
(2018) 05 RAJ CK 0251
In the Rajasthan High Court
Case No : Civil Writs No. 3182 of 2018

M/s. Real Mazon India Ltd. @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 21-05-2018

Acts Referred:

Rajasthan Transparency in Public Procurement Act, 2012 — Section 4
Central Motor Vehicles Rules, 1989 — Rule 50
Rajasthan Transparency in Public Procurement Rules, 2013 — Rule 59, 68, 80
Constitution of India, 1950 — Article 32, 136, 141

Citation : (2018) 05 RAJ CK 0251

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : Amarpreet Singh, Sandeep Pathak, Rajendra Prasad, Karan Tibrewal, Suresh Uppal

Final Decision : Allowed

Judgement

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1. The backdrop of the present writ petition is of the respondent-State issuing an NIT inviting bids for implementation of High Security Registration,,

Plates (â??HSRPâ?) Scheme introduced vide amendment made under Rule 50 of the Central Motor Vehicles Rules, 1989 and the HSRP Order of",,,

2001 issued by the Central Government. The said HSRP Scheme contemplates that the present system of Archaic Number Plates are replaced with,,

the HSRP which have the Modern Security Features not available in the Archaic Number Plates, viz:-",,,

(a) Hot stamped Chromium based Hologram.,,,

(b) Permanent consecutive identification number of minimum 7 digits. (c) â?? INDâ?? in blue colour.,,,

(d) Non-removable snap lock,,

(e) Third Registration Plate on the top left hand corner of the three/four wheeler widescreen.,,

(f) Hot Stamping INDIA inscript Film.,,

2. The tender notice dated 30/05/2017 required the bidder to implement the project by establishing necessary infrastructure for the issuance and fixing,,

of HSRP. The bid was required to be submitted on-line in electronic format consisting of technical and financial proposal. The provisions of the,,

Rajasthan Transparency in Public Procurement Act, 2012 (hereinafter referred as "RTPP Act") were made applicable for the procurement and",,

the Rules framed thereto were to prevail. The bidder could be an individual, firm, company, corporation, a joint venture or consortium with qualifications",,

both technical and financial as laid down in the bid document.,,

3. The petitioner No.1-M/s. Real Mazon India Ltd. states that earlier they had been awarded tender vide agreement dated 16/05/2012 for,,

implementation of the HSRP Scheme in compliance of the orders passed by the Supreme Court in Maninderjit Singh Bitta's PIL i.e. Writ,,

Petition (C) No.510/2005. It is stated that they implemented the Scheme during its contractual period from May, 2012 to May, 2017 and were",,

granted extensions upto the award of fresh contract.,,

4. Petitioners had approached this Court alleging tailor made conditions in the subsequent corrigendum issued to the NIT on 30/06/2017 vide S.B. Civil,,

Writ Petition No.10921/2017. During the pendency, the petitioners had participated in the tender as a consortium and the prequalification bid had taken",,

place and this Court has noted that the firm had not been disqualified. The petitioner-firm had apprehended that it shall be ousted in the technical bid,,

but as there was no such basis, the writ petition was disposed of by passing following order on 18/08/2017: "Thus, present writ petition is disposed",,

of with liberty to the petitioner-firm to take remedy that if any adverse order is passed, however, the respondents would also be expected to consider",,

every bid as per the conditions given therein.",,

5. It is stated that immediately after disposal of the said writ petition, the petitioners were declared disqualified on technical ground vide e-mail sent to",,

them on 18/08/2017. SB Civil Writ Petition No.14242/2017 challenging the rejection order dated 18/08/2017 was preferred and the bid was rejected,,

pointing out several deficiencies and also on account of Clause 1.5.3.1 treating the petitioners to be participating as a Joint Venture.,,

6. The learned Single Judge, after hearing, did not accept contention of the petitioners and dismissed the same vide order dated 05/09/2017. DB",,

Special Appeal (Writ) No.1325/2017 was filed and the respondent no.3Celex Technologies Private Limited, which had been awarded the contract",,,

was directed to be impleaded as a party. After hearing the parties, the Division Bench decided the appeal and passed following order vide order dated",,

02/11/2017:-,,

â??The submission made in reference to R.68 of the Rajasthan Transparency in Public Procurement Rules, 2013 or the CVC guidelines, the Id. Single",,

Judge at the stage observed that it was premature because the decision on the selection of single bidder was pending at that time when the judgment,,

was pronounced by the Id. Single Judge but as we have set aside the order or rejection 18/08/2017 and in the further process there being two bidders",,,

R. 68 of the Rules, 2013 may not have any application at this stage and it is always open for the State authorities to consider while reaching to the",,

finality of the present tender process and it is expected that the mandate of the Rajasthan Transparency in Public Procurement Act, 2012 and the",,

Rules, 2013 framed thereunder may be fulfilled in its true spirit.",,

Consequently, the instant appeal succeeds and is hereby allowed. The impugned rejection order dt.18/08/2017 and so also order of the Id. Single Judge",,

dt.05/09/2017 are hereby quashed and set aside. The Government is at liberty to complete the tender process keeping in view the conditions of the bid,,

document within a period of four weeks and take further action in accordance with law. No costs.â??,,

