(2023) 03 OHC CK 0038

In the Orissa High Court

Case No : Writ Petition (C) NO. 32916 OF 2022

M/s. Acharya Brothers Construction Pvt. Ltd — APPELLANT

Vs

State Of Odisha And Others — RESPONDENT

Date of Decision : 06-03-2023

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2023) 03 OHC CK 0038

Hon'ble Judges : Dr. B.R. Sarangi, J;M.S. Sahoo, J

Bench : Division Bench

Advocate : B.P. Das, A. Mohanty, G. Mohanty, S. Samal, P.A. Dash, S.R. Tripathy, S. Kanungo, A.Sarangi, V.A. Das, P.P. Mohanty, Milan Kanungo, Sitikant Mishra, S.R. Mohanty, D. Acharya, S. Moharana, Pradipta Kumar Mohanty, Pronoy Mohanty, P.K. Pasayat, S.N. Dash, S.K. Sahu

Final Decision : Dismissed

Judgement

B.R. Sarangi, J

1. M/s Acharya Brothers Construction Pvt. Ltd., the petitioner herein, is a company registered under the Companies Act, 1956. It has filed this writ petition through its Managing Director seeking to quash the letters of negotiation issued in favour of opposite party no.3 under Annexure-9 series, and to issue direction to opposite party no.3-Managing Director of Odisha Bridge Construction Corporation to award the work "Development of Housing Projects for Sevayats at Harachandi Sahi in the Heritage City of Puri under ABADHA Scheme on Turnkey Basis" in its favour being the L-1 bidder in the e-Reverse Auction pursuant to the e-Notice Inviting Tender vide Bid Identification No.26/Tender/OBCC/2022-23 dated 14.09.2022 under Annexure-2.

2. The factual matrix of the case, in precise, is that the Managing Director, Odisha Bridge Construction Corporation ("OBCC" for short)-opposite party no.3 issued under Annexure-2 an e-Notice Inviting Tender ("e-NIT" for short) on 14.09.2022 vide Bid Identification No. 26/Tender/OBCC/ 2022-23 for the work

"Development of Housing Projects for Sevayats at Harchandi Sahi in the Heritage City of Puri under ABADHA Scheme on Turnkey Basis". Thereafter, corrigendum no.1 was issued by opposite party no.3 on 30.09.2022 under Annexure-3, whereby certain modifications were made in respect of the technical specifications provided under Sections 5 & 5.4 of the e-NIT issued on 14.09.2022. Thereafter, corrigendum no.2 was issued on 11.10.2022 by the opposite party no.3 under Annxure-4, wherein again some modifications were made in respect of the technical specifications as provided under Serial Nos. 1, 6, 8 & 10 as well as Section-1 (Clause 20.1 & 23.1) respectively of the e-NIT dated 14.09.2022. Again opposite party no.3 issued corrigendum no.3 on 13.10.2022 under Annexure-5, wherein the minimum annual turnover under Section-1-ITB was modified from "last 5 years" to "last 7 years".

2.1 In pursuance of the above e-NIT and corrigendum issued from time to time, the petitioner and three others submitted their bids through e-procurement system. Thereafter, a letter was issued in favour of the petitioner on 15.11.2022, wherein it was reflected that the bid would be opened on 28.10.2022 and the petitioner was to remain present for technical presentation before the technical presentation evaluation committee on 19.11.2022 through video conferencing. Four bidders were qualified in the pre-technical bid process, namely, the present petitioner, B.C. Bhuyan Construction Pvt. Ltd., M/s. B.P. Construction and Shreejikrupa Project Limited. Out of them, three bidders were found technically qualified by the technical presentation evaluation committee. Thereafter, opposite party no.3 opened the financial bid on 22.11.2022. The relative positions of the financial offer are given below:-

Sl.

No.

Name of Bidder

Bidding value in

Rs.

Relative

Position

1.

M/s. Acharya Brothers Construction Pvt. Ltd

67,67,67,677.00

1st

2.

