, that the respondent authorities are awarding the contract for the implementation of the HSRP project in the State of Chhattisgarh, by ousting several other competent manufacturers, including the second largest manufacturer of HSRPs in the country under the garb of allegedly failing to meet with eligibility conditions. In order to justify the alleged ineligibility of the Petitioner, the Respondent-authorities had adopted a totally perverse construction of Clause 1.1.4 of the IFB.

28. From the minutes of the pre-bid meeting which has been attached to the return dated 14.02.2022 that the requests of none of the bidders were accepted other than the requests of the three favoured bidders whose bids were, as expected, the only bids found to be technically fit. Further, on a perusal of Sl. No. 10 and Sl. No. 15 of table of the minutes of the pre-bid meeting, it may be noted that at the request/behest of the L-2 and L-3 bidders the tendering authority went on to delete a clause which required bidders to furnish a list of Court cases/litigation in contractual matters involving the bidders. Besides the fact that the desire of these bidders to conceal details of ongoing litigation/Court cases is itself suspicious, the decision of the tendering authority to accede to such a request

supports the submission of the petitioner that the tendering authority has sought to favour the three bidders who were found to be technically it. All of these circumstances support the submission of the petitioner that the respondent-authorities have sought to favour the three bidders who were found to be technically competent.

29. Clause 4.3.1(xi) of the IFB requires bidders to provide a list of "Current contract Commitment/Works in progress in India as shown in Annexure XIII". The petitioner has duly submitted a list in the form provided in Annexure XIII of the Tender Document, along with its technical bid. However, the respondent seems to state that Clause 4.3.1(xi) of the IFB has not been complied with, as the petitioner had provided the details of its current contractual commitments/works under agreements with Motor Vehicle manufacturers. This experience has been disregarded by the tendering authority. This issue requires to be considered along with the issue of the interpretation of Clause 1.1.4, and the submissions made with regard to the said clause may apply to this issue as well. The alleged non-compliance with Clause 6.8 of the IFB dated 13.11.2021 is of no consequence whatsoever insofar as determining the responsiveness of the bid of the petitioner is concerned. Clause 6.8 of the IFB requires bidders to submit along with their technical bids, an undertaking to the effect that the project will be implemented by the contractor himself. Due to inadvertence, the petitioner missed out on including an undertaking to the above effect along with its technical bid. However, it is submitted that by the mere act of submission of a bid, with every page of the tender document signed, the petitioner has undertaken to adhere by all the contractual terms and conditions provided in the IFB including the prohibition on sub-letting/sub-contracting, if it is awarded the contract. The non-submission of an express undertaking to this effect on account of inadvertence does not take away the petitioner's obligation and undertaking to not sub-let/sub-contract if it is awarded the contract. Hence, this short-coming in the technical bid, if at all it may be called so, was only technical and inconsequential and could have been easily rectified by the Petitioner if called upon to do so. Clause 6.8 of the IFB falls under main Clause 6 which bears the heading "Terms and Conditions of Contract". The said clause deals with conditions that would apply after award of the contract and not with matters pertaining to the submission of bids and the selection process. Hence, the requirement to submit the undertaking as per clause 6.8 along with the technical bid, is located out of place and the petitioner had genuinely missed out on the same while submitting its technical bid due to inadvertence. Clause 4.3.1 of the IFB provides a list of Documents which are to be included in the technical bid. The said list did not contain an entry relating to an undertaking of the nature provided in clause 6.8. Notwithstanding the missing out of the undertaking of the nature referring to in clause 6.8, the petitioner's bid is substantially responsive. A substantially responsive bid for the purposes of the IFB dated 13.11.2021 is defined in Clause 4.12.2. An inadvertent missing out of an undertaking to which the petitioner would anyway be bound by if its bid is accepted, does not amount

to the technical bid of the petitioner becoming substantially unresponsive.

30. Mr. Gupta would also submit that the contention that the bid fee was not as per requirement is not of any relevance anymore as the Demand Draft submitted by the petitioner had already been encashed and the technical bid of the petitioner had been opened, and the deviation, if at all it may be called so, is inconsequential and does not warrant rejection of the bid of the petitioner. The bid document fee of Rs. 5,000/- was duly paid by way of a Demand Draft drawn on the ICICI Bank. However, as per the relevant tender condition, the demand draft from a nationalized bank was preferred. The deviation, if at all it maybe called so, does not have any material bearing on the tender. Further, the demand draft submitted by the petitioner was encashed and the technical bid of the petitioner was opened. Hence, the tendering authority itself had accepted the demand draft submitted by the petitioner.