7. SLP (C) No.33870 of 2017 filed by the State and SLP (C) No.33423/2017 by respondent No.3 against the said order and the same was dismissed,,

after hearing all the parties on 05/01/2018 with following order:-,,

â??The special leave petitions are dismissed. Pending application(s), if any, shall stand disposed of.â??",,

8. The petitioner has again filed the present writ petition as the respondents vide order dated 15/02/2018 have reexamined their bidding document on,,

other technical parameters and rejected the technical bid submitted by the petitionerâ??s Consortium.,,

9. The first contention raised by the petitioners is that the respondents could not have rejected the technical bid again and it was not permissible for the,,

State Government to rely upon any of the grounds which were taken by it in their earlier order of rejection dated 18/08/2017 and it could not have,,

once again disqualified for the same reasons which were contained in the order dated 18/08/2017 as the order dated 18/08/2017 had been quashed and,,

set aside by the Division Bench of this Court and upheld by the Supreme Court while dismissing the SLP of State Government.,,

10. On 18/08/2017, the respondents had evaluated the technical evaluation parts of bids and after noting all the aspects relating to the tender had,,

mentioned as under:-,,

â??Note : M/s. Mazon B V is a foreign entity and as such following documents are not available with the Bid :,,

1. Extract of directorship as per MCA site Solvency certificate in case of Mazon BV is from ABN 2. Amro Bank 3. MOA of Mazon BV ot,,

available Copy of IT return, PAN, TIN, GST,,

4. Service Tax mijksDrkuqlkj M/s. Mazon B V ds fy;s fcM MkD;wesaV ds DykWTK 1.5.3.2 (d) â??The Application should contain all information,,

as required in this bid document for each member of the consortiumâ?? dh iwfrZ ugha djrk gSA,,

11. As regards the financial eligibility, the order dated 18/08/2017, noted for the petitioner, reads as under:-",,,

â??M/s . Real Mazon India Ltd. (Consortium between Real Mazon India Ltd. & Mazon B.V.),,,

I. The bidder has submitted DD for tender document fee Rs. 100000/ii. The bidder has submitted DD for tender processing fee Rs. 1000/-,,

iii. The bidder has submitted DD., for EMO of Rs. 10000000/-",,,

iv. The bidder has submitted Bank Guarantee for EMO of Rs. 10000000/- The compliance of financial capabilities :,,

a. Net worth Required Rs. 10.00 cr.,,

b. Annual Turnover Required Rs. 20.00 Cr. In any two of immediately preceding three financial years.,,

a. M/s.

Real

Mazon

India Ltd

85%","Required Rs.

8.50

Cr.","Actual Rs.

19.36

Lakh

b. M/s. Mazon

BV 15%","Required Rs.

1.50 cr.","Actual Rs.

18.03 cr.

possess.,,

(v) Failed to provide the complete list of directorship of the respondent no.2 as per the MCA site, as contrarily the Trade Register Office indicates that",,

there are two Directors.,,

(vi) Non-disclosure of copy of IT return, PAN, TIN, GST registration etc.",,

Hence it is apparent that the consortium did not comply with clause 1.5.3.2 (d) of NIT which reads "The Application should contain all information",,

as required in this bid document for each member of the consortium." Therefore, the petitioner no.2 has rightfully rejected the bid submitted by the",,

consortium led by M/s Real Mazon, by the Order dated 18.08.2017, as the same was non-responsive."",,

13. It is submitted that all these grounds were not only taken up by the respondents in their reply to the earlier writ petition but were also taken up in",,

the SLP preferred before the Supreme Court. However, this Court as well as the Supreme Court has not accepted their contentions and it was not",,

available for the respondents to again take up the same issue and reject bid of the petitioner. Learned counsel submits that the action of the",,

respondents suffers from malice in law as well as on facts. Learned counsel has additionally submitted that even otherwise, the petitioner had",,

submitted all documents alongwith bid which showed that the petitioner had net worth equivalent to Rs. 10 Crore in terms of corrigendum, Accon-",,

