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**(2004) 08 UK CK 0038**

**In the Uttarakhand High Court**

**Case No :** Writ Petition No. 267 (M/B) of 2004

Heera Singh Sobti Contracts Limited

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

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**Date of Decision :** 12-08-2004

**Acts Referred:**

Companies Act, 1956 — Section 303(2)  
Constitution of India, 1950 — Article 14, 19(1), 226

**Citation :** (2004) 08 UK CK 0038

**Hon'ble Judges :** J.C.S. Rawat, J;Irshad Hussain, J

**Bench :** Division Bench

**Advocate :** S. Dhulia, for the Appellant; U.K. Uniyal, Learned A.A.G., for Respondent No. 1, K.P. Upadhyaya, Learned Standing Counsel for Respondents No. 1 and 3, Pitamber Maulakhi, Learned Standing Counsel for Respondent Nos. 4, 5 and 10, S.P.S. Panwar and L.P. Naithani Rakesh Thpilyal and Lalit Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Irshad Hussain, J.—By means of this writ petition under Article 226 of the Constitution of India, the Petitioner-company engaged in the business of construction of motor roads by hot mix process etc. took exception to the grant of contract to Respondent Nos. 6, 7 and 8 by accepting their bids for carrying constructions of roads in the districts of Udham Singh Nagar and Nainital of this State and sought to issue the writs etc. as below:

(a) To issue a writ, order or direction in the nature of Mandamus commanding the Respondents to stop the entire work given to Respondents Nos. 6, 7 and 8 which has been given to in contravention of terms and conditions of tender notice.

(b) To issue a writ, order or direction in the nature of Mandamus commanding the Respondents not to proceed any further with Respondents in the matter of awarding the contract, pertaining to 53rd circle, Haldwani, and 22nd circle,

Nainital.

(c) To issue a writ, order or direction in the nature of Mandamus commanding the Respondent No. 1 to constitute a C.B.I, enquiry for the anomalies committed by the Respondent No. 4/5 in the matter of inviting and awarding contract of civil construction in their circle.

2. The Petitioner came up with the allegations that the Government of India, Ministry of Surface Transport had published a "Standard Bidding Document" for procurement of civil works, in order to check arbitrariness in awarding contracts to private bidders by the government and its instrumentalities and in order to bring uniformity in the system. The State of Uttaranchal had also passed an order dated 13-5-2002 regarding classification of contractors and policy for the works of P.W.D. (Annexure No. 2). In pursuance thereof work of more than Rs. 40 lacs had to be carried out by tender invitation in accordance with the Standard Bidding Document but the Respondents violated the conditions of the said documents and the G.O.

3. Petitioner alleged that in the matter of work of Kotdwara-Satpuli road from Km. 134.60 to km. 192 allotted to Respondent No. 8, the condition of turn over was manipulated and it was given that total turnover of last five years will be the governing factor instead of turnover of any one year during last five years. Further the tender cost for this work was Rs. 13.50 crores hence the single work should have been of Rs. 6.75 crores (50% of the cost) but the department relaxed the condition as "single order of Rs. 6 crores or three works of Rs. 2 crores in three years or works of three years aggregating to Rs. 15 crores." Moreover while this work was in progress the said firm was, ignoring the bid capacity awarded two other works named as strengthening of Roorkee-Laksar road for Rs. 4 crores and strengthening of Purkazi-Laksar-Jawalapur road for Rs. 8 crores.

4. Petitioner further submitted that the Respondent Nos. 4, 5 and 10 altered the eligibility criteria in order to favour the said contractors as is evident from the following 13 contracts awarded during the last two years:

S. No. Name of work Anomalies alleged

1. (a) Widening and strengthening of Haldwani Kaladhungi -Bazpur-Doraha Motor road under interstate connectivity in Uttaranchal State. (a) As per the standard bidding document condition 4.5 A(a) from amongst the last 5 years work the turnover for any one year was required to be 14.3 crore. The condition was changed and the total turn over required was 23 crore for the last 5 years.