31. Mr. Gupta would lastly submit that while construing terms of a contract, plain construction of the terms of the contract should apply unless the same results in some absurdity. In support of his contentions, he relies on the decisions of the Supreme Court in *Delhi International Airport Ltd. v. AERA* {(2024) 1 SCC 176} and *Bangalore Electricity Supply Co. Ltd. v. E.S.Solar Power* {(2021) 6 SCC 718}. He also submits that where the words of a contract/tender document are clear and unambiguous, there is no room for any interpretation by going into the mind of the author. He relies on the decisions of the Delhi and Bombay High Court in *Xcellance Medical Technologies Pvt. Ltd. v. HLL Infra Tech Services Ltd. & Another* {(2021) SCC OnLine Del 4635} and *Shinde Developers v. Mormugao Port Authority* {(2023) SCC OnLine Bom 1267}.

32. Mr. Aman Preet Singh Rahi, learned counsel for the respondent No. 4-M/s. Real Mazon India Ltd. would submit that the decision of the respondent authorities in rejecting the bid of the petitioners herein is just and proper and does not warrant any interference. The respondent No. 4 has been declared as L-1 after meticulous examination of the tender documents and other relevant aspects and there is no illegality in the decision of the respondent authorities. He would pray for dismissal of both the writ petitions.

33. An application was filed by the intervenor-Rosemerta Safety Systems Pvt. Ltd. in both the petitions stating that the petitioners with the present petitions had filed an interim application seeking a stay of the tender process, which came to be dismissed by this Hon'ble Court on 16.02.2022. Thereafter, the petitioners had assailed the said order before the Hon'ble Supreme Court in an SLP (C) 4380/2011 and 4565/2022 wherein the intervenor had filed a caveat and subsequently appeared before the Hon'ble Supreme Court. On 01.08.2023, after hearing the parties including the intervenor, the Hon'ble Supreme Court declined to interfere with the impugned order dated 16.02.2022 and dismissed the SLP filed by the petitioners.

34. The aforesaid application (in both the petitions) were allowed by this Court

vide order dated 22.02.2024.

35. Mr. Vaibhav Shukla, learned counsel for the intervenor would submit that in these petitions, the intervenor would be directly affected by the outcome of the present writ petition being L-2, because a portion of the tendered work would be awarded to the intervenor as L-1 in terms of clause 4.19.2 of the IFB which reads as under:

"4.19.2 The State has been designated into two zone namely Zone A and Zone B (as per Annexure-1) and the selection will be two separate bidders (L-1 and L-2 wherein L-2 has to match the rate of L-1) to execute the scheme in equal proportionate in their zone. The selection of the bidder will be through one bid/tender and strictly as per eligibility conditions of the bid documents."

36. Mr. Shukla would further submit that the intervenor also participated in the IFB and the after opening of the price bid of the intervenor by the Respondent State, the intervenor stood as L-2 which was duly accepted by the State, as the intervenor fulfilled all the eligibility conditions mentioned in the IFB. Pursuant to the above, vide letter dated 04.02.2022, the respondent-State has also sought consent of the intervenor for executing the tendered work of designing, manufacturing, supply and fixing of High Security Registration Plates on "build, own and operate (BOO) basis in vehicles in Chhattisgarh. In response to the above, the intervenor submitted its consent vide letter dated 04.02.2022 to the respondent-State to match the prices with L-1 bidder in compliance to clause No. 4.19.2 of the IFB and accepted the prices offered by L-1 bidder. Thereafter, on 24.02.2022 the State/Office of Transport Commissioner has issued LOA to the intervenor and the performance security has also been deposited by the intervenor. The intervenor being L-2 in the light of 4.19.2 of the IFB is a necessary and proper party. Any order passed by this Hon'ble Court in the present matter would have direct bearing on the rights and interest of the intervenor including financial implication.

37. Mr. Shukla further submits that so far as the present writ petition filed by the petitioners are concerned, it is respectfully submitted that the instant petition have been filed with an ulterior motive to derail the tender process on false and fabricated grounds which is evident from the fact that the petitioners despite knowing the fact that it is ineligible at pre-bid meeting stage itself held on 22.11.2021 on account of non-fulfillment of requisite criteria under the IFB, have purposefully participated in the IFB notwithstanding the fact that the objections made by the petitioners were rejected by the State on 06.12.2021 which was known to the petitioners. Further, the law relating scope of interference/ judicial review in tender matters has now been well settled by Hon'ble Supreme Court as well as this Hon'ble Court in catena of decisions. Time and again, it has been categorically held by the Hon'ble Supreme Court that the High Court's exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India would not sit as an appellate authority on the decision of tendering authority. Merely because the petitioner has quoted lower rates than the L1 bidder would not