Avm was a Chartered Accountant and its number was also mentioned. The same

was annexed as bid document. Learned counsel also submits that,,
the petitioner also had solvency certificate of Mazon B.V. placed alongwith bid document issued by Amro Bank. The petitioner further submits that,,
the power of attorney had been notarized by the Notary Public at Netherlands sinceÂ Netherlands comes under Heg Legislation Convention 1961,",,
the same is not required to be legalized from Indian Embassy. It had already been notarized by the Dutch Competent Authority and the Authority,,
Letter as per Clause 1.6.6 of the bid document of Mazon B.V. was submitted.,,
14. Learned counsel for the petitioner further submitted that the list of Directors had been placed alongwith bid documents of Mazon B.V.. An,,
affidavit of one of the Directors was also submitted. The requirement of Return, PAN, TIN Certificates was not applicable to Mazon B.V. it being a",,
Foreign Company. The Memorandum of Articles (MOA) was, however, produced with English translation. It is his submission that earlier vide order",,
dated 18/08/2017, the deficiencies had been mentioned but the bid had not been rejected on that ground. Learned counsel submits that Rule 59 of the",,
RTPP Rules, 2013 laid down the determination of responsiveness and the defects which were pointed out and have been made a ground to reject the",,
petitionerâ??s bid cannot be said to be material deviation. Learned counsel further submits that the bid accepted of respondent no.6 was much higher,,
than that of the petitioners. It is submitted that the bid of the petitioners was rejected with a view to help the respondent no.6. It is his case that the,,
State exchequer would suffer a loss of somewhere around 50 Crore on account of the acceptance of the bid of respondent no.6 in comparison to bid,,
of the petitioners. It is also stated that the petitioner no.1, which was a part of the consortium already had an experience of working in Rajasthan and",,
there was no occasion to deprive the petitioners firm performing by creating hurdles. Rule 59 of the RTPP Rules, 2013 was relied upon.",,
15. Learned counsel for the petitioners also relied on Rule 68 of the RTPP Rules, 2013 to point out that by their action of rejecting the petitionersâ??",,
bid on technical grounds, there was lack of competition with regard to the financial bid and there was a requirement to act in terms of Rule 68 of",,
RTPP Rules, 2013. However, in the earlier litigation the Court had clearly left out Rule 68 of the RTPP Act to beÂ observed once it has reached to",,
the conclusion that the petitioners were also technically qualified. It is his

submission that once there are grounds set up before the Court and the,,
 Court decides the writ petition, it would be presumed that all grounds have been considered and decided and it is not available for any party to again",,,
 take up the same issues and force second round of litigation relating to the same issues.Â He relies on the law laid down by the Apex Court in the,,
 case of Rashmi Metaliks Limited and another Vs. Kolkata Metropolitan Development Authority and others: (2013) 10 SCC 95 to submit that once a,,
 contention or ground has not been taken up in the first round, the same cannot be a reason to interfere and permit to travel beyond the stand which",,,
 was adopted and decided against a party in the earlier decision. He also relies on the law laid down in the case of Mohinder Singh Gill Vs. Chief,,
 Election Commr.: (1978) 1 SCC 405.,,,
 16. Per-contra, learned Additional Advocate General submits that merely because the SLP dismissed, it cannot be said that the same has been",,,
 decided on merits. The order of Division Bench does not merge with the order of the Supreme Court. He relies on the law laid down by the Apex,,
 Court in the case of Kunhayammed & ors. Vs. State of Kerala & ors.: 2000(6) SCC 359. Hence, he submits that the respondents were within their",,,
 right and power to non-suit the petitioners on the grounds which were not considered in the previous decision rendered by this Court.,,,
 17. Additionally, he submits that since in the earlier litigation, the Division Bench had directed that "the Government is at liberty to complete to",,,
 tender process keeping in view the conditions of bid documents within a period of four weeks and take further action in accordance with lawâ?, the",,,
 respondents had rightly issued the order dated 15/02/2018 and re-examined the bid document of the petitioners and rejected it on the grounds which,,
 were other than as decided by this Court.,,,
 18. The respondent no.3 has submitted written submissions and has principally followed the submissions as set up by Mr. Rajendra Prasad, Additional",,,
 Advocate Genral. The law laid down in the case ofÂ Kunhayammed & ors. Vs. State of Kerala & ors. (supra) has been relied upon to submit that,,
 the additional grounds not raised at the time of pleadings before the lower Court can only be urged with the leave of the Court before the Supreme,,
 Court as per Supreme Court Rules, 2013. However, since no such leave of the Court was obtained, it cannot be said that the grounds on which the bid",,,

of the petitioners has been rejected were raised and argued before the Supreme Court in the earlier bout of litigation. It is further submitted that the,,

defects in the petitionersâ?? bid were material in nature nature as bid of the petitioners does not consist of a valid bank solvency certificate of the,,

consortium member Mazon B.V.. The requirement of solvency certificate is an essential tender condition since the State Government would be,,

entering into a long term agreement with the successful bidder who would have to continuously provided service to the general public on behalf of the,,

State Government and the process undertakes financial and operational liabilities and obligations.,,

19. Further, it is submitted that the valid net worth certificate of the consortium member Mazon B.V. was not included with the bid of the petitioner",,,

which is a material requirement to determine whether the petitioners can undertake skill of operation and financial obligations the project entails. The,,

certificate from the Chartered Accountant is also an essential document. The disclosure of all the Directors was also material and the valid power of,,

attorney was not available of Mazon B.V.. It is also submitted that merely because the bid of the petitioners was lowest, the tendering authority was",,,

not bound to accept the same and relies on the judgment passed by the,,

Apex Court in the case of State of West Bengal Vs. Patel Engineering: MANU/SC/0024/2001. Further, the respondent no.3 submits that the tendering",,,

authority could not have permitted rectification of the defective bid and the tendering authority also could not have exempted or relaxed any tender,,

condition. It is submitted further that award of contract to the respondent no.3 was strictly in terms of Rule 68 of the RTPP Act, 2012 as only two",,,

bidders were available to compete in the technical qualification stage and since the petitionersâ?? bid was technically not qualified, the work order",,,

was rightly allotted to respondent no.3.,,

20. Having noted the aforesaid submissions and after looking into the record which was called from the respondents, this Court finds that the moot",,,

question which requires to be considered is whether the respondent-State could have rejected petitionersâ?? bid on technical grounds after the,,