(b)Tender date 18-10-2002 (d) Contract awarded: M/s R.C.C. Developer Meerut (b) According to the condition 4.5 A(b) as prime contract the similar nature of work required was of Rs. 4.3 crore, as a single work experience. This condition was relaxed to similar type of work, in different contracts in any one of the last five financial years, which should not be than 10.75 crore.

(c) The mandatory condition 4.7 (bid capacity) was removed in order to grant favour to some contractors.

2. (a) Widening of Bareilly-Almora Road in Kiccha Chauraha via. Din Dayal Chowk to Railway Phatak and Constt. Of Divider. (d) Contract awarded: M/s Kudar Trading Company Rudrapur (U.A.) (a) As per the standard bidding document conditions the contractor should have a turn over of Rs. 1.2 crores in any one of the last five years. This condition was changed to total turn over of the last five years amounting to Rs. 1.2 crores. (c) The condition 4.7 (bid capacity) was removed.

3. (a) Construction of drain, foot path, etc. dense carpeting of roads in Haldwani areas. (d) Contract awarded: M/s Puja Project, New Delhi. (a) As per condition 4.5 A(a) the turnover of any one year, from amongst last five years, should have been at least 4.90 Crore. What was, however, asked was total turnover of Rs. 7.88 for the total five years. (c) The condition 4.7 (bid capacity) was removed.

4. (a) Reconstruction of roads by hotmix under state sector. (d) Contract awarded: M/s Puja Project, New Delhi. (a) As per condition 4.5 A(a) the total turnover of any one year, for the last five years should have been Rs. 165 Lacs. What was asked was total turnover of Rs. 264 Lacs for total five years. (b) As per condition No. 4.5 A(b) in any one year of the last 5 years the contractor should have done the work as a prime contractor for 33 lacs. All the same, what was asked was that the contractor should have done in one year of the last five years an accumulated work of Rs. 823 lacs in

respect of one single work. (c) The condition 4.7 (bid capacity) was removed.

5. (a) Reconstruction by hotmix and drains etc. on various roads of Haldwani city. (d) Contract awarded: M/s Puja Project, New Delhi. (a) As per condition 4.5 A(a) the total turnover of any year, for the last five years should have been Rs. 6.5 Crore. All the same, what was asked in the tender document was a total turnover of Rs. 10 crores of last five years. (c) The condition 4.7 (bid capacity) was removed.

6. Reconstruction & improvement by BM/SDBC on 5 works under PE PWD Rudrapur District Udham Singh Nagar package No. 4A Contract awarded : M/s Wood Hill Engineers & Builders, Ghaziabad. (a) As per condition 4.5 A(a) the turn over of any one year for the last five year should have been Rs. 27 Crore. All the same what was asked was that the bidder should have a turn over in any one year of the last five years, including the current financial year, of not less than 15 crores. (b) As per condition No. 4.5 A(b) as prime contractor similar nature of work in any one year of the last five years should be of Rs. 9 Crore as a single work completed. This contract has been awarded to M/s Wood Hill Engineers & Builders Ghaziabad, U.P. although till date they have never completed any work as prime contractors amounting to Rs. 9 crores which is of similar nature. They have not done any work as prime contractor but only as Sub contractors.

7. Improvement/Reconstruction of BM/SDBC etc. On two works under constt. Div. Khatima Distt. Udham Singh Nagar. Contract awarded: M/s Raj & Associates (Respondent No. 7) (a) As per condition 4.5 A(a) the total turn over of any one year in the last five years should have been Rs. 22 Crores. All the same, what was asked was that the bidder have achieved total minimum financial turn over in any one of the last financial year including current financial year and the turn over should not be less than Rs. 11 Crores. (b) As per condition 4.5 A(b) the total amount of single work of similar nature as prime contractor should have been of Rs. 5.5 Crores. What was asked was the work of Rs. 6.5 Crores and the work of "Similar nature of work" was changed to all class of engineering work (this was done by way of corrigendum).

8. Improvement and Reconstruction of following roads in District Nainital : (All tenders cancelled) As the tender document had placed conditions which were against standard bidding document and since objections were raised by various contractors the tenders were cancelled.

