

(2006) 09 MAD CK 0266

In the Madras High Court

Case No : Writ Petition No. 27904 of 2005

Met-Tech International Pte. Ltd.

APPELLANT

Vs

The Tamilnadu Electricity Board and Cable Corporation of
India

RESPONDENT

Date of Decision : 02-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6), 226
Tamil Nadu Transparency in Tenders Act, 1998 — Section 19
Tamil Nadu Transparency in Tenders Rules, 2000 — Rule 17

Citation : (2006) 09 MAD CK 0266

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : R. Alagirisamy, for S. Elambharathi, for the Appellant; Ezhilmani, for R1 and Ravindran, for Michael Amalraj, for R2, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The prayer in this Writ Petition is for a Writ of Certiorarified Mandamus calling for the records of the respondent in Letter NO.SE/TR-II/EE 400 KV/A3/F.T.1235/D/. 107/05 dated 12.08.2005 and quash the amendment contained therein as Clause 1.1.6 in tender specification No.1235 and consequently direct the respondent Board to receive the bid of the petitioner.

2. The second respondent/Electricity Board invited tenders for supply and erection of 230 kv, single core, 1200 Sq.mm. Aluminium compact, segmental, stranded conductor XLPE insulated lead alloy sheathed HDPE outer sheathed cable on global tender basis. The scope and supply as per specification No.1235 under Invitation for bid and as published in the tender notice under "Description of work, supply" is as below:

Design, detailed Engineering, Manufacture, Assembly, Testing at works, offering for inspection, packing, transport and delivery of 106.5 kms. of 133/230 kv single core 1200 sq.mm. Aluminium compact, segmental, stranded conductor

XLPE insulated lead alloy sheathed HDPE outer sheathed cable for laying (i) double circuit from Mylapore 230KV SS to Taramani 230KV SS (Route length -12.5 km.) and (ii) Single circuit from mylapore 230KV SS to Elephant Gate Tower Point (Route length - 10.5 km) with accessories, startup and essential spares at Departmental Stores/Site at Chennai.

3. Initially, the due date for sale of tender document was 18.06.2005 and opening of tender was on 14.07.2005 and prospective tenderers were allowed to download the specifications from TNEB's website and accordingly, the petitioner downloaded the bid documents. Originally, the clause in specification T.1235 which is subject matter of writ petition was as follows:

Clause 1.1.6 of BQR:

The manufacturer must submit type test reports for cable and accessories obtained from an independent test laboratory or if the tests have been carried out in their in house laboratories, the same should have been witnessed by the representative of any reputed inspecting agency on 133/230/245 KV or higher voltage grade cable as offered. The test should have been conducted within 5 years prior to the date of bid submission. Separate type test reports of cable and accessories are acceptable. However, the successful bidder has to conduct the test type as detailed in Clause.7.1 of specification CAB-18 free of cost in the presence of purchaser's representative at an international electrical testing laboratory of purchaser's choice before commencement of supply irrespective of the fact whether it had been type tested earlier or not.

4. A pre-bid meeting as per tender condition 15.0 was held on 24.06.2005 to clarify doubts on the specifications by the prospective bidders who have purchased or downloaded the same. The petitioner participated in the pre-bid meeting and raised certain queries. It is alleged by the first respondent/Board that all the points were clarified during the said pre-bid meeting itself and the prospective bidders were informed to prepare their offers taking into account the clarification made to them without waiting for the written clarification. The first respondent Board, by their letter dated 12.08.2005 published the said clarifications. In respect of Clause 1.1.6. of BQR, amendment was made, which is mentined below:

The manufacturer must submit type test reports and pre-qualification test reports as per IEC 62067/2001 for cable and accessories of 230/245 KV or higher voltage grade obtained from any of the following test laboratories. The test should have been conducted within 5 years prior to the date of bid submission. Separate type test reports of cable and accessories are acceptable.

1) KEMA, HOLLAND

2) EDF, FRANCE

3) HYDRO QUEBEC, CANADA

4) CESI, ITALY

5) CPRI, BANGALORE, INDIA

6) IPH, GERMANY

If the bidder could not produce the pre-qualification test report, he should produce necessary documentary evidence and end user certificate for successful operation for more than 8 years for atleast 3 kms. of 230 KV or above voltage grade XLPE cable supplied by them.