Division Bench had set aside the rejection order passed earlier which was challenged by the State before the Supreme Court in SLP and the SLP had,,

been dismissed and whether the so-called defects as pointed out in the rejection

order could be said to be material in nature and could have been,,

procured by pointing out the discrepancy to the notice of the tenderer in-stead of disqualifying the bid.,,

21. The purpose of RTPP Act, 2012 is ingrained in Section 4 of the RTPP Act, 2012 which lays down as under:-",,,

â??4. Fundamental principles of public procurement.- (1) In relation to a public procurement, the procuring entity shall have the responsibility and",,,

accountability to-,,,

(a) ensure efficiency, economy and transparency;",,,

(b) provide fair and equitable treatment to bidders;,,,

(c) promote competition; and,,

(d) put in place mechanisms to prevent corrupt practices.,,,

(2) Subject to the provision of sub-section (3) of section 3, every procuring entity shall carry out its procurement in accordance with the provisions of",,,

this Act and the rules and guidelines made thereunder.â??",,,

22. The determination of responsiveness has been provided under Rule 59 of the RTPP Rules, 2013 which provides as under:-",,,

â??59. Determination of responsiveness.- (1) The bid evaluation committee shall determine the responsiveness of a bid on the basis of bidding,,

documents and the provisions of subsection (2) of section 7.,,,

(2) A responsive bid is one that meets the requirements of the bidding documents without material deviation, reservations, or omission where:-",,,

(a) â??deviationâ?? is a departure from the requirements specified in the bidding documents;,,,

(b) â??reservationâ? is the setting of limiting conditions or withholding from complete acceptance of the requirement specified in the bidding,,

documents; and,,

(c) â??Omissionâ?? is the failure to submit part or all of the information or documentation required in the bidding documents.,,,

(3) A material deviation, reservation, or omission is one that, (a) if accepted, shall:-",,,

(i) affect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the bidding documents; or",,,

(ii) limits in any substantial way,inconsistent with the bidding documents, the

procuring entity's rights or the bidder's obligations under the",,,
 proposed contract; or (b) if rectified, shall unfairly affect the competitive position of other bidders presenting responsive bids.",,,

(4) The bid evaluation committee shall examine the technical aspects of the bid in particular, to confirm that all requirements of bidding document have",,,
 been met without any material deviation, reservation or omission.",,,

(5) The procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the bidding documents, or it contains minor",,,
 deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents, or",,,
 if it contains errors or oversights that can be corrected without touching on the substance of the bid.",,,

23. Lack of competition is to be dealt with in terms of Rule 68 of the RTPP Rules, 2013, which provides as under:-",,,

68. Lack of competition.- (1) A situation may arise where, if after evaluation of bids the bid evaluation committee may end-up with one responsive bid",,,
 only, in such situation, the bid evaluation committee should check as to whether while floating the Notice Inviting Bids all necessary requirements to",,,
 encourage competition like standard bid conditions, industry friendly specifications, wide publicity, sufficient time for formulation of bids, etc. were",,,
 fulfilled. If not, the Notice Inviting Bids should be refloated after rectifying deficiencies. The bid process shall be considered valid even if there is one",,,
 responsive bid, provided that-",,,

(a) the bid is technically qualified;,,
 (b) the price quoted by the bidder is assessed to be reasonable;,,
 (c) the bid is unconditional and complete in all respects;,,
 (d) there are no obvious indicators of cartelisation amongst bidders; and,,
 (e) the bidder is qualified as per the provisions of section 7,,

(2) The bid evaluation committee shall prepare a justification note for approval by the next higher authority of the procuring entity, in which the",,,
 concurrence of the accounts member shall be necessary.,,,

(3) In case of dissent by any member of bid evaluation committee the next higher authority in delegation of financial powers shall decide as to whether,,
 to sanction the single bid or re-invite bids after recording reasons.,,,

(4) If a decision to re invite the bids is taken, market assessment shall be carried out for estimation of market depth, eligibility criteria and cost estimate.",,,

24. Rule 80 of the RTPP Rules, 2013 provides for the Code of integrity and it is enjoined on all officers and employees of the procuring entity that they",,,

shall not intentionally use unnecessarily restrictive or "tailored" specifications, terms of reference or statements of work that can discourage",,,

competition and shall treat all bidders in a fair and equitable manner in line with the principle of fairness, integrity and transparency in the procurement",,,

process.,,,

25. In the aforesaid background, a look at the first round of litigation shows that bid of the petitioners was rejected on 18/08/2017 by imposing Clause",,,