9. Improvement and Reconstruction of following roads in District Nainital : 3-Keshowala-Bannakhera Bailparao (17 Km.) As Above

Tender date: 12-1-2004 Total cost of work: 22.00 Crores. All tenders cancelled

10. Extension of Haldwani bypass Contract awarded : M/s P.R.L Leasing (P) Ltd., Delhi. (a) As per condition 4.5 A(b) the work experience of at least Rs. 80 Lacs in one year of the last 5 years should have been asked. All the same, what was asked was the turn over of the last 5 years but it was extended till December 03 as against 31st March 03. (b) The aforesaid condition was deleted subsequently when objections were raised by different contractors but this condition was not removed as far as the work experience of one single year was concerned which remained extended till December, 03.

11. Widening & improvement of Kathgodam- Chorgalia -Sitarganj Motor Road. Contract awarded: M/s R.G. Buildwell, Ghaziabad (Respondent No. 8). (a) As per condition 4.5 A (a) the total turn over of any one year of the last 5 years should have been Rs. 20 Crores. All the same, what was asked in the tender document was a turn over of Rs. 17 Crores for any one of the last 5 years, including the current financial year. This was, however, amended after the contractors raised objections. (b) That as per 4.5 A(b) the total experience required was of Rs. 6 Crore in any one year. All the same, what was asked was total experience required in any one of the last 5 years extended till December, 03. This was not removed inspite of the objections of the contractors.

12. Improvement & Reconstruction by BM/SDBC & misc. works on four works of Bhimtal-Bhowali-Mukteshwar section District-Nainital: 2- Mukteshwar inspection house motor road 6.66 Km. (a) The conditions of the turn over required in the tender document were against the conditions of S.B.D. (b) As per the tender documents the conditions asked were against the mandatory conditions of S.B.D. For example the work done in any one of the last 5 years should have been Rs.

6.25 Crore. All the same, what was asked in the tender document was the work in last 5 years but

3- Mehra Gaon-Saat Tal Motor Marg(6.50Km.) (Tenders are kept pending for courts interim orders) it was extended till December, 03.

13. Improvement and Reconstruction of the following road works: Contract awarded : M/s Wood Hill Builders (Respondent No. 6). (a) The conditions of the turn over required in the tender document were against the conditions of the S.B.D. (b) The total work experience of any one was of the last 5 years should have been Rs. 7.25 Crores. All the same, what was asked was work experience of Rs. 6.5 Crores.

5. Petitioner also urged that the tenders at serial Nos. 8 and 9 have been rejected and recalled on 6-2-2004. This tender notice was published for the first time on 26-1-2004 and secondly on 29-1-2004. As per rules minimum 15 days gap should be there between the date of first publication and the date of receiving tender. But in this case the time gap was 11 days only. Initially the tenders were invited as package No. 3(A) and 3(B) by the S.E. 22nd Circle P.W.D., Nainital but second time the tenders were invited on 6-2-2004 and the packages were arranged so as to qualify the contractor of their choice and the packages were named as 3 (A), 3 (B), and 3 (C). This time three tenders received were of (1) M/s R.G. Buildwell, Ghaziabad (2) Petitioner M/s Hira Singh Sobti contractor and (3) M/s Madhva Hightech Engineers, Hyderabad. Petitioner's tender was rejected and the work was allotted to M/s R.G. Buildwell, Ghaziabad, though it did not fulfill the conditions of eligibility as per tender documents. M/s R.G. Buildwell had not completed any work amounting to Rs. 6.50 crores during last five years i.e. 1998-99 to 2002-2003. They have been qualified on the basis of their work in year 2003-2004 which is against the condition applied in the tender documents. It is also "alleged that under package No. 3(B) only one tender of M/s Wood Hill Engineers & Builders has been received. This tender was also not valid because as per conditions of the tender documents no revenue stamp was pasted on tender validity statement which is a must. The Petitioner objected to it but for unknown reason the invalid tender has been accepted for Rs. 15 Crores. The same firm has also been awarded package No. 4(A) earlier and thus a total work of approximately Rs. 30 crores has been awarded to M/s Wood Hill Engineers & Builders a firm which do not qualify as per terms and conditions of the tender documents in terms of single order, ownership of machinery and quantities executed during one year. For package 3(C) only one tender of M/s Madhva Hightech has been received and is under disposal.