5. It is stated by the petitioner that in and by the said amendment, a new condition warranting the tenderers to submit type test and pre-qualification tests as per IEC 62067/2001 for cable and accessories of 230/245 KV or higher voltage grade obtain from 1) KEMA, HOLLAND; 2) EDF, FRANCE; 3) HYDRO QUEBEC, CANADA; 4) CESI, ITALY; 5) CPRI, BANGALORE, INDIA and 6) IPH, GERMANY and the test should have been conducted within 5 years prior to the date of bid submission, in the alternative, the tenderers should produce necessary documentary evidence and end user certificate for successful operation for more than 8 years for atleast 3 kms. of 230KV or above voltage grade XLPE cable supplied by them. According to the petitioner, the said condition is a one tailor-made which was introduced with the intention of awarding the contract to European bidders, hence the present writ petition is filed.

6. By Order dated 31.08.2005 in WPMP No. 30332 of 2005, this Court granted interim injunction in respect of confirmation of bid alone. On that day the tenders were not opened.

7. Mr. Alagirisamy, learned Senior counsel appearing for the petitioner submitted as follows:

The Electricity Board has acted arbitrarily and introduced new conditions in Clause 1.1.6; that the Board did not assign any valid reasons for specifying European laboratory; that in view of the new conditions introduced by the Board with malafide intention to exclude the persons like petitioner which amounts to violative of Article 14 of the Constitution of India; that extension of time sought for to make competitive offer was erroneously denied; that the Board not followed the principles of transparency in Tamil Nadu Transparency in Tender Act, 1998 and prayed for quashing of amendment to 1.1.6.

8. The learned Senior counsel for the petitioner relied on the below mentioned decisions:

i) Rashbihari Panda etc. Vs. State of Orissa, , wherein in Para Nos. 17 and 19, it was held thus:

17. ...By the new scheme instead of the Government making an offer, the existing contractors were given the exclusive right to make offers to purchase Kendu leaves. But insofar as the right to make tenders for the purchase of Kendu

leaves was restricted to those persons who had obtained contracts in the previous year the scheme was open to the same objection. The right to make offers being open to a limited class of persons it effectively shut out all other persons carrying on trade in Kendu leaves and also new entrants into that business. It was ex facie discriminatory, and imposed unreasonable restrictions upon the right of persons other than existing contractors to carry on business. In our view, both the schemes evolved by the Government were violative of the fundamental right of the petitioners under Article 19(1)(g) and Article 14 because the schemes gave rise to a monopoly in the trade in Kendu leaves to certain traders, and singled out other traders for discriminatory treatment.

19. ...The scheme of selling Kendu leaves to selected purchasers or of accepting tenders only from a specified class of purchasers was not "integrally and essentially" connected with the creation of the monopoly and was not on the view taken by this Court in *Akadasi Padhan's* case (1963) Supp. SCR 691 protected by Article 19(6)(ii); it had therefore to satisfy the requirement of reasonableness under the first part of Article 19(6). NO attempt was made to support the scheme on the ground that it imposed reasonable restrictions on the fundamental rights of the traders to carry on business in Kendu leave. The High Court also did not consider whether the restrictions imposed upon persons excluded from the benefit of trading satisfied the test of reasonableness under the first Part of Article 19(6). The High Court examined the problem from the angle whether the action of the State Government was vitiated on account of any oblique motive, and whether it was such as a prudent person carrying on business may adopt.

ii) *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, wherein in Para Nos. 10, 12 and 20, it was held thus;

10. ...This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it bet he meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the expression set-forth by Harry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in "Democracy, equality and freedom", "substantial agreement is in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law, the executive government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of power involves affection of some right or denial of some privilege.

12. ...The power of discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweetwill, but its action must be in conformity with some principle which meets the test of reason and relevance.

iii) (W.B. State Electricity Board v. Patel Engineering Co. Ltd and Ors. (2001) 2 SCC 451, wherein in Para No. 24, it was held thus:

24. ...The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to the ITB or rules is the best principle to be followed, which is also in the best public interest.

