

(2019) 03 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 50074 Of 2018 (Gm-Ten)

Nec Technologies India Pvt. Ltd.

APPELLANT

Vs

Shivamogga Smart City Limited

RESPONDENT

Date of Decision : 21-03-2019

Acts Referred:

Karnataka Transparency in Public Procurements Act, 1999 — Section 16
Karnataka Transparency In Public Procurements Rules, 2000 — Rule 23(3)

Citation : (2019) 03 KAR CK 0017

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Srinivasa Raghavan V, Arjun Pal, Tripathi, Tejan, Nagaprasanna, H.R.Showri, A.G.Holla, P.D.Vishwanath

Final Decision : Disposed Off

Judgement

1. Mr.Srinivasa Raghavan V., learned Senior counsel along with Mr.Arjun Pal, Mr.Tripathi and Mr.Tejas, learned counsel for the petitioner.

Mr.M.Nagaprasanna, learned senior counsel along with Mr.H.R.Showri, learned counsel for respondent No.1.

Mr.A.G.Holla, Learned Senior Counsel along with Mr.P.D.Vishwanath, learned counsel for respondent No.2.

2. The writ petition is admitted for hearing. With consent of the learned counsel for the parties, the same is heard finally.

3. This petition under Article 226 of Constitution of India has been filed by the petitioner being aggrieved by the decision of the Tender Inviting Authority viz., respondent No.1 to proceed to take steps towards awarding the works under the request for proposal for selection of local system integrator for implementation of integrated command and control center and smart elements in Shivamogga dated 21.03.2018 to respondent No.2. In order to appreciate petitioner's grievance, relevant facts need mention, which are stated hereinafter:

4. The respondent No.1 viz., Shivamogga Smart City Ltd., floated a tender for selection of local system integrated command and control center in Shivamogga on 21.03.2018. The bidders were required to submit the bids in two parts viz., technical and commercial bids. In response to the aforesaid tender, five bidders submitted their bids. The petitioner and respondent No.2's technical bid was found to be responsive and their commercial bids were opened. It is the case of the petitioner that respondent No.2's financial bid ought to have been rejected on account of deviations from the terms and conditions of the tender. However, the respondent No.1 sought clarifications vide communication dated 21.10.2018 from the respondent No.2 on its commercial bid and on the basis of clarifications dated 25.10.2018 received, by respondent No.2 changed the commercial bid and price submitted by respondent No.2 based on the report dated 05.11.2018 submitted by Project Management Consultants, which is in contravention of the terms and conditions of the tender. It is also averred that the respondent No.1 by seeking and permitting the clarifications as recorded in the Minutes of the proceedings dated 14.11.2018 has acted beyond its jurisdiction by purporting to exercise the discretion, which it did not possess viz., in permitting the changes to the price quoted by the respondent No.2 and substance of the respondent No.2's commercial bid. It is stated in the petition that respondent No.2's bid is changed from Rs.48.47 Crores to Rs.46.07 Crores. In the aforesaid factual background, the petitioner has approached this Court.

5. Learned Senior Counsel for the petitioner submitted that each commercial bid as per the terms of the tender had two components viz., capital expenditure costs and operating expenditure costs and under the tender, a bidder was required to provide three years of warranty by default. While referring to condition 8.3 of the tender, it is pointed out that the aforesaid condition provided a format for quoting operating expenditure and the tender clearly prescribed that costs associated in relation to warranty for first three years were to be included in the capital expenditure itself and the bidder was required to quote Annual Maintenance Costs only for balance two years of project in the form of operating expenditure as warranty would cover the first three years of the project. It is further submitted that respondent No.2's commercial bid was not in accordance with the terms of the tender as it quoted amounts towards annual maintenance costs for all five years of the project and the respondent No.2 could not have quoted amounts towards Annual Maintenance Costs for first three years and should have quoted annual maintenance costs only for last two years and therefore, the commercial bid of respondent No.2 ought to have been rejected on account of non compliance with the terms of the tender in view of condition 2.2 of the tender. It is also submitted that respondent No.1 by not rejecting the respondent No.2's bid has failed to discharge its duties and obligations under the tender.