1.5.3.1 which was only applicable to the bidder participating as joint venture whereas the petitioners had participated as consortium.,,,

The Clause 1.5.3.1 reads as under:-,,

"For the purpose of above evaluation, if the Bidder is a Joint Venture, the financial capabilities of its constituent entities shall be considered in the",,,

ratio of their share holding in the JV.",,,

26. Once the Court rejected contention of the respondents regarding Clause 1.5.3.1, the question relating to financial capabilities of its constituent",,,

entities was not required to be considered at all. For the bidder as a consortium as accepted by the Division Bench earlier and upheld by the Apex",,,

Court, a look at the tender document shows that Para 1.5.3.2 would apply. Para 1.5.3.2 reads as under:-",,,

"In case the Bidder is a Consortium. It shall comply with the following additional requirements as the case may be:",,,

a. The member of a consortium shall form an appropriate SPV registered under the Indian Companies Act 1956 after issuance of LOI but before",,,

signing of agreement, to execute the Project, if awarded to the Consortium.",,,

b. The joint bidding agreement should include a brief description of the roles and responsibilities of individual members. Particularly with reference to",,,

financial, technical and O&M obligation.",,,

c. Members of the Consortium shall nominate one member as the lead member (the "Lead Member"), who shall have an equity share holding of",,,

at least 40% (forty percent) of the paid up and subscribed equity of the SPV and 15% equity share for rest of the members individually. The",,,

nomination(s) shall be supported by a Power of Attorney signed by all the other members of the Consortium.,,

d. The Application should contain a II the information as required in this bid for each member of the Consortium.,,

e. An individual Bidder cannot at the same time be member of a Consortium. Further, a member of a particular Bidder Consortium cannot be member",,,

ofÂ any other Bidder Consortium for this bid.â???,,

27. Thus, the rejection of the bid of the petitioners on the ground of Mazon B.V. a member of the consortium having certain deficiencies relating to",,,

proof of its financial capabilities would not come in way. It is seen that in the earlier order of rejection dated 18/08/2017, the bid was considered as",,,

that of a Joint Venture and therefore, the individual entityâ??s financial capabilities were examined. However, it is seen that in the order impugned",,,

also the respondents have examined treating it to be a Joint Venture, the individual financial capabilities of the constituent members of the Consortium",,,

was not required to be considered under the terms of the contract.,,

28. The other grounds, which have been taken up in the present impugned order, were also mentioned in the order of rejection dated 18/08/2017. The",,,

order dated 18/08/2017 was challenged. The learned Single Judge dismissed the writ petition. Before the Court, it was mentioned that the respondent",,,

no.3 had quoted weighted average price of Rs.149.62 inclusive of tax whereas the petitioners had quoted Rs.126/- which was much lower than that of",,,

the respondent no.3. The Division Bench vide its judgment dated 08/09/2017 allowed the appeal and set aside the order passed by the Single Judge,,,

with further directions to complete the tender process. Rejection order dated 18/08/2017 was also quashed & set aside.,,

29. It was ground before the Supreme Court in the two separate SLPs filed by the respondent-State and the respondent No.3 that the Division Bench,,,

had only examined one of the points of rejection while the petitioners were found non-suited on other grounds too. Those are the grounds on which the,,,

petitioner has again been now non-suited and this second round of litigation has started. The Supreme Court, after hearing both the parties dismissed",,,

the SLP. It is also noted that before the Division Bench, the same grounds, which have been raised now, were not raised by the State to support their",,,

order dated 18/08/2017 although they were part of it.,,

30. In the case of Kunhayammed & ors. Vs. State of Kerala & ors. (supra), it has been held by the Supreme Court as under:-",,,

â??A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected",,,

(i) as barred by time, or",,,

(ii) being a defective presentation,",,,

(iii) the petitioner having no locus standi to file the petition,",,,

(iv) the conduct of the petitioner disentitling him to any indulgence by the Court,
(iv) the question raised by the petitioner for consideration by this Court",,,

being not fit for consideration or deserving being dealt with by the apex court of the country and so on. The expression often employed by this Court,,

while disposing of such petitions are â??heard and dismissedâ?, â??dismissedâ?,
â??dismissed as barred by timeâ? and so on. May be that at the",,,

admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply,,

its mind to the merit worthiness of the petitionerâ??s prayer seeking leave to file an appeal and having formed an opinion may say â??dismissed on,,

meritsâ??. Such an order may be passed even ex-parte, that is, in the absence of the opposite party.",,,

In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by",,,

the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of",,,

the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order.,,,

Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 of the C.P.C. or any other statutory provision or allowing review of an,,

order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1,,

of the C.P.C. act as guidelines) are not necessarily the same on which this court exercises discretion to grant or not to grant special leave to appeal,,

while disposing of a petition for the purpose. Mere rejection of special leave petition does not take away the jurisdiction of the court, tribunal or forum",,,

whose order forms the subject matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to,,

exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for",,,

special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned,,

away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply.,,,

But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court,,

in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court,",,

tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be,,

subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.â???,,,

31. Similar view has been taken by the Supreme Court in the case of Gangadhara Palo Vs. Revenue Divisional Officer and another: (2011) 4 SCC,,