entitle the petitioners for awarding the work because it is well settled law that price is one of the factor and not the sole factor in awarding of the tendered work. It is within the domain of the tender authority to accept the bid which is most suitable and qualified in executing the tendered work. The petitioners have suppressed material facts with respect to its eligibility in their writ petitions just in order to procure favorable order from this Court which is completely illegal. Admittedly, the petitioners do not qualify the technical requirement contained in Clause 1.1.4 read with 4.3.1 (xi), 1.2.3, 4.3.1(xxiv) of the tender conditions. Further, the petitioners have also failed to submit Annexure XXIV and XIX of the IFB ie. undertaking and certificate. The requirement under IFB was experience for at least five whole States/Union Territories in India for a minimum period of one year in last five financial years and the scope of such contract should be for implementing HSRP in all RTOs/DTOs in the respective State/Union Territories which petitioners admittedly did not fulfill. The petitioners, much prior to their participation in the IFB were aware that it was not technically qualified in the IFB process. The petitioners, after opening of the price bid cannot at this stage in any manner challenge terms and conditions of the IFB or question the award of work to L-1 and L- 2 i.e the intervenor as the petitioners participated in the tender process with wide open eyes thereby, accepting the terms and conditions of the IFB despite knowing the fact that the petitioners are not technically qualified.

38. The qualification under clause 1.1.4 was executing HSRP for at least five whole States/Union Territories in India for a minimum period of one year in last five financial years and the scope of such contract should be for implementing HSRP in all RTOs/DTOs in the respective State/Union Territories but the petitioners were not having the above qualification / experience of executing HSRP in minimum 5 States as required under the IFB. Besides the above, the petitioners have dealt with only one make of vehicle, namely, Suzuki Motorcycle and Scooters, while there are hundreds of makes of vehicles in the country, and therefore, by no stretch of imagination can it be said that as required under Clause 1.1.4, the petitioner has been implementing HSRP in all RTOs/DTOs of the respective States and as such, the respondent-State was absolutely justified in law and facts in rejecting the bid of the petitioners. The whole tender process has been carried out with utmost fairness and transparency in accordance with the terms and conditions of the IFB having regards to the scope of work and there is no iota of arbitrariness, illegality or infirmity as alleged by the writ petitioners. The intervenor vehemently opposes the writ petitions of the petitioners and denies each and every adverse allegations made in the writ petition against L-1 and consequently against L-2. The petitioners have failed to make out any legal and valid ground for seeking interference of this Hon'ble Court and therefore, the present writ petitions deserve to be dismissed at threshold and the petitioners are not entitled for any relief as claimed in the writ petition whatsoever. In support of his contentions, Mr. Shukla relies on a decision of the Supreme Court in *Association of Registration Plates v. Union of India & Others* {(2005) 1 SCC 679}.

39. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

40. The petitioners, in both the writ petitions are basically aggrieved by rejection of their bids by the Transport Commissioner. The reason assigned for rejection of their bids is that both the petitioners do not meet the eligibility criteria. The petitioners have tried to dispute the reasoning given by the Transport Commissioner that they do not fulfill the eligibility criteria. From perusal of the affidavit filed by the State/respondents {in WPC No. 809/2022}, it is apparent that the Tender Evaluation Committee had duly scrutinized and evaluated the bids submitted and as per the evaluation made, it was found that the petitioner could not make compliance of "Clause 1.1.4 read with 4.3.1 (xi), 1.2.3 (PAN and ITR not submitted), 4.3.1 (xxiv) (certificate for Laser Printing not submitted), Annexure (xix) (undertaking not submitted), 6.8 (undertaking not submitted) and the bid document fee was not as per the requirement" and accordingly have declared the petitioner as disqualified. Similarly, in the second writ petition {WPC No. 786/2022}, according to the State/respondents, the petitioner did not fulfill the technical requirement under clause 1.1.4 as it had not enclosed any certificate/LOI/Agreements with the State Transport. The petitioner was supplying HSRP to some of the automobile manufacturers and their representative dealers, however, the same was not the requirement under the clause of technical experience as mentioned in clause 1.1.4 supplies of HSRP to the vehicle manufacturers and their dealers being done by the petitioner cannot be counted as experience as the scope of contract was implementing HSRP in all RTOs/DTOs of the respective State/Union Territories. The IFB conditions envisage end to end solution for the HSRP project which included creating infrastructure in the RTO/DTO, deployment of manpower, machines in the RTO/DTO for embossing, hot foiling, order booking and the important matters for HSRP fixation of HSRPs onto the vehicle in the RTO/DTO whereas the petitioner was merely supplier of HSRP to the dealers. The petitioners also failed to fulfill the criteria as prescribed under clause 4.3.1 (ix), clause 6.8 having not submitted the requisite information and documents and even the bid document fee was not as per the requirement.