9. Mr. Ezhilmani, learned Counsel appearing for the first respondent/Board submitted as follows:

The petitioner did not participate in the tender, hence, it is estopped from disputing the tender conditions; that the Board has got power under tender conditions as well as Rule 17 of Tamilnadu Transparency in Tender Rules, 2000 at any time after issuance of the tender documents and before opening the tender to make any changes, modifications or amendments. u/s 19 of the Tamilnadu Transparency in Tenders Act, 1998, the jurisdiction of the Court is barred. The petitioner by letter dated 20.06.2005 sought for certain clarification and also informed that they are deputing their representative Mr. K. Parthasarathy to attend the pre-bid meeting and all future communication be sent to him and

accordingly the said person had participated in the pre-bid meeting along with other prospective bidders. Initially in Clause 1.1.6 of the tender it was mentioned that the type test as detailed in the specification has to be conducted at International electrical testing laboratory of purchaser's choice. Some of the prospective bidders namely L.G. International Corporation, Brugg Cables, Switzerland and Egytech Cables, Cairo have pointed that in Clause 1.1.6 of BQR, the standard to be followed for conducting type test has not been mentioned and to avoid the ambiguity in that clause, they have requested to include relevant standard IEC 62027/2001 and the pre-qualification test as part of BQR. The IEC 62027/2001 is International Electrotechnical Commission's standard for XLPE cables for 230KV proposed to be procured by the first respondent/ Board against the present tender, hence six laboratories which are internationally recognised laboratories for testing electrical products have been included. All the points were clarified during the pre-bid meeting itself and the prospective bidders were informed to prepare their offers taking into account the clarifications made by them without waiting for the written clarification since it requires approval of the competent authority. After approval, on 12.08.2005, the Board has published the same. The said amendment was made after discussion and deliberations to provide uninterrupted power supply to the public. The said test is a long term test requiring one year to complete, hence, it is likely that some of the prospective bidders would not have conducted such test earlier but would have experienced in manufacturing and supplying all these type of cables. In order to consider such tenderers with experience, at the same not to compromise on longevity of the cable to be procured opportunity was given to all the bidders. The labs prescribed were internationally recognised laboratories of highest standard and are competent in doing the type test and pre-qualification test and the neighbouring States such as Andhra Pradesh and Karnataka have also specified the said laboratories in similar tenders. The CPRI laboratory based in Bangalore which is also one among the six laboratories specified by the first respondent/Board possess requisite facilities for the test. The amendment is a valid one, which is introduced in public interest. The averment of the petitioner that the amendment is arbitrary and mala fide and the Board has decided to award contract to European bidders are nothing but a falsehood. Two offers were received on the date of opening of the tender i.e., on 01.09.2005, one is from India i.e., second respondent and another one is from Japan, among two the second respondent is found fit. The Board has acted only as per the existing procedure and Rules and issued the amendment to BQR which was also duly published in newspapers and also communicated to all the individuals who have purchased specifications and sufficient time was also given to them to make necessary changes in their bids. The writ petition is filed suppressing the said facts and prayed for dismissal of the same.

10. Mr. Ravindran, learned Senior Counsel appearing for the second respondent submitted as follows:

All bidders, including the petitioner herein have participated in the pre-bid

meeting and requested the respondent/Board to provide the list of laboratories, consequently, six laboratories were specified by the Board, hence, it is not open to the petitioner to question the amendment; that CPRI Laboratory, based in Bangalore, India provided with all facilities to test all type tests as IEC 62027 standard and the second respondent herein has done the type test there in accordance with IEC 62027. It is further stated by the learned Senior counsel that the petitioner is aware of the amendment as early as 24.06.2005, suppressing the same, he has filed this writ petition as if the said amendments were issued by the Board surprisingly. The first respondent in Para Nos. 8 and 14 of the counter affidavit has stated that all the clarification sought for by the bidders were clarified and the names of six laboratories were also finalised in order to avoid ambiguity in Clause 1.1.6 and the bidders also requested to include the relevant standard IEC 62027 and the pre-qualification test as part of BQR, accordingly which were introduced and the above said facts were not disputed by the petitioner by filing any reply. There was time of more than 45 days between the date of pre-bid meeting and issuance of written clarification letter dated 12.08.2005, about 3 weeks time between the date of publication of the amendment and the opening of the tender, hence, the averment that the amendments were issued suddenly is false. In view of the amendments made, the closing date of the sale of tenders and opening of the tenders were extended to 30.08.2005 and 01.09.2005 respectively. Thus sufficient time was given for participation, but the petitioner did not participate since he is aware that he is not qualified. Pursuant to the interim order passed by this Court, the tender submitted by the second respondent was not confirmed by the first respondent and prayed for dismissal of the writ petition.