6. It is also pointed out that the petitioner brought the deviation to the attention of respondent No.1 vide representation dated 08.10.2018. Thereafter, this petition was filed and subsequent to filing of the petition, the respondent No.1

uploaded on its website, the Minutes of the tender scrutiny of the evaluation committee for financial bid evaluation held on 14.11.2018. It is further submitted that respondent No.1 in the garb of seeking clarifications from respondent No.2 on its commercial bid has changed the commercial bid and price of respondent No.2 in as much as Annual Maintenance Costs quoted by respondent No.2 for first three years have either been shifted to capital expenditure component or have been removed from the respondent No.2's financial bid, which is prohibited under Clause 3.3 of the tender. It is urged that the aforesaid action of respondent No.1 is arbitrary, in violation of the terms of the tender and amounts to malice in law. It is also argued that terms of the tender have to be complied with scrupulously and any deviation will encourage discrimination, arbitrariness and favoritism, which is opposed to Rule of law. Lastly it is urged that this Court in exercise of powers under Article 226 of the Constitution of India can interfere with the tender process if it is vitiated by irregularities despite existence of alternative remedy under Section 16 of Karnataka Transparency in Public Procurements Act, 1999. In support of aforesaid submissions, reliance has been placed on decisions in the cases of 'LARSEN AND TOUBRO LIMITED AND ANOTHER VS. UNION OF INDIA', (2011) 5 SCC 430, 'WB STATE ELECTRICITY BOARD VS. PATEL ENGINEERING CO. LTD.', (2001) 2 SCC 451 AND 'MONARCH INFRASTRUCTURE (P) LTD. VS. COMMISSIONER, ULHASNAGAR MUNICIPAL CORPORATION AND OTHERS, (2000) 5 SCC 287' and 'RICHA INDUSTRIES LIMITED VS. DELHI METRO RAIL CORPORATION AND ANOTHER', 2017 (163) DRJ 472(DB).

7. Learned Senior Counsel for respondent No.1 submitted that Annual Maintenance Contract, which is one of the component of operations expenditure includes operation and maintenance support costs also which shall be claimed by the bidder for all the five years. During evaluation of the financial bid, it was noticed that on some of the items i.e., 44 out of 149 items, operational expenditure costs was claimed for first three years also by respondent No.2 and thereafter an opinion was sought from the Project Management Consultants. The aforesaid consultants filed a report stating that operational expenditure costs may include operation and support costs also and therefore, it is necessary to seek clarification on the issue whether costs quoted by respondent No.2 in respect of 44 line items constitutes annual maintenance costs or operation and maintenance support costs from respondent No.2 who was L1 bidder. Thereupon, a clarification was sought from respondent No.2 vide communication dated 21.10.2018. The respondent No.2 thereupon furnished a clarification on 26.10.2018. Thereafter, once again, a clarification was sought from the Project Management consultants which opined that the price bid of respondent No.2 after the clarification is in conformity with the tender conditions. On receipt of the opinion of the committee deliberations were held and in the proceedings on 14.11.2018, the committee decided to negotiate on the bid value with the respondent No.2. It is also submitted that action has been taken in conformity with clause 3.4 of the tender conditions. Attention of this court has also been