41. Clause 4.13 and 4.20 of the IFB is relevant for adjudication of these petitions and hence, they are quoted below:

"4.13 PROCESS TO BE CONFIDENTIAL

Information relating to the process of examination, clarification, evaluation and comparison of bids and recommendations for the award of contract shall not be disclosed to bidders or any other persons not officially concerned with such process. Any effort by a bidder to influence the Transport Commissioner's processing of bids or award decisions may result in rejection of his bid"

4.20 RIGHT TO ACCEPT ANY BID TO REJECT ANY OR ALL BIDS BY THE TENDER ACCEPTING AUTHORITY

4.20.1 The decision of the Transport Commissioner regarding the opening, evaluation, qualification and award of the bid shall be final and binding on all the bidders.

4.20.2 The Transport Commissioner reserves the right to reject any or all offers received from the bidders without assigning any reason."

42. The petitioner-Company {in WPC No. 786/2022} had already requested the respondent authorities to reduce the experience of HSRP project to one (1) State/ Union Territory in India for State/Union Territory Transport Department and relaxing the clause 1.1.4 of the IFB to which the respondents have replied that the IFB conditions would prevail. The contention that the said company is that it has been supplying and fixing HSRPs in the State of West Bengal under a Concession Agreement with the State of West Bengal, wherein the

petitioner in the year 2010 was awarded a contract for the supply of HSRPs. The said contention itself goes to show that it does not fulfill the criteria of executing HSRP project for at least five whole States/Union Territories in India for a minimum period of one year, in last five financial year. The petitioner-Company was well aware that it does not fulfill the said criteria and hence, it had prayed that the same be reduced from five (5) to one (1). It is for the authority issuing the tender who has to decide as to what should be the conditions of tender. Even if the petitioner has been supplying and fixing HSRPs in several other States under agreements with several motor vehicle manufacturers, that would not mean that it has the experience in five whole States/Union Territories and the scope of such contract is for implementing HSRP in all RTOs / DTOs of the respective State/ Union Territory.

43. It is well settled law that in contracts involving complex technical issues, the Court should exercise restraint in exercising the power of judicial review. Even if a party to the contract is 'State' within the meaning of Article 12 of the Constitution, and as such, is amenable to the writ jurisdiction of the High Court or the Supreme Court, the Court should not readily interfere in commercial or contractual matters. This principle has been reiterated by the Supreme Court in *Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others* {2023 SCC OnLine SC 671}. The Court ought to defer to the discretion of the tender inviting authority which, by reason of having authored the tender documents, is best placed to interpret their terms. The Courts ought not to sit as courts of appeal but review the decision-making process and examine arbitrariness or mala fides, if any {See: *Monte Carlo Limited v. National Thermal Power Corporation Limited*, (2016) 15 SCC 272}.

44. The Supreme Court, *Uflex Limited* (supra), observed as under:

"1. The enlarged role of the Government in economic activity and its corresponding ability to give economic 'largesse' was the bedrock of creating what is commonly called the 'tender jurisdiction'. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke

the jurisdiction of the High Court under Article 26 of the Constitution of India (hereinafter referred to as the 'Constitution'), beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The Public Interest Litigation ('PIL') jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.

2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fide. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance. {Jagdish Mandal v. State of Orissa (2007) 14 SCC 517}.

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted.

4. In a sense the Wednesbury principle is imported to the concept, i.e., the decision is so arbitrary and irrational that it can never be that any responsible authority acting reasonably and in accordance with law would have reached such a decision. One other aspect which would always be kept in mind is that the public interest is not affected. In the conspectus of the aforesaid principles, it was observed in *Michigan Rubber v. State of Karnataka* {(2012) 89 SCC 216} as under:

"23. From the above decisions, the following principles emerge:

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

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as

awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted; (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.”

5. One other aspect examined by this Court is whether the terms and conditions of the tender have been tailor-made to suit a person/entity. In fact, this is what is sought to be contended in the facts of the present case by the respondents who were the original petitioners before the Court. In order to award a contract to a particular party, a reverse engineering process is evolved to achieve that objective by making the tender conditions such that only one party may it the bill. Such an endeavour has been categorized as “Decision Oriented Systematic Analysis” (for short ‘DOSA’).{Misrilall Mines Pvt. Ltd. & Anr. v. MMTC & Ors, 2013 SCC OnLine Del 563}.