602 wherein it was held as under:-,,

â??7. The situation is totally different where a special leave petition is dismissed without giving any reasons whatsoever. It is well settled that special,,

leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a special leave petition can be dismissed for a variety of",,,

reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any,,

reasons. Hence, when a special leave petition is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the",,,

order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is",,,

limited to errors apparent on the face of the record. If, on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be",,,

even of just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (See the decisions of this Court in",,,

Kunhayammed & Others vs. State of Kerala, S Shanmugavel Nadar v. State of T.N., State of Manipur v. Thingujam Brojen Meetei and U.P. RSTC",,,

v. Omaditya Verma.),,,

8. A judgment which continues to exist can obviously be reviewed, though of

course the scope of the review is limited to errors apparent on the face",,,
of the record but it cannot be said that the review petition is not maintainable at all.â??,,

32. Thus viewed, the judgment passed by the Division Bench would not merge with the order passed by the Supreme Court while dismissing the SLP.",,,

However, the question would arise whether the order of Division Bench quashing the rejection order passed by the State Government dated",,,

18/08/2017 would mean to only reject one ground of the State Government of rejecting the bid and other grounds were left open for the State,,

Government to re-agitate for rejecting the bid.,,,

33. In the case of *Devi Lal Modi Vs. Sales Tax Officer, Ratlam and others*: AIR 1965 (SC) 1150 wherein it was held as under:-",,,

â??11. The result of the decision of this Court in the earlier appeal brought by the appellant before it is clear and unambiguous, and that is that the",,,

appellant had failed to challenge the validity of the impugned order which had been passed by the Assistant Commissioner against him. In other words,",,,

the effect of the earlier decision of this Court is that the appellant is liable to pay the tax and penalty imposed on him by the impugned order. It would,",,,

we think, be unreasonable to suggest that after this judgment was pronounced by this Court, it should still be open to the appellant to file a subsequent",,,

writ petition before the Madhya Pradesh High Court and urge that the said impugned order was invalid for some additional grounds. In case the,,

Madhya Pradesh High Court had upheld these contentions and had given effect to its decision, its order would have been plainly inconsistent with the",,,

earlier decision of this Court, and that would be inconsistent with the finality which must attach to the decisions of this Court as between the parties",,,

before it in respect of the subject-matter directly covered by the said decision. Considerations of public policy and the principle of the finality of,,

judgments are important constituents of the rule of law and they cannot be allowed to be violated just because a citizen contends that his fundamental,,

rights have been contravened by an impugned order and wants liberty to agitate the question about its validity by filing one writ petition after another.,,,

12. The present proceedings illustrate how a citizen who has been ordered to pay tax can postpone the payment of the tax by prolonging legal,,

proceedings interminably. We have already seen that in the present case the

appellant sought to raise additional points when he brought his appeal,,
before this Court by special leave; that is to say, he did not take all the points in
the Writ petition and thought of taking new points in appeal. When",,,
leave was refused to him by this Court to take those points in appeal, he filed a
new petition in the High Court and took those points, and finding that",,,
the High Court had decided against him on the merits of those points, he has
come to this Court; but that is not all. At the hearing of this appeal, he has",,,
filed another petition asking for leave from this Court to take some more
additional points and that shows that if constructive res judicata is not applied,,
to such proceedings a party can file as many writ petitions as he likes and take
one or two points every time. That clearly is opposed to considerations,,
of public policy on which res judicata is based and would mean harassment and
hardship to the opponent. Besides, if such a course is allowed to be",,,
adopted, the doctrine of finality of judgments pronounced by this Court would
also be materially affected. We are, therefore, satisfied that the second",,,
writ petition filed by the appellant in the present case is barred by constructive
res judicata.â??,,

34. The aforesaid view was reiterated in the case of Union of India Vs. Nanak
Singh: AIR 1968 (SC) 1370 as well as in the case of State of Uttar,,
Pradesh Vs. Nawab Hussain: AIR 1977 (SC) 1680 and in the case of Gulam
Abbas and others Vs. State of UP and others: AIR 1981 (SC) 2198.,,,

The same view has been taken by the Apex Court in the case of Smt. Pujari Bai
etc. Vs. Madan Gopal (dead) L.Rs. Viz. Jayawanti and others: AIR,,
1989 (SC) 1764 wherein it was held in Para 23 as under:-,,
â??23. This takes us to the question of res judicata. The question is whether the
suit of the appellant was barred by res judicata in view of the,,
summary dismissal of her writ petition earlier. It is not disputed that the writ
petition filed by the appellant against the order of the Assistant,,
Consolidation Officer was dismissed in limine.,,,