11. The learned senior counsel appearing for the second respondent relied on the below mentioned decisions:

i) *Tata Cellular v. Union of India* (1994) 6 SCC 651, wherein in Para Nos. 70 and 92, it was held thus:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14, if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

92. In *Sterling Computers Limited v. M & N Publications Ltd*, this Court observed thus: (SCC p.455, para 12)

In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by Courts while dealing with public property. It is not possible for Courts to question and adjudicate every decision taken by the authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bonafide manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Homes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive.

ii) Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others, wherein in Para Nos. 9 and 10, it was held thus:

9. ...The High Court in construing certain clauses of the bid documents has come to the conclusion that such a correction was permissible and, therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. We are of the considered opinion that it was not within the permissible limits of interference for a Court of law, particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the appellant....

10. Therefore, though the principles of judicial review cannot be denied so far as exercise of contractual powers of government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the Court that in the matter of award of a contract power has been exercised for any collateral purpose....

(iii) Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, wherein in Para Nos. 7 and 12, it was held thus:

7. ...The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should not exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

12. ...In a commercial transaction of a complex nature what may appear to be better, on the face of it, may not be considered so when an overall view is taken.

In such matters the court cannot substitute its decision for the decision of the party awarding the contract. On the basis of the material placed on record, we finds that CIAL bona fide believed that involving a public sector undertaking and a national carrier would, in the long run, prove to be more beneficial to CIAL. For all these reasons, it is not possible to agree with the finding of the High Court that CIAL had acted arbitrarily and unreasonably and was also influenced by extraneous considerations during its decision-making process.

iv) M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, wherein in Para No. 14, it was held thus:

14. ...We cannot say whether these conditions are better than what were prescribed earlier for in such matters the authority calling for tenders is the best judge. We do not think that we should intercede to restore status quo ante the conditions arising in Clauses 6 (a) and 6(b) of the tender Booklet and the bid offered much earlier by Konark Manufacture (P) Ltd should be accepted, for it filed a writ petition, which was allowed with a direction for calling for fresh tenders. Public interest in the present case would be definitely served by reason of allowing the tender process to be completed by accepting the highest offer made by Monarch Infrastructure (P) Ltd., subject to raising its bid to Rs.42 crores matching with that of Ramchand Mahadeo Rao, though invalid, for Rs.41,51,00,000 for the period of 11 months which he is willing to raise to Rs.42 lakhs. We are not allowing Konark Infrastructure P Ltd or M/s. Jai Krishna Infrastructure such an opportunity as they had made lower bids.

v) Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, wherein in Para Nos. 13 and 14, it was held thus:

13. ...Moreover, it was for the authority to set the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the Court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. The provision of the terms inviting tenders from firms having a turnover of more than Rs.20 crores has not been shown to be either arbitrary or discriminatory or actuated by malice.

14. This apart SSI having a turnover of more than Rs.20 crores was the lowest bidder. Faced with the situation that the bids given by the respondents were not competitive with the bid given by SSI Limited, learned Counsel for the respondents contended that because of the fall in price in the computer hardware and lowering of duty on the imports of the computers or its components the Government should invite fresh bids. It is not for us to comment as to what course is to be adopted by the appellants, in the changed circumstances attributed to lapse of time. It is for them to decide whether to continue with the

tenders already floated, if necessary, by making negotiations so as to bring down the rates quoted or to invite fresh tenders.

12. Heard the counsel on both sides and perused the records placed. The first respondent Board invited tenders as per specification No.1235 for supply and erection of 230 kv, single core, 1200 Sq.mm. Aluminium compact, segmental, stranded conductor XLPE insulated lead alloy sheathed HDPE outer sheathed cable on global tender basis.