6. The burgeoning litigation in this field and the same being carried to this Court in most matters was the cause we set forth an epilogue in Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited & Ors. {(2019) 14 SCC 81.} Even if it amounts to repetition, we believe that it needs to be emphasized in view of the controversy arising in the present case to appreciate the contours within which the factual matrix of the present case has to be analysed and tested.

“37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and public sector enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness

and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the public sector.

38. In *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr.* {(2016) 16 SCC 818}, this Court has expounded further on this aspect, while observing that the decision-making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision-making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a decision. It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice.

39. Another aspect emphasised is that the author of the document is the best person to understand and appreciate its requirements. In the facts of the present case, the view, on interpreting the tender documents, of Respondent No.1 must prevail. Respondent No.1 itself, appreciative of the wording of Clause 20 and the format, has taken a considered view. Respondent No.3 cannot compel its own interpretation of the contract to be thrust on Respondent No.1, or ask the Court to compel Respondent No.1 to accept that interpretation. In fact, the Court went on to observe in the aforesaid judgment that it is possible that the author of the tender may give an interpretation that is not acceptable to the constitutional Court, but that itself would not be a reason for interfering with the interpretation given. We reproduce the observations in this behalf as under:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

40. We may also refer to the judgment of this Court in *Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL) & Anr.*, {(2018) 11 SCC 508.}, authored by one of us (Sanjay Kishan Kaul, J.). The legal principles for interpretation of commercial contracts have been discussed. In the said judgment, a reference was made to the observations of the Privy Council in *Attorney General of Belize v. Belize Telecom Ltd.* { (2009) 1 WLR 1988.} as under:

“45. ... 16. Before discussing in greater detail the reasoning of the Court of Appeal, the Board will make some general observations about the process of

implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. ...”

.....

“19.In *Trollope & Colls Ltd. v. North West Metropolitan Regional Hospital Board* {(1973) 1 WLR 601 (HL)} Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said:

“... the court does not make a contract for the parties. The court will not even improve the contract which the parties have made for themselves, however desirable the improvement might be. The court’s function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves.”

41. *Nabha Power Limited (NPL)* {*Nabha (supra)*} also took note of the earlier judgment of this court in *Satya Jain v. Anis Ahmed Rushdie* {(2013) 8 SCC 131}, which discussed the principle of business efficacy as proposed by Bowen, L.J. in *the Moorcock* {(1889) LR 14 PD 64 (CA)}. It has been elucidated that this test requires that terms can be implied only if it is necessary to give business efficacy to the contract to avoid failure of the contract and only the bare minimum of implication is to be there to achieve this goal. Thus, if the contract makes business sense without the implication of terms, the courts will not imply the same.

42. The judgment in *Nabha Power Limited* concluded with the following observations in para 72:

“72. We may, however, in the end, extend a word of caution. It should certainly not be an endeavour of commercial courts to look to implied terms of contract. In the current day and age, making of contracts is a matter of high technical expertise with legal brains from all sides involved in the process of drafting a contract. It is even preceded by opportunities of seeking clarifications and doubts so that the parties know what they are getting into. Thus, normally a contract should be read as it reads, as per its express terms. The implied terms is a concept, which is necessitated only when the Penta-test referred to aforesaid

comes into play. There has to be a strict necessity for it. In the present case, we have really only read the contract in the manner it reads. We have not really read into it any 'implied term' but from the collection of clauses, come to a conclusion as to what the contract says. The formula for energy charges, to our mind, was quite clear. We have only expounded it in accordance to its natural grammatical contour, keeping in mind the nature of the contract."

43. We have considered it appropriate to, once again, emphasise the aforesaid aspects, especially in the context of endeavours of courts to give their own interpretation to contracts, more specifically tender terms, at the behest of a third party competing for the tender, rather than what is propounded by the party framing the tender. The object cannot be that in every contract, where some parties would lose out, they should get the opportunity to somehow pick holes, to disqualify the successful parties, on grounds on which even the party looting the tender finds no merit. {Caretel (supra)}."

7. It may also be pertinent to note the principles elucidated in the case of Tata Cellular v. Union of India:

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and budgeted expenditure. {(1994) 6 SCC 651}"

45. Whether the petitioners fulfill the eligibility criteria or not can be best decided by the authority which had invited the IFB as it involves technical issues and the Court does not have the expertise to go into those technicalities.

46. In view of the above discussions and in light of the decisions of the Supreme Court referred herein above, we do not find any merit in these petitions and both these petitions are dismissed.

47. No order as to cost(s).