This order dated 14-4-1969 was passed by the Division Bench of Punjab &
Haryana High Court. It was a one word order. The question of res,,
judicata apparently arises when a controversy or an issue between the parties
has been heard and decided. This Court in Workmen of Cochin Port,,
Trust v. Board of Trustees of the Cochin Port Trust(1978) 3 SCR 971 : (AIR 1978
SC 1283) considered this principle and observed (at p. 977) (of,,

SCR) : (at p. 1287-1288 of AIR):,,

But the technical rule of res judicata although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues",,,

in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of res,,

judicata to such an extent so as to found it on mere guess work. To illustrate our view point, we may take an example. Suppose a writ petition is filed",,,

in a High Court for grant of a writ of certiorari to challenge some order or decision on several grounds. If the writ petition is dismissed after contest by,,

a speaking order obviously it will operate as res judicata in any other proceeding, such as, of suit, Article 32 or Article 136 directed from the same",,,

order or decision. If the writ petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the",,,

availability of an alternative remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be barred on the",,,

principle of res judicataâ??,,

35. Same view has been taken by the Apex Court in the case of S. P. Gupta and others Vs. UP State Electricity Board and others: AIR 1991 (SC),,,

1309 wherein it was held in Para 3 as under:-,,

â??3. The petitioners have preferred the present Special Leave Petition against the order of the Allahabad High Court dated 2.4.90. Shri Mohanty",,,

learned Counsel for the petitioners, submits that neither the cryptic order of dismissal of the original special leave petition nor the order on the",,,

miscellaneous application filed by the petitioners could stand in the way of the Allahabad High Court considering the review petition filed before it on,,

merits. In support of this contention he relied, inter alia, on the observations in Daryao and Ors. v. The State of U.P. [1962] 1 SCR57 (AIR 1961 SC",,,

1457), State of Orissa v. Dr. (Miss) Binapani Dei 1967 (2) S.C.R. 625; (AIR 1967Â SC 1269) Workmen or Cochin Port Trust v. Board of Trustees",,,

of the Cochin Port Trust (1978) 3 SCC 119: (AIR 1978 SC 1283) and Indian Oil Corporation Ltd. v. State of Bihar 1987 (167) i.T.R. 897 : (AIR 1986,,

SC 1780).â??,,

36. Thus in all the aforesaid cases, the Supreme Court has been consistently observing that a second writ petition on the same grounds on which the",,,

first writ petition has been rejected would not lie. The same would apply to the

grounds taken by the non-petitioner. Once the grounds have been taken,,
to support and order which is impugned and the Court examines the order and
quashes the same, it has to be presumed that the Court has considered",,,

all the grounds although it would be necessary to have incorporated all the
grounds in the part of the judgment.,,,

37. At best, if a party is aggrieved by any ground not having been examined in
the body of the judgment, it can file a review petition to submit that a",,,

finding must be given with regard to the ground taken in the pleadings. However,
to allow a second round of litigation on the premise that the earlier",,,

judgment did not refer to a particular ground of rejection and therefore, the
same would be available to the party against whom the order has been",,,

passed to raise the same in order to oust the party in whose favour the earlier
judgment has been rendered, would amount to gross abuse. If such a",,,

course is allowed, it would be an unending process and the Courts would be stuck
with a single case coming up for more than once before it as one or",,,

the other grounds may not find place in the judgment pronounced by it. Such
action would also defeat finality of a judgment.,,,

38. In the aforesaid backdrop, therefore, on the facts which have been noted
above, the impugned order passed by the respondents dated 15/02/2018",,,

deserves to be quashed and set aside.,,,

39. In the case of Tata Cellular Vs. Union of India: 1994(6) SCC 651, it has been
held by the Apex Court in para no.77 as under:-",,,

â??77. . The duty of the court is to confine itself to the question of legality. Its
concern should be:,,

1. Whether a decision-making authority exceeded its powers?,,,

2. committed an error of law,,

3. committed a breach of the rules of natural justice,,

4. reached a decision which no reasonable tribunal would have reached or,,

5. abused its powers.,,,

Therefore, it is not for the court to determine whether a particular policy or
particular decision taken in the fulfillment of that policy is fair. It is only",,,

concerned with the manner in which those decisions have been taken. The extent
of the duty to act fairly will vary from case to case. shortly put, the",,,

grounds upon which an administrative action is subject to control by judicial

review can be classified as under :,,

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.,,

(ii) Irrationality, namely, Wednesbury unreasonableness,",,

(iii) Procedural impropriety.,,

The above are only the broad grounds but it does not rule out additional of further grounds in course of time. As a matter of fact, in *R v. Secretary of*,",,

State for the Home Department ex parte Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of,",,

proportionality. In all these cases the test to be adopted is that the court should, ""consider whether something has gone wrong of nature and degree",,,

which requires its intervention"".".,,

40. In the case of *Rashmi Metaliks Limited and another Vs. Kolkata Metropolitan Development Authority and others* (supra), it was held by the Apex,",,