6. According to the Petitioner the tender of District, Udham Singh Nagar for which notice was issued on 20-11-2003 (Annexure-4) the terms and conditions of the tender (Annexure-5) were altered and corrigendum was issued to give benefit to a particular set of the contractors and despite the Petitioner having offered the bid, it not informed as to whether the financial bid has been opened or not, in violation of the mandatory condition No. 23.4 of the contract document

and that despite the repeated complaints and reminders and also the representation dated 28th January 2004 (Annexure-9) sent to the Chief Secretary, Government of Uttaranchal, Dehradun no action had been taken.

7. The Petitioner further alleged that tender conditions for the construction works in Ramnagar, Rudrapur and Khatima were changed. On objection these were deleted by issuing corrigendum (Annexure-10) but when the tenders were invited the deleted conditions were again imposed and when objection was raised and clarification was sought from the authorities the conditions were amended only a day before the last date for submitting the tender. The Petitioner was informed through fax about the same only 34 minutes before the expiry of the time when the Petitioner had already submitted the tender. It has also been alleged that the Petitioner was under legitimate expectation that its bid will be considered but the Respondents in an arbitrary manner released his security deposit without assigning any reason and by not adopting a transparent process and fair play which is the essence of administrative action and thereby the mandate of Articles 14 and 19(1)(g) of the Constitution of India had been violated. The Petitioner therefore urged that arbitrary, illegal and unreasonable actions of the Respondent-authorities warrant interference of the court by exercising its extra-ordinary jurisdiction to grant the prayers made in the petition.

8. The Petitioner impleaded Sri Rajendra Kumar Tandon, Technical Advisor, P.W.D., Uttaranchal as Respondent No. 9 alleging that he was a Director of the Respondent No. 8-company which had been awarded contracts in arbitrary manner.

9. The Respondents in their affidavits refuted the allegations of the Petitioner and urged that the "Standard Bid Documents" of Ministry of Surface Transport, Government of India contain the guide-lines for the departments working under the said Ministry; that the Government of Uttaranchal has its own policy contained in G.O. No. 128/2002, dated 15-3-2002, which is applicable for the works of the P.W.D. and the tenders were being invited under the guide-lines and norms as mentioned in concerned notices; that in the said G.O. no reference about the "Standard Bidding Documents" has been made; that the tenders were invited in accordance with the said G.O. wherein clause- 2-E require that the tenders for work of more than 40 lacs be invited on the basis of "two bid system" under national competitive bidding; that the contracts were awarded as per the required procedure and no favour had been shown to any contractor; that the Superintending Engineer, 22nd Circle, P.W.D. invited tender vide letter No. 380(3)/41-M-22, dated 24-1-2004 but on account of urgency and importance of work tenders were invited on short term notice and required time was given; that the technical bids were opened in the presence of the bidders before a committee constituted per Government G.O. dated 13-5-2002; that the Petitioner's technical bids were not accepted in respect of various contracts after proper evaluation and the earnest money were refunded to the Petitioner; that condition of the current financial year in the tender notices was amended per

letter Nos. 4553/25M-08/03 dated 23-12-2003 and 4359/23M-22, dated 22-12-2003 for the package 4-A and 5-B of District Udham Singh Nagar; that tenders for package Nos. 3 and 3-B were invited before December 2003 and the said para "including the current financial year" was deleted vide corrigendum dated 24-12-2003; that the same para has not been mentioned in the tender document of improvement of Kathgodam-Bhawali-Moronola road, Km. 32 to 69.15 and other three roads and as such no corrigendum in this case was required to be issued; that it is not mandatory to inform each and every bidder who is not qualified in technical bids and the list of qualified bidders were displayed on the notice board in the office of Respondent Nos. 4, 5 and 10 and that it was known to the Petitioner on that very day about his disqualification in the technical bids and therefore the Petitioner was never kept in dark about the decision taken.

10. The claim of the Petitioner that Respondent No. 9 was inducted as Director of Respondent No. 8 has been vehemently denied.