B.C. Bhuyan Construction Pvt. Ltd

74,01,08,000.00

2nd

3.

Shreejikrupa Project imited

85,32,00,000.00

3rd

2.2 The petitioner was declared as L1 bidder. Thereafter, the eligible bids were examined in terms of Clause-29 of Section-1 of the e-NIT. The tender committee members evaluated the technically and financially qualified bidders in terms of Clause 29.2 read with Clause 4.6 of the e-NIT to determine their bid capacity for award of contract in terms of the formula specified. The available bid capacity of the 1st lowest bidder, namely the petitioner herein was calculated at Rs.37.35 crores and its offered bid for the contract was Rs.67.67 crores. Consequentially, the petitioner failed to satisfy Clause-29.2 of the bidding document, as a result of which its bid was declared as insufficient and was accordingly rejected. Hence, this writ petition.

3. Mr. B.P. Das, learned counsel appearing for the petitioner contended that rejection of the bid of the petitioner being L1 cannot be sustained in the eye of law and, as such, opposite party no.3, without giving any opportunity of showing cause to the petitioner, negotiated with opposite party no.5 and rejected the petitioner’s bid, which is not legally tenable. It is further contended that the assessment of the bid capacity value of the petitioner meets the minimum requirement prescribed in the e-NIT. Thereby, declaring disqualification of the bid of the petitioner after opening the financial bid cannot have justification. As a consequence thereof, the negotiation letters between the opposite parties no.2 and 3 with opposite party no.5 cannot also be sustained. Thereby, the selection of opposite party no.5 for award of the work cannot be sustained in the eye of law and, as such, the same is liable to be quashed.

3.3 To substantiate his contentions, learned counsel for the petitioner has relied on the decisions of the apex Court in the cases of Bharat Coking Coal Ltd. v. AMR Dev Prabha, (2020) 16 SCC 759, Adani Gas Limited v. Petroleum and Natural Gas Regulatory Board, (2020) 4 SCC 529; Food Corporation of India v. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601; Master Marine Service (P) Ltd. v. Metcafe & Hodgkinson (P) Ltd, (2005) 6 SCC 138, Sangwan v. Union of India, AIR 1981 SC 1545, Tata Cellular v. Union of India, (1994) 6 SCC 651; Ramana Dayaram Shetty v. International Authority of India, AIR 1979 SC 1628; and decisions rendered by this Court, namely, Sampad Samal v. State of Odisha, AIR 2017 Ori 33; D.K. Engineering & Construction v. State of Odisha, 2016 SCC OnLine Ori 405; and Hemogenomics Private Limited v. State of Odisha, AIR 2016 Ori 178.Airports

4. Mr. Milan Kanungo, learned Senior Advocate appearing along with Mr. S.R. Mohanty, learned counsel for opposite parties no.2 to 4 vehemently contended that since the petitioner does not satisfy the requirement as per the e-NIT, therefore, even if it had quoted lowest price, the same was not accepted. It is further contended that opposite party no.2 issued corrigendum no.3 dated 13.10.2022 wherein minimum annual financial turnover under Section-1-ITB was modified from "last 5 years" to "last 7 years". In the said corrigendum there was no change to updation factor for 6th year and 7th year. But, even if corrigendum is taken into effect, then also annual turnover of the year 2016-17 is also to be taken into consideration for evaluation of bid capacity calculation. Since the petitioner has not satisfied the requirement as per Clause 4.6 of the e-NIT, which is clear and unambiguous, there is no scope for the petitioner to assume differently in reading "5 years" as "7 years", as contended by it. Therefore, the action taken by the authority is well justified. Consequently, the action of the tendering authorities does not warrant any interference by this Court at this stage. To substantiate his contention, reliance has been placed by the learned Senior Advocate appearing for the opposite parties no.2 to 4 on the judgments of the apex Court in the case of Galaxy Transport Agency v. New J.K. Roadways, 2020 SCC OnLine SC 1035; Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and another, (2016) 16 SCC 818; Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517; Central Coalfield Limited and another v. SLL-SML (Joint Venture Consortium) and others, (2016) 8 SCC 622; Silpi Constructions Contractors v. Union of India, 2019 SCC OnLine SC 1133; M/s. N.G. Projects v. M/s Vinod Kumar Jain and others (CA No. 1846 of 2022; National High Speed Rail Corporation v. Montecarlo Limited, (2022) 6 SCC 401; and of this Court in the case of Jogendra Nayak v. State of Odisha (W.P.(C) No. 15857 of 2022 decided on 30.06.2022.