invited to Rule 23(3) of the KTPP Rules as well as Clauses 4.4, 8.2 and 8.3 of the tender conditions. It is also pointed out that no malafides have been alleged in this writ petition. It is also submitted that the petitioner in his petition has only sought the rejection of the commercial bid of respondent No.2 and no consequential relief has been sought for by the petitioner for award of tender to the petitioner. Therefore, no relief can be granted to the petitioner. It is also submitted that the scope of judicial review is extremely limited and if a decision is taken by the respondent No.1 bonafide, this Court would not interfere with a decision merely on account of procedural abrasion. It is also submitted that all the contentions raised in this petition can be urged in an appeal under section 16 of the Act. In support of his submissions, reliance has been placed on 'MUNICIPAL CORPORATION, UJJAIN AND ANOTHER VS. BVG INDIA LIMITED AND OTHERS', (2018) 5 SCC 462, 'SRI G.SHANKAR VS. KRISHNA BHAGYA JALA NIGAM LIMITED AND OTHERS', ILR 2016 KAR 4790, 'MICHIGAN RUBBER (INDIA) LIMITED VS. STATE OF KARNATAKA AND OTHERS', (2012) 8 SCC 216, 'RAUNAQ INTERNATIONAL LIMITED VS. I.V.R. CONSTRUCTION LTD. AND OTHERS', (1999) 1 SCC 492, AND ALSO RELIED ON 'W.P. NO.902/2019 ORDER DATED 21.02.2019'

8. Learned Senior Counsel for respondent No.2 has invited the attention of this Court to clause 4.3(d) of tender conditions and has submitted that the aforesaid condition provides that the bidders shall quote their operation and maintenance rates as per their own assessment and the conclusion that the bid submitted by respondent No.2 conforms to the conditions prescribed in the tender conditions has been taken by a committee of experts and this court in exercise of power of judicial review cannot sit in appeal over the decision taken by committee of experts. It is further submitted that under condition 2.17 of the tender conditions, the respondent No.1 had the power to modify and amend the criteria and general power of relaxation vests with the respondent No.1 while evaluating the bids. Lastly, it is urged that when a statute creates rights or obligations and provide for a forum for redressal of a grievance, that forum has to be resorted to by an aggrieved person. Therefore, no interference is called for in exercise of writ jurisdiction. In support of aforesaid submissions, reference has been made to decisions of Hon'ble Supreme Court in 'UNION OF INDIA AND OTHERS VS. MAJOR GENERAL SHRI KANT SHARMA AND ANOTHER', (2015) 6 SCC 773 AND 'HINDUSTAN STEEL WORKS CONSTRUCTION LTD. AND ANOTHER VS. HINDUSTAN STEEL WORKS CONSTRUCTION LTD. EMPLOYEES UNION', (2005) 6 SCC 725, S.SUMITRA Vs. THE STATE AND OTHERS AIR 1993 KAR 108, BAKSHI SECURITY AND PERSONNEL SERVICES PVT. LTD. Vs. DEVKISHAN COMPUTED PVT. LTD AND ORS., B.S.N.JOSHI & SONS LTD. Vs. NAIR COAL SERVICES LTD. AND OTHERS (2006) 11 SCC 548, SANJAY KUMAR SHUKLA Vs. M/s. BHARAT PETROLEUM CORPORATION LTD. AND ORS. AIR 2014 SC 3778.

9. I have considered the rival submissions made by both the sides and have perused the record. Before proceeding further, it is apposite to refer to few well settled legal propositions. The Hon'ble Supreme Court in SUKHDEV SINGH Vs. BHAGATRAM SARDAR SINGH RAGHUVANSHI (1975) 1 SCC 421 approved the

principle enunciated by Frankfurter J. in *VITERALLI Vs. SEATON* 359 US 535, that an executive authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards on the pain of invalidation of an act in violation of them. The aforesaid principle was also quoted with approval in *A.S.AHLUWALIA Vs. STATE OF PUNJAB* (1973) 3 SCC 503 and in the celebrated case of *R.D.SHETTY Vs. INTERNATIONAL AIRPORT AUTHORITY OF INDIA* (1979) 3 SCC 489 and it was held that having regard to the Constitution mandate of Article 14 as also the judicially evolved rule of administrative law, and instrumentality of the State is not entitled to act arbitrarily in accepting the tender of a tenderer and is bound to conform to the standards or norm laid down in notice inviting tenders. In *G.J.FERNANDEZ Vs. STATE OF KARNATAKA AND OTHERS* (1990) 2 SCC 488 the aforesaid principle was quoted with approval and it was held that a State or instrumentality of a State can deviate from the ancillary conditions but not mandatory conditions which pertain to eligibility of a tenderer. The aforesaid decision was referred to with approval in *PODDAR STEEN CORPORATION Vs. GANESH ENGINEERING WORKS AND OTHERS* (1991) 3 SCC 273, *KANHAIYA AGRAWAL Vs. UNION OF INDIA AND OTHERS* (2002) 6 SCC 315, *INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED AND ANOTHER Vs. DOSHION VEOLIA WATER SOLUTIONS PRIVATE LIMITED AND OTHERS* (2010) 13 SCC 364, *CENTRAL COALFIELDS LIMITED AND ANOTHER Vs. SLL-SML (JOINT VENTURE CONSORTIUM) AND OTHERS* (2016) 8 SCC 622 AND *MUNICIPAL CORPORATION, UJJAIN AND ANOTHER Vs. BVG INDIA LIMITED AND OTHERS* (2018) 5 SCC 462.