11. The learned Senior Advocate Sri S. Dhulia, counsel for the Petitioner drew attention to the material on record and submitted that the contract works of roads, for which tenders were invited, were malafidely awarded in favour of particular set of the contractors (the Respondent Nos. 6, 7 and 8) by changing the terms and conditions incorporated in the Government policy and norms and in contravention of the national competitive bidding documents and that the Petitioner was arbitrarily deprived of the allotment and therefore in the totality of the circumstances of the case the Petitioner has legal right to challenge the award of the contracts on the plea that the action of the Respondents has been violative of the Article 14 of the Constitution of India in order to seek the reliefs claimed in the petition. Learned Counsel placed reliance on the following reported decisions. (1) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , (2) Ram and Shyam Company Vs. State of Haryana and Others, , (3) G.J. Fernandez v. State of Karnataka and Ors. (1990) 2 SCC 448, (4) Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , (5) M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, and (6) Tata Cellular Vs. Union of India, .

12. On the other hand the learned Counsel for the Respondents made submissions supporting the award of the contracts, terms of the tender notices and relaxation in the eligibility criteria for the tenders invited from the contractors and urged that there has not been any element of arbitrariness or any malafide intention in doing so and to award the contracts to the bidders found eligible to under-take the works. They passed into service the reported decisions in the matter of (1) Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, , (2) Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, and (3) Tata Cellular Vs. Union of India, .

13. As is evident from the averments made in the affidavits of the parties the Petitioner has participated only in few of the tenders/contracts out of the 13

mentioned above. According to the Petitioner it was technically qualified barring only one contract at serial No. 1 and that he was disqualified in regard to the other tenders/contracts at the technical stage and no information was sent to him and further that no reason was assigned as to why it failed to qualify in the technical bids. The Respondents however urged that the Petitioner participated only in four tenders/contracts at serial Nos. 1, 6, 7 and 11 but he could not qualify in the technical bid itself. In other tenders also where-ever the Petitioner was qualified he quoted higher rates and hence the tenders were rejected. The basic allegation against the acceptance of tenders of the Respondents raised is that the authorities resorted to alterations and modifications in the tender conditions in order to keep the Petitioner out of the reckoning so as to give benefit to a particular set of contractors, the Respondent Nos. 6, 7 and 8. The Respondents submitted that the State Government had its own norms and guidelines for inviting tenders and allotment of contracts and that alterations or modifications made were neither arbitrary nor were made malafidely to give benefit to a particular set of the contractors.

14. The dispute raised in this petition need to be considered and resolved keeping in view the principles deducible from the reported decisions cited at the bar. The courts can scrutinize the allotment of the contract in exercise of its powers of judicial review to prevent arbitrariness or favouritism. From the reported decisions, following legal principles are deducible:

(1) The State and its instrumentalities are required to follow the norms and procedures formulated by them and can not depart from them in an arbitrary manner. Although the decision by State instrumentality may not be amenable to judicial review, court can examine the decision making process and interfere if the decision made is vitiated by malafides, unreasonableness or arbitrariness.

(2) The State may deviate from the terms and conditions of the tender provided that the norms formulated by the State have left room for such relaxation and the deviation does not result in injustice to any of the bidder or to the public interest in general.

(3) 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 malafides.

(4) 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.

15. Petitioner claimed that the State of Uttaranchal adopted the norms and guidelines formulated by the Government of India for procurement of civil works per G.O. No. 128/2002, dated 13-5-2002 (Annexure-2) and consequence thereto