5. Mr. P.K. Mohanty, learned Senior Advocate appearing along with Mr. P.K. Pasayat, learned counsel for opposite party no.5 contended that he supports the argument advanced by Mr. Milan Kanungo, learned Senior Advocate appearing on behalf of opposite parties no.2 to 4, as opposite party no.5 has stepped into the shoes of the said opposite parties. He further contended that since the petitioner has not satisfied the terms and conditions of the e-NIT, even though it was L1, the bid should not have been knocked down in its favour. Thereby, opposite parties no.2 to 4 have not committed any illegality or irregularity so as to cause interference by this Court at this stage.

6. This Court heard Mr. B.P. Das, learned counsel appearing for the petitioner; Mr. P.P. Mohanty, learned Additional Government Advocate for the State; Mr. Milan Kanungo, learned Senior Advocate appearing along with Mr. S.R. Mohanty, learned counsel for opposite parties no.2 to 4; and Mr. P.K. Mohanty, learned Senior Advocate appearing along with Mr. P.K. Pasayat, learned counsel for opposite party no.5 in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. As per the e-NIT under Annexure-2, Section 1 deals with Instruction To Bidders (ITB). Under A. General Instruction, Clause 4.4 A, 4.6 reads as follows:-

“4.4A. To qualify for award of contract, each bidder in its name should have in the last five financial year immediately preceding the financial year in which the bids are received:-

(a) Achieved a minimum annual financial turnover from construction works of ……… [As mentioned in Bid Data Sheet at the end of Section -1].

(b) Satisfactorily completed, as a prime Bidder, at least one similar work/ any major civil construction work of value not less than……[As mentioned in Bid Data Sheet at the end of Section-1]. Bidder should submit completion certificate for Central/State Government projects. For private sector projects, completion certificate with TDS shall be submitted.

(c) Deleted

(d) Bidders must furnished their bid, a detailed construction planning and methodology supported with layout and necessary drawing and detailed calculations to allow the employer to review their proposals.

xxx xxx xxx

4.6 Bidders who meet the minimum qualification criteria will be qualified only if their available bid capacity is more than the total bid value. The available bid capacity will be calculated as under:

Assessed Available Bid Capacity = (AxNx2)-B

Where:

A = Maximum value of civil engineering works executed in any one financial year during the last five financial years (updated to bid invitation year [As mentioned in Bid Data Sheet at the end of Section-1] price level) taking into account the completed as well as works in progress.

N = Number of years prescribed for completion for which the bid has been invited

B = Value (updated to the price level on the financial year in which bids are received) of existing commitments and on-going works' to be completed during the next [As mentioned in Bid Data Sheet at the end of Section-I]”

Under, E. Bid Opening and Evaluation, Clause-25 deals with clarification of financial bids, which reads as follows:-

“25. Clarification of Financial Bids:

25.1. To assist in the examination, evaluation, and comparison of Bids, the Employer may, at his discretion, ask the lowest evaluated responsive bidder for clarification of his-Bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable/e-mail, but no change in the price or substance of the Bid shall be sought, offered, or permitted.

25.2. Subject to Sub-Clause 24.1, no Bidder shall contact the Employer on any matter relating to his bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, it should do so writing.

25.3. Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders' bid.”

Under F. Award of Contract, Clause 29 deals with Award Criteria whereas Clause 30 deals with Employer’s Right to accept any Bid and to reject any or all Bids. Clauses 29, 30 and 30.1 read as follows:-

“29. Award Criteria:

29.1 Subject to Clause 30, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be

(a) eligible in accordance with the provisions of Clause 3 and

(b) qualified in accordance with the provisions of Clause 4.