10. The Hon'ble Supreme Court in *MICHIGAN RUBBER (INDIA) LIMITED*, supra, after taking note of decisions of the Hon'ble Supreme Court in *TATA CELLULAR Vs. UNION OF INDIA* (1994) 6 SCC 651, *RAUNAQ INTERNATIONAL LTD. Vs. IVR CONSTRUCTION LTD.* (1999) 1 SCC 492 and *ASSOCIATION OF REGISTRATION PLATES Vs. UNION OF INDIA* (2005) 1 SCC 679, culled out the legal principles and held that basic requirement of Article 14 is fairness in action by the State and non-arbitrariness in essence and substance is the heart beat of fairplay and these actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. It was further held that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authorities is found to be malicious and a misuse of statutory powers, interference by the Courts is not warranted. It is also held that if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, interference by Court is very restrictive since no person can claim a fundamental right to carry on the business. The Hon'ble Supreme Court formulated the following two questions which the Court should pose itself before invoking the power of judicial review, namely:

(i) Whether the process adopted or decision made by the authority is mala fide

or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and

(ii) Whether the public interest is affected?

It was accordingly held that if answers to the above questions are in the negative, then there should be no interference under Article 226.

11. It is equally a well settled legal principle that award of contract whether it is by a private party or by a public body or the State, is essentially a commercial transaction and in arriving at a commercial decision, considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can enter into negotiations before finally deciding to accept one of the offers made and it is free to grant any relaxation for bona fide reason if the tender conditions permit such relaxation. The State, its Corporations, instrumentalities and agencies have the public duty to be fair to all concerned. It is further held that even if some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and must exercise only in furtherance of public interest and not merely on making out of a legal point. It is also held that Court should always keep the larger public interest in mind in order to decide whether or not its intervention is called for and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene. (See SANJAY KUMAR SHUKLA, *supra* and MAA BINDA EXPRESS CARRIER AND ANOTHER Vs. NORTH-EAST FRONTIER RAILWAY AND OTHERS (2014) 3 SCC 760, BAKSHI SECURITY AND PERSONNEL SERVICES PRIVATE LTD. Vs. DEVKISHAN COMPUTED PRIVATE LIMITED AND OTHERS (2016) 8 SCC 446, MONTECARLO LIMITED Vs. NATIONAL THERMAL POWER CORPORATION LIMITED (2016) 15 SCC 272, CONSORTIUM OF TITAGARH FIREMA ADLER S.P.A-TITAGARH WAGONS LTD. Vs. NAGPUR METRO RAIL CORPORATION LTD. AND ANOTHER (2017) 7 SCC 486, CRRC CORPORATION LIMITED Vs. METRO LINK EXPRESS FOR GANDHINAGAR AND AHMEDABAD COMPANY LIMITED (2017) 8 SCC 282 AND MUNICIPAL CORPORATION, UJJAIN, *supra*).

12. At this stage, the relevant clauses of the request for proposal document may be referred to 3.3 Clarification on Bids During the bid evaluation, Authority may, at its discretion, ask the Bidder for any clarification(s) of its bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered, or permitted. Clarifications shall be obtained only in the pre-historic information like bidders credentials etc.