the Chief Engineer, Level-I, P.W.D. Dehradun vide his letter dated 30-5-2002 also reiterated the same thing and standard proforma of invitation for bids on the basis of "two bid system" under national competitive bidding was circulated to all the regions of P.W.D., Uttaranchal for the publication of the tenders. The contention of the Respondents is that the "Standard Bidding Documents" as prescribed by the Government of India are not binding upon them as the State of Uttaranchal have issued its own instructions regarding tender policy vide G.O. dated 13-5-2002 and in which no reference about the Standard Bidding Documents of the Government of India has been made. The policy in fact stipulates that the contracts of more than Rs. 40 lacs shall be on the basis of "two bid system" under national competitive bidding which mean that the participation of the bidders or the contractors shall be at national level to achieve wider publicity and receive more competitive bids from contractors registered at national level. G.O. dated 13-5-2002 no where mention that the "Standard Bidding Documents" issued by the Government of India shall be followed for allotment of the civil works by the State of Uttaranchal and its agency, the P.W.D. Mere mentioning that the tenders for works of more than 40 lacs be invited on the basis of "two bid system" under the national competitive bidding would not mean that the norms and guidelines compiled as "Standard Bidding Documents Procurement of Civil Works" by the Government of India had been adopted by the State of Uttaranchal. It is immaterial that few of the conditions and norms issued vide orders dated 13-5-2002 and letter of the Chief Engineer dated 30-5-2002 are some what identical to the conditions of the tenders as laid down in the standard bidding documents. On account of the similarity it can not be accepted that the said document had been adopted for the purpose of grant of contracts by the State Government.

16. The Petitioner alleged anomalies in the 13 contracts which have been given in the last two years by the Respondent Nos. 4, 5 and 10. The anomalies pointed out on the basis of the "Standard Bidding Documents" of Government of India in the face of the facts of the case have no bearing and it is only to be seen as to whether the Respondent - State and its agency P.W.D. have in any way made a departure from the prescribed norms and procedures in an arbitrary manner to award the contracts to a particular set of contractors and to deprive the Petitioner from participating in financial bids by disqualifying him at technical stage. As stated above the Petitioner participated only in works at serial Nos. 1, 6, 7 and 11, and the work of serial No. 8 and 9 were cancelled. The Petitioner could not qualify in the technical bids for the said four works. The learned Counsel for the Petitioner submitted that even otherwise if it is to be taken that the "Standard Bidding Documents" was not adopted by the Respondent-State the two mandatory conditions which were stated by the Chief Engineer, Level-1, P.W.D. Dehradun in his letter dated 30-5-2002 could not have been relaxed or deviated from in the matter of tender invitations and grant of contracts. This was, according to him, however done to benefit the Respondent Nos. 6, 7 and 8. The eligibility criteria of the bidders are mentioned at para 2.2 and 2.3 and which

are as below:

2.2: The bidder should have completed at-least one similar work of value not less than 50% of the estimated value of the each package, for which the bid is submitted, in a government or its undertaking departments during the last three years reckoned from the date of submission of bid.

2.3: The annual financial turn-over of the bidder for the construction of work only should be at least 21/2 times of the total bid value during any of the preceding three years (1999-2000, 2000-2001, 2001-2002).

17. Perusal of letter dated 30-5-2002 of the Chief Engineer, Level-I, P.W.D., Dehradun indicate that a general draft tender notice in which the above eligibility criteria of the bidders were incorporated was prepared to meet the requirement of the tender policy of the State Government. The said letter dated 30-5-2002 as well as the G.O. dated 13-5-2002 regarding qualification of contractors and tender policy for quality control in works of P.W.D., however do not stipulate that the concerned authorities were completely debarred from making any suitable departure and making suitable relaxation in the eligibility criteria keeping in view the commercial viability and the nature of work to be under taken under a particular contract. The draft tender notice being general in nature it clearly admit of suitable deviations keeping in view above factor and the public interest in general. Here it also need to be stated that the tenders were to be invited in accordance with the policy of the State Government and not as per the norms formulated under the "Standard Bidding Documents, Procurement of Civil Works" issued by the Ministry of Surface Transport of the Government of India.

18. It is pertinent to mention that the Petitioner has no where alleged that tender notices were neither widely published in terms of the tender policy of the State Government nor any of the bidders including the Petitioner were kept in dark regarding the relaxed eligibility criteria for various contracts. In other words as and when tender notices were published the tender document gave complete detail of the works together with the eligibility criteria of "A" class contractors for the works of more than 40 lacs. Knowing very well the necessary conditions the Petitioner has also offered bids and from the averments in the respective affidavits of the parties and the record of the contracts produced for our perusal we find no merit in the allegation that the eligibility criteria for the contracts were laid-down malafidely to oust the Petitioner and to give benefit to the contractors who have finally been allotted the work.