29.2 In no case, the contract shall be awarded to any bidder whose available bid capacity is less than the evaluated bid price, even if the said bid is the lowest evaluated bid. The contract will in such cases be awarded to the next lowest bidder at his evaluated bid price.

30. Employer’s Right to accept any Bid and to reject any or all Bids.

30.1 Notwithstanding Clause 29, the Employer reserves the right to accept or reject any Bid and to cancel the Bidding process and reject all Bids at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer’s action.”

Annexure-I to ITB deals with the Procedure to participate in online bidding-e-procurement (Refer clause-19 of ITB). Clause-12 thereof deals with Clarification and Negotiation of Bids, which reads as follows:-

“12. CLARIFICATION AND NEGOTIATION OF BIDS:

12.1 For examination, evaluation, and comparison of bids, the officer inviting the bid may, at his discretion, ask the lowest bidder for clarification of his rates including reduction of rate on negotiation and breakdowns of unit rates.

12.2 On opening of the price bid the system shall arrange the financial bids in order of their value (L1 first, followed by L2, L3 ....) for subsequent evaluation.

The

evaluation status (Sheet) will be visible to all the participating bidders after opening on their respective logins. Each activity is recorded in the system with date and time stamping.”

Under Bid Data Sheet at Clause 4.4. A (b) it has been stated as follows:-

4.4.A(b)

Experience in similar project works

Experience of successful completion of Work:

(a) Satisfying any one of the following criteria for Similar Works during last 5 years preceding the date of NIT. Cost of completed works of previous financial years shall be given weightage of 10% (ten percent) per year based on rupee value to bring them to the price level up to the year of bid invitation.5

a.1 One Similar Work of 44

Crores; or

a.2 Two Similar Works

of 33 Crores each; or

a.3 Three Similar

Works of 22 Crores each

Please note that:-

(i) Experience of holding companies, associate companies, subsidiaries, and sister concerns shall not be considered for evaluation.

(ii) All work orders/completion certificates submitted should be in the name of the Applicant (or Subcontractor) as allowed as per the provisions of this IFB). The completion certificate(s) should be from office not below the rank of

Executive Engineer in respect of Project(s) executed in Government

sector. The correspondence details like email id., telephone /fax number

and address for correspondence must be available in the said experience certificate for cross checking if need be.

(iii) For private sector projects, completion certificate with TDS shall be submitted.

Corrigendum No.3 dated 13.10.2022 under Anenxure-5 to the writ petition at Sl. No.2 reads as follows:-

2.

Section -1: TB; Bid

Datasheet Clause

Bid invitation year 2022-23,

Updation Factors:

Bid invitation year 2022-23,

Updation factors:

No.4.4A(a)(i)

Minimum Turnover Financial Turnover

Foot Note-4

Year Before Updation factors One 1.10

Two 1.21

Three 1.33

Four 1.46

Five 1.61

Year Before Updation factor One 1.10

Two 1.21

Three 1.33

Four 1.46

Five 1.61

Six 1.61

Seven 1.61

8. In view of the aforesaid conditions under Clause 4.4 A, to qualify for award of contract, each bidder in its name should have in the last five financial years immediately preceding the financial year, in which the bids are received, achieved a minimum annual financial turnover from construction work. The same having been enhanced for seven financial years by issuing a corrigendum on 13.10.2022, therefore, minimum annual financial turnover shall be taken into consideration, in view of amended Clause 4.4 A (a)(i) by extending the period from "last 5 years" to "last 7 years". As per Clause 4.6, the bidder who meets the minimum qualification criteria will be qualified only if its available bid capacity is more than the total bid value. As such, 'A' indicates the maximum value of civil engineering works executed in any one financial year during the last five financial years (updated to bid invitation year). Therefore, the year prescribed for five years for assessment of available bid capacity has been amended, modified or

clarified by the corrigendum issued. As per Clause 29 of Section-1 of e-NIT, on perusal of the same as mentioned above, it appears that the petitioner has satisfied the stipulation contained in Clause 29.1(a)(b). Pursuant to Clause 29.2 the bidding capacity of all the three bidders was determined keeping in view the provisions contained in Clause 4.6 of the e-NIT. As per the formula prescribed therein, the bidding capacity of all the 3 bidders was determined as follows:-