13. Clause 1.1.6, 1.1.7, 5.4.1, 5.4.2, 15.0 and 15.1 of Section II BQR of tender document as follows:

1.1.6 : The manufacturer must submit type test reports for cable and accessories obtained from an independent test laboratory or if the tests have been carried out in their in house laboratories, the same should have been witnessed by the representatives of any reputed inspecting agency on 133/230/245 KV or higher voltage grade cable as offered. The test should have been conducted within 5 years prior to the date of bid submission. Separate type test reports of cable and accessories are acceptable. However, the successful bidder has to conduct the type test as detailed in Clause 7.1 of Specification - CAB 18 free of cost in the presence of purchaser's representative at an International Electrical Testing Laboratory of purchaser's choice before commencement of supply irrespective of the fact whether it had been type tested earlier or not.

1.1.7: End user certificate is to be produced for the above quantity of cable and accessories claimed to have been manufactured and supplied in the past along with the corresponding copy of purchase order placed by the end user, attested by the Indian High Commissioner/Ambassador of the respective country where the manufacturing is done. In case of local manufacturers the same should be got attested by Notary Public or Commissioner of Oaths. Before price bid opening, such of the original purchase orders and other documents will be referred to the authority who had placed the order to ensure the genuineness of the claim made by the bidder and got verified.

5.4 AMENDMENT OF BIDDING DOCUMENTS

5.4.1: At any time after the issue of the Bid documents and before the opening of the bid, the PURCHASER may make any changes, modifications or amendments to the Bid Documents and shall send intimation of such change to all those who have purchased the bid documents.

5.4.2 In order to afford prospective BIDDER's reasonable time to take the amendment into account in preparing their Bids, the PURCHASER may, at its discretion, extend the deadline for the submission of Bids.

15.0 PREBID MEETING AND BID OPENING

15.1 (a) The pre-bid meeting will be held at Conference Hall, 10th Floor, Western Wing, NPKRR Maaligai, 800, Anna Salai, Chennai - 600 002, INDIA or elsewhere

to be intimidated.

(b) For participating in the Pre bid meeting the bidders should satisfy the following conditions:

(i) Bidders should have purchased the bid documents

(ii) In case of down loading of the bid documents from website, they should remit the cost of specification in the form of DD/Cash on or before the closing date of sale of specification and submit the details to this office on or before pre-bid meeting so as to send any clarifications. Further the DD or Banker's cheque towards cost of specification should be submitted along with offer in the outer cover.

14. Originally, last date of sale of tender document was 18.06.2005 and opening of tender was 14.07.2005. On 20.06.2005, the petitioner sent a letter to the Board stating that as per the tender, successful bidder must perform system type test in the CPRI, which not possess all the facilities to carryout the test as per the standards mentioned in the tender; that the choice of lab is to be decided by the Board and requested the Board to specify the lab to ascertain the cost of testing and also raised other doubts, which are not relevant for this case. It is stated that the other prospective bidders also made similar representation to the first respondent Board. As per Clause 15.1 of tender, the first respondent Board has conducted pre-bid meeting on 24.06.2005. The petitioner's representative Mr. Parthasarathy and other prospective bidders have participated in the said meeting. In the said meeting some of the prospective bidders namely L.G. International Corporation, Brugg Cables, Switzerland and Egytech Cables, Cairo have pointed that in Clause 1.1.6 of BQR, the standard to be followed for conducting type test has not been mentioned and requested to include relevant standard IEC 62027/2001 and the pre-qualification test as part of BQR. The IEC 62027/2001 is International Electrotechnical Commission's standard for XLPE cables for 230KV proposed to be procured by the first respondent/Board. Including the petitioner, the other prospective bidders requested the first respondent/Board to specify the lab and the same were specified. Accordingly the amendments including relevant standard IEC 62027/2001, pre-qualification test and also the name of the labs were introduced. The said amendment and other clarification were made in the said pre-bid meeting itself and the prospective bidders were informed to prepare their offers taking into account the clarifications made by them without waiting for the written clarification since it requires approval of the competent authority. The said facts were mentioned by the first respondent in their counter affidavit in WVMP No. 514 of 2006 in Paragraph Nos. 8 and 14 and the petitioner has not denied the said facts either by filing reply affidavit or in their arguments. Pursuant to the pre-bid meeting, a formal communication dated 12.08.2005 was issued by the first respondent Board to all the bidders informing in writing the details of clarification, including the amendment to Clause 1.1.6, which is the subject matter of this writ petition. In view of the fact that the amendments were made after discussion and

deliberations in the pre-bid meeting itself, the petitioner is estopped from disputing the same, particularly amendment to Clause 1.1.6.