19. From perusal of the records of the various contracts we also noticed that technical bids were considered after preparing pre-qualification comparative statement of all the bidders by the committee constituted according to the aforementioned G.O. dated 13-5-2002 and which consists of Superintending Engineer of the concerned circle (Chairman), Executive Engineer of the Division concerned (member) and Executive Engineer of one another Division nominated by the Superintending Engineer (Member). In the technical bid pre-qualification

comparative statement detailed information of the contractors/bidders, other necessary requirements and the clear reasons have been given for disqualification of any of the bidders. For instance in regard to the package named as 3(A) high lighted in the petition we find that in regard to the work of improvement and reconstruction of (i) Haldwani-Ramnagar motor road Km. 29 to 55, (ii) Keshowala Banna Kheda Bail Parao motor road (iii) Choi-Jagannath motor road, tenders were invited by 21.1.2004 and the date of opening of the technical bids was 7-2-2004. The bids of three contractors including the Petitioner and Respondent No. 8 were considered. The Petitioner could not qualify the requirements of conditions under clause 3.5 (b) and 4.4.A(b) of the tender notice which stipulated that the contractor should have completed not less than 90% of the contract work of similar nature as prime single contractor in any of the last five years to the tune of Rs. 6.50 crores. The Petitioner gave a certificate of entering into contract of value of Rs. 6.97 Crores in the year 1995-96 but against this contract 88.5% work only was completed in the year 1998-99 and the value of the work so done was Rs. 89.23 lacs only at the price level of the cost of the work of the year 2003-04. In the year 1999-2000 the work done against said contract was only 10% of the total work, the value of which was 96.68 lacs only at the price level of the year 2002-04. It was thus indicated that the Petitioner had not completed work of the value of Rs. 6.50 Crores (90% of the contract bond) during the last five years. Contrary to this the Respondent No. 8 M/s R.G. Buildwell Engineers (P) Ltd. fulfilled the required criteria as it had completed more than 90% work of single contract of the value of Rs. 7.38 Crores as a single work. As regards the value of the work of similar nature in one year it was 18.43 Crores. It also qualified in the bid capacity on the basis of the existing commitments. It also need to be stated that the Petitioner also failed to qualify on the basis of nonavailability with it of the machines and equipments for the said package. The bidder was required to furnish the attested copies of the cash memos etc of the machines and critical equipments for the contract work but the Petitioner did not attach any cash memo of the hot mix plants said to have been purchased from Ranjeet Engineering Work-shop and for other machines also. From its side the bills of the machines were submitted which were of much lesser value as compared to the price of standard critical equipment. Annexure-C.A.-3 to the counter affidavit of the Respondent No. 3 reveal that the Petitioner has filed bills and invoices of the manufacturers of the equipments of much lesser value as compared to the price of Rs. 39,50,000/- quoted by Gujarat Apolo Equipments Ltd. in their quotation sent to the department. The quotation was obtained to verify as to whether the bidders meet the qualification criteria for machines and equipments for the package. Perusal of the material on record and other contract documents also reveal similar pattern and therefore we feel no need to site any other example with datas in detail and it will suffice to say that the Petitioner failed to establish that the norms and procedures formulated for award of contracts were malafidely relaxed or deviated from to benefit the particular set of the contracts, the Respondent Nos. 6, 7 and 8 and the Petitioner's bids were arbitrarily rejected. Needless to say that the norms

formulated by the State Government as stated above also do not forbid relaxation or any deviation from the same keeping in view the nature of the work and the price of the contract work and on this account also the Petitioner has no case to assail the contracts awarded to the Respondent Nos. 6, 7 and 8.

20. In regard to tender notice of work package No. 3(B) the allegation that the tender documents of Respondent No. 6 to whom the contract was awarded had no revenue stamp pasted on it as was required under the conditions of the tender is not of much significance. A pasted revenue stamp may have gone astray when the documents are handed and this aspect of the matter having been considered it can not be accepted that the contract was awarded ignoring the said condition of the tender document. Petitioner appears to have also offered any bid in regard to this package and the allegation has merely been made with an attempt to make out a case of alleged illegal allotment of the work and in which the Petitioner has failed.