"(a) M/s Acharya Brothers Construction Pvt. Ltd.

i. A Value: Rs 59.25 Cr (Rs 36.80 Cr of 17-18 updated @ 10%/Year to 22-23)

ii. N value: 1.5

iii. B value: 140.40 Cr

iv. Bidding Capacity = 2x (59.25x1.5)-140.40= Rs 37.35 Cr

(b) B.C.Bhuyan Construction Pvt. Ltd.

i. A value: Rs 261.06 Cr (for the year 2022-23)

ii. N value: 1.5

iii. B Value: 392.17 Cr

iv. Bidding Capacity = 2 x (261.06x1.5)-392.17 = Rs 391.01 Cr

(c) Shreejikrupa Project Limited.

i. A value: Rs 464.38 Cr(Rs 349.16 Cr of 19-20 updated @ 10%/Yea to 22-23)

ii. N Value: 1.5

iii. B Value: 1080.15 Cr

iv. Bidding Capacity = 2 x (464.38 x1.5)-1080.15= Rs 312.99 Cr"

9. The bid capacity of the present petitioner, as calculated above, stands at Rs. 37.35 crores and its offered bid for the contract was Rs.67.67 crores. Therefore, the tender committee met on 23.11.2022 for award of contract, as per the provisions contained in Clause-29 of the e-NIT, evaluated the bidding capacity of all the bidder vis-à-vis their bid value pursuant to Clause 29.2 of the e-NIT to determine the responsiveness of the bidders. Clause 29.2 of the e-NIT states that in no case, the contract shall be awarded to any bidder whose available bid capacity is less than the evaluated bid price, even if the said bid is the lowest evaluated bid. The contract in such cases will be awarded to the next lowest bidder at the evaluated bid price. As the available bidding capacity of the petitioner-contract is much less than its bid value, it could not satisfy the requirement of Clause 29.2 of the e-NIT for award of contract. Therefore, the tender committee recommended not to award the contract to the petitioner, as per Clause 29.2 of the e-NIT, and recommended to ask the next lowest bidder, i.e., opposite party no.5 to negotiate with their quoted offer of

Rs.74,01,08,000.00.

10. In course of hearing, this Court called upon the petitioner with regard to the genuineness of the calculation made by the tender committee. It was emphatically submitted by him that as per Clause 4.4 A the biding was calculated taking into consideration minimum annual turnover for the last 7 years, as per the Corrigendum-3 issued by the authority, whereas the bid capacity was calculated under Clause 4.6 taking into consideration the last five financial years of the bid as per Clause A. Thereby, there is no dispute before this Court with regard to determination made to find out the suitability of the bidders who participated in the bid. Therefore, the petitioner even was shown LI, but the tender committee, taking into consideration the provisions contained in the e-NIT under Clause 4.4 and 4.6, made the assessment that it could not come out successful and, hence, rejected its bid, for which no illegality or irregularity can be attributed on the authority in rejecting the bid of the petitioner.

11. In Bharat Coking Coal (supra), in which reliance was placed by the learned counsel for the petitioner, it was held that when the conditions are laid down by the tender inviting authorities, violation/ alternation of the essential conditions of the e-NIT is not permissible. But the said judgment has no application to the facts and circumstances of present case. Similarly, in case of Adani Gas (supra), it was held by the apex Court that without assigning any reason and without affording any opportunity of hearing to the petitioner and also without specifying violation of any tender clause, rejection of the bid of the petitioner therein and issuance of direction for re-bidding of the work cannot be sustained in the eye of law. The said principle is also not applicable, as because in the case at hand the entire assessment has been made by the tender committee in consonance with the terms of e-NIT and consequential corrigendum issued, about which the petitioner was very well aware.