Court in Para 18 as under:-,,

â??18. We think that the Income Tax Return would have assumed the character of an essential term if one of the qualifications was either the gross,,

income or the net income on which tax was attracted. In many cases this is a salutary stipulation, since it is indicative of the commercial standing and",,,

reliability of the tendering entity. This feature being absent, we think that the filing of the latest Income Tax Return was a collateral term, and",,,

accordingly the Tendering Authority ought to have brought this discrepancy to the notice of the Appellant company and if even thereafter no,,

rectification had been carried out, the position may have been appreciably different. It has been asserted on behalf of the Appellant-company, and not",,,

denied by the learned counsel for the Respondent-Authority, that the financial bid of the Appellant-company is substantially lower than that of the",,,

others, and, therefore, pecuniarily preferable.".,,

41. Further, it is seen that the Court found that individual financial capability was not required to be seen once it has been held that Para 1.5.3.1 would",,,

not apply and the bidder was not to be treated as a Joint Venture but as a Consortium.,,

42. Rule 59 of the RTPP Rules, 2013, as quoted above, provides what is a material deviation. Taking into consideration that the deficiencies which",,,

have been pointed out are only in relation of Mazon B.V. which is a partner of the consortium and the consortium as such was possessing the requisite,,
net worth and bank solvency certificate, the requirement of bank solvency certificate as per the language required by the respondent-State as well as",,,
net worth certificate, could have been always asked for from the consortium partner and in this regard, the petitioners could have been called upon to",,,
make necessary corrections. However, the same could not be said to be a material deviation which would deprive the petitioners from being",,,
considered as technical qualified.,,,

43. It is for this reason that this Court in its earlier judgment passed by the Division Bench did not take into consideration the said grounds as have,,
been incorporated now for the purpose of rejecting bid of the petitioners and the order dated 18/08/2017 was quashed.,,,

44. The contention of counsel for the respondents that the Division Bench had allowed them to re-examine bid of the petitioners on technical side is,,
misconceived. The Division Bench of this Court only directed the State Government to complete the tender process keeping in view the conditions of,,
bidding document which meant that the respondent-State was required to take into consideration the financial bid of both the bidders and proceed,,
further within the four-corners of the bid document. This Court has examined the office-note relating to the process taken for allotting work order to,,
the respondent no.3 and this Court finds that the decision can not be said to be in terms of Rule 68 of the RTPP Rules, 2013 as in the office-note, it",,,
has been recorded that previously the average bid rate was only Rs.101/- while the respondent no.3 had submitted the rate of Rs. 149.6. Even if,,
Rs.15/- as royalty, as noted in the office-note, would have been gone to the State Government, still the price of Rs.135/- per plate is much higher than",,,
the previous rate of Rs.101/- per plate. The decision has been also taken on the basis of an office-note, which does not refer to the judgment passed",,,
by the Division Bench but only relates to the noting that the Single Judge has rejected the writ petition.,,,

45. It is also seen from the office-note that the rates were again increased by adding GST 28%Â and this Court finds that the decision making,,
process adopted by the respondents for rejecting bid of the petitioners while accepting the single bid of the respondent no.3 is based on a noting,,,

prepared by one officer, who is holding the post of Additional Transport Commissioner (Tax) who has recommended for rejecting bid of the petitioner",,,

and also accepting bid of the respondent no.3 and the same officer was included as the member and head of the Technical Evaluation Committee.,,,

46. It is also seen from the office note atÂ Para No.210 that the said Additional Transport Commissioner (Tax) Mr. RC Yadav has relied upon an,,

opinion given by one Advocate Shri S.N. Jha sent by the respondent no.3-bidder vide letter dated 10/01/2018 to take a decision to again reject bid of,,

the petitioners and on the said basis, he has again requested for putting up the matter before the Bid Evaluation Committee which proceeded to reject",,,

bid of the petitioners on the said grounds, as noted above.",,,

47. Thus, this Court finds that the respondents have taken all steps to oust the petitioners from competition in financial bidding. The action smacks of",,,

malice in law as well as on facts and is strongly deprecated. The concerned officers who have been instrumental in starting this second round of,,

litigation and denying petitioner to participate should be subjected to disciplinary proceedings and the StateÂ may examine role of the concerned,,

officers in this regard. There was no occasion to re-examine the technical bid on individual basis after the Division Bench of this Court had already,,

held the bid filed by the petitioners as that of a Consortium. Thus, the decision making process adopted by the respondents is defective as noted above",,,

and the order impugned deserves to be quashed & set aside on that count also. Similar view has been taken by this Court in the case of Johnson,,

Johnson Private Limited Vs. State of Raj. & ors. (SB Civil Writ Petition No.8281/2017), decided on 17/05/2018.",,,

48. Consequent, the order impugned dated 15/02/2018 passed by the respondents is quashed & set aside. There has been already a lot of delay in",,,

procurement of HSRP. The respondents are directed to examine financial bid of both i.e. the petitioner and the respondent No.3 and award the,,

contract accordingly.,,,

49. The writ petition is accordingly allowed with costs of Rs.50,000/- to be recovered from the erring officers.",,,