21. So far as the package No. 4 (A) is concerned it was also awarded to Respondent No. 6 and the Petitioner failed to qualify in the technical bid on account of non-fulfilling the terms and conditions as stipulated in the tender document. Petitioner also alleged that in regard to the tender works in Ramnagar, Rudrapur and Khatima the tender conditions were altered by issuing corrigendum and certain amendments were made only a day before the last date for submitting the tender. According to the Petitioner information was sent by fax only 34 minutes before the expiry of the time when the Petitioner had already submitted the tender. Annexure-10 to the petition itself reveals that the Petitioner's representative participated in the pre-bid conference on 27-1-2004 and in that meeting the decision for making change or amendment in the conditions was taken by the committee. Even if the fax message was received next day some time before expiry time of the tender submission it could not mean that the Petitioner was not in the know of the altered terms and conditions. Therefore the allegation in this regard also does not indicate that the Respondent-authorities intended to keep the Petitioner out of reckoning for that work and to favour other contractors.

22. So far as allegation that Respondent No. 9 Sri Rajendra Kumar Tandon, Technical Advisor, P.W.D., Uttaranchal was inducted as one of the Directors of the Respondent No. 8 company, which had been awarded some contracts, it needs to be stated that the Petitioner furnished a certified copy of Form No. 32, Annexure S.A.-4 of supplementary affidavit dated 12-5-2004 obtained from the office of the Registrar of companies to show that Sri Tandon was appointed as Additional Director with effect from 8-11-2001. Form No. 32 is submitted, pursuant to Section 303(2) of the Companies Act 1956 as and when a Director is appointed or any change in the Directors is effected by the company, to the Registrar of the Companies. The Respondents concerned vehemently denied the allegation of the Petitioner and the matter was being also inquired through the Senior Central Government Standing Counsel. The learned Senior Central Government Standing

Counsel submitted report on 20-6-2004 indicating that the original record was perused and queries were made from the Registrar of Companies. It revealed that the original Form 32 regarding induction of Sri R.K. Tandon as Director/ Additional Director of the said company is not available on the record of the Registrar of Companies. However the matter is under investigation of the Registrar of Companies to know as to how the certified copy of Form No. 32 got to be issued. Petitioner has not filed the affidavit of the person who applied and thereby received copy of Form 32 from the office of Registrar of Companies. Therefore, it can safely be stated that from the material on record the allegation of the Petitioner in that regard also does not stand fully substantiated. However, in the face of the facts of the case the Respondent-authorities may, till the result of the inquiry is not reported to them by the Registrar of the Companies very prudently not involve Sri Tandon in the decision making process of grant of contracts.

23. It is of significance that the Petitioner had withdrawn the earnest money deposited in regard to various contract works as and when it did not qualify for award of the contract and in a situation like this and also in view of the prayers made in the petition it is evident that the Petitioner does not seem interested that any of the contract work in question be awarded to him on cancellation of the contract of any of the Respondents-contractors. The Petitioner filed the writ petition after lapse of sufficient period from the date of the grant of the contracts to the Respondent Nos. 6, 7 and 8 and therefore it is evident that the Petitioner was not interested to have any of the contract work to be under taken by it. Moreover the work under the various contracts had already been started after considerable expenditure and this was a reason that the interim order dated 14-5-2004 in regard to the contract work awarded to Respondent No. 8 was vacated after we have heard the arguments in the petition and it was reserved for judgment.

24. For the reasons aforesaid and the material on record we are of the view that on the touch-stone of the legal principles deduced from the reported decisions and referred above the Petitioner has failed to establish that the Respondent-authorities malafidely relaxed and deviated from the norms and conditions of the tender notices for various works. We also find that the relaxation as and when made do not have an element of arbitrariness as the deviation has nexus to the nature of the work under the contract and that the Respondent-authorities have fairly exercised the options keeping in view the commercial viability of the contract work to be awarded. Therefore the petition being devoid of merit is liable to be dismissed.

25. The petition is dismissed and interim orders are vacated. No order as to costs.