12. Therefore, even though the petitioner was declared as L1, but taking into consideration the provisions contained in the e-NIT, if the assessment is made and bid of the petitioner is rejected, it cannot be said that the action of the tender committee suffers from violation of any of the conditions, so as to cause interference by this Court. So far as the cases of Sampad Samal and D.K. Engineering (supra), as cited on behalf of petitioner, are concerned, the same have no application to the facts and circumstances of the present case. Reliance was also placed by the petitioner on the case of Food Corporation of India (supra). Therein, it was held by the apex Court that it is the well settled principle that public authority possesses powers only to use them for public good and this imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action". As such, the opposite parties no. 2 to 4 have not committed any error apparent on the face of the record or violated any of the conditions as prescribed in the e-NIT. Therefore, such judgment rather supports the case of opposite parties no.2 to 4, instead of the petitioner. Similarly, the judgment in the case of Master Marine Service (supra), which is cited by the petitioner, also favours the

case of opposite parties no. 2 to 4. As such, the petitioner has not made out a case of arbitrariness or unreasonableness, far from favoritism, so as to cause interference by this Court in exercise of power of judicial review.

13. In National High Speed (supra), the apex Court at paragraphs 34, 35 and 48 of judgment observed as follows:-

34. Even otherwise it is required to be noted that once a conscious decision was taken by the JICC and JICA, who can be said to be the author of the terms and conditions of the tender document, taking a view and stand that the Bid submitted by the original writ petitioner suffers from material deviation and the said decision was taken after considering the relevant clauses of the ITB, thereafter it was not open for the High Court to interfere with such a conscious decision in exercise of powers under Article 226 of the Constitution of India and take a view that the Bid submitted by the original writ petitioner was in substantial compliance.

35. As observed hereinabove, there are as such no allegations of mala fides and/or favouritism at all. Therefore, the High Court has erred in holding that the Bid submitted by the original writ petitioner was in substantial compliance. Whether the Bid submitted by a Bidder suffers from any material deviation and/or any substantial deviation should be left to the author of the Bid document and normally, the High Courts, in exercise of the powers under Article 226 of the Constitution of India, should not interfere with the same unless such a decision is found to be mala fide and/or there are allegations of favouritism and/or such a decision is arbitrary.

48. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner’s notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of caution and advise, we rest the matter there and leave it to the wisdom of the concerned Court(s), which ultimately may look to the larger public interest and the national interest involved.

14. In view of the aforementioned judgment, it is made clear that if the opposite

parties no.2 to 4 have taken a conscious decision on the basis of the e-NIT floated by them, who can be said to be the author of the terms and conditions of the tender document, it cannot be said to suffer from material deviation so as to warrant interference by this Court.

15. In Galaxy Transport Agencies (supra), a three-Judge Bench of the apex Court reiterated that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a Court in judicial review proceedings.

16. In Afcons Infrastructure (supra), the apex Court at paragraph-15 of the judgment observed as follows:-

"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."

17. In Central Coalfields Ltd. (supra), the apex Court at paragraphs-47 of the judgment ruled as follows:-

"47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty the terms of the NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision making process can certainly be subject to judicial review. The 2016 (7) SCALE 425 (2012) 8 SCC 216 soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in Jagdish Mandal [Jagdish Mandal v. State of Odisha, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216].

18. In Silppi Construction (supra), the apex Court at paragraph-20 of the judgment held as follows:-

"20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

19. In view of the facts and law, as discussed above, this Court is of the considered view that since the opposite parties no.2 to 4 have acted in consonance with the terms and conditions of the e-NIT, the selection of opposite party no.5 cannot be said to be arbitrary, illegal or unreasonable, so as to cause interference by this Court.

20. Thus, the writ petition merits no consideration and the same stands dismissed. However, there shall be no order as to costs.

……………………………….