15. In this context, it is relevant to mention that Clause 5.4.1 and 5.4.2 of tender conditions as well as Rule 17 of Tamil Nadu Transparency in Tender Rules, 2000 enable the Board after the issue of bid documents and before opening of it to make any changes, modification or amendments to the bid documents provided the same to be intimated to all those who have purchased the bid documents and reasonable time for preparing the bids, to be extended.

16. The petitioner has sent a letter dated 20.08.2005 to the first respondent board seeking extension of time for opening of tender and the Board sent its reply dated 28.08.2005 i.e., 3 days prior to the opening of the tender. As discussed above, more than 2 months time in between pre-bid meeting and opening of the tender to enable the tenderers prepare their bids, hence, the averments that the amendments were introduced surprisingly is incorrect.

17. The argument of the petitioner is that the labs specified suit only few persons is untenable in Law. It is stated by the Board that labs prescribed were internationally recognised laboratories and high standard and are competent in conducting type test and pre-qualification test and neighbouring States such as Andhra Pradesh and Karnataka have also specified the said laboratories in similar tenders. One of the labs namely CPRI is in Bangalore wherein the second respondent said to have conducted type test in accordance with IEC 62027/2001. If the petitioner is really interested in participating in the tender, he could have tested his item in the said lab, but he did not do so.

18. The averment of the petitioner that the first respondent acted arbitrarily by publishing BQR with rigorous terms and conditions, the earlier conditions are better than what are prescribed by way of amendment are concerned, the court cannot say that certain conditions are better than the other conditions, for, in such matters, the authority calling for tenders is the best judge. Followed M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, . The introduction of IEC standard, pre-qualification test are made for uninterrupted power supply to the general public. The tenderers were requested to submit type test reports and pre-qualification test reports as per IEC 62027/2001 for cables and accessories 230/245kv or higher voltage grade obtained from any one of the six laboratories. It is further mentioned that the test should have been conducted within five years prior to the date of submission. The said test is a longterm test require one year to complete, hence, the Board felt it is likely to affect some of the prospective bidders, who have not conducted such test earlier but possess experience in manufacturing and supplying of cables. In order to consider such tenderers with experience, at the same time not to compromise longevity of the cable, the bidder able to produce necessary documentary evidence and end user certificate for successful operation for more than eight years for atleast 3km of 230 kv or above voltage grade XLPE cable supplied by them are also permitted to participate, hence, this

Court is of the view that the amendment made is only in the public interest of procuring international standards of cable and accessories to ensure uninterrupted flow of electricity supply.

19. In a commercial transaction of a complex nature, what may appear to be better, on the face of it, may not be considered so when an overall view is taken. In such matters, the Court cannot substitute its decision for the decision of the party awarding the contract. Followed *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, .

20. The Court cannot interfere when it has not found any malafide or favouritism in the grant of contract. Followed *Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others*, .

21. The principles of judicial review apply only to the extent to prevent arbitrariness or favouritism by the Government Bodies. Followed *Tata Cellular v. Union of India (1994) 6 Supreme Court Cases 651*.

22. In this case, this Court finds no such elements of arbitrariness or favouritism. The amendments introduced were absolutely necessary to serve the purpose sought to be achieved, for which tender is invited and to get the best person or the best quality of materials, such right to choose cannot be considered to be an arbitrary power. The Board being a purchaser, it is at liberty to assess the overall situation for the purpose of taking a decision and the decision are taken in a bonafide manner, which is referred as freedom of "play in the joints" to the board.

23. In view of the above discussion, this Court finds no reason to interfere with the impugned amendment, hence, the writ petition is dismissed. No costs.