3.4 Evaluation Process Authority shall constitute a Committee to evaluate the responses of the bidders. The Committee shall evaluate the responses to the RFP and all supporting documents / documentary evidence. Inability to submit, requisite supporting documents/ documentary evidence by may lead to rejection

of their bids.

The decision of the Authority in the evaluation of bids shall be final and binding on all the bidders. No correspondence will be entertained outside the process of evaluation with the Committee. The Tender Evaluation Committee may ask for meetings or presentation with the Bidders to seek clarifications or confirmations on their bids.

The Authority reserves the right to reject any or all bids. Each of the responses shall be evaluated as per the criteria and requirements specified in this RFP.

3.4.3 Stage 2: Commercial Evaluation

a. All the technically qualified bidders will be notified to participate in commercial bid opening process.

b. The commercial of only those bidders which have qualified in State-1(A) and Stage-1(B) shall then be opened on the notified date and time and reviewed to determine whether the commercial bids are substantially responsive. Bids that are not substantially responsive are liable to be disqualified at Authority's discretion.

d. Since the payments to the SI shall be made over several years, the Net Present Value (NPV) method will be used for evaluation of the Commercial bids, so as to bring all bidders to a common denomination for determination of lowest bidder. The bidder shall quote their O&M rates as per their own assessment. However, the Authority will calculate the NPV of the quoted amount as per the formula below for the purpose of evaluation. The Net Present Value of a contract is equal to the sum of the present values of all the cash flows associated with it. The formula for calculating NPV of a commercial bid is illustrated below:

$$P = C + [(O1)/(1+r)] + [(O2)/(1+r)^2] \\ + [(O3)/(1+r)^3] + [(O4)/(1+r)^4] \\ + [(O5)/(1+r)^5]$$

Where: P = Final Price

C = Total Capex Price, O1 = Opex Price for Year 1

O2 = Opex Price for Year 2, O3 = Opex Price for Year 3, O4 = Opex Price for Year 4, O5 = Opex Price for Year 5

R = Rate of Interest / Discounting Rate at 10%

e. Bidder shall provide breakup of all Taxes (in percentage) considered by him/her, as per the Section 7.13. However, the Authority shall consider Grand Total Price (Capex Price + Opex Price with NPV) exclusive of applicable taxes, for evaluation purpose and arriving at L1 price. In case of tie in prices, the Bidder who has scored highest technical score among the ties shall be considered as L1.

4.4 Warranty and Maintenance

Bidder shall also provide complete maintenance support, comprehensive on-site warranty, for all the proposed integrated solution as outlined in this RFP for a period of sixty months from the date of go-live i.e. "Go-Live" + 60 months. "Go-live" is the date on which the proposed solution is completely operational as per the requirements provided in this RFP and all the acceptance tests are successfully concluded to the satisfaction of Authority.

The Bidder shall offer default warranty of three years (3) for all the supplied IT equipment and shall extend comprehensive Annual Maintenance Contract (AMC) services to cover additional two (2) years and for all the equipment / infrastructure supplied.

8.1 d. It is mandatory to provide breakup of all Taxes, duties and levies wherever applicable and/or payable in the separate annexure 7.13 with Technical bid. However, authority shall consider Grand Total (Capex Price + Opex Price with NPV) exclusive of applicable taxes etc. for evaluation purpose and arriving at L1 price.

13. Now, in the facts of the case in hand, may be adverted to. From perusal of the relevant extract of the request for proposal document in particular Clause 3.4.3 d, it is axiomatic that the bidders were at liberty to quote their operation and maintenance rates as per their assessment. However, the authority was required to calculate the NPV of the quoted amount as per the formula prescribed in the clause. The aforesaid document further provides that authority shall consider grand total price that is (capex price plus opex price with NPV) exclusive of applicable taxes for evaluation of purpose of arriving of L1 price. According to the petitioner, the respondent No.2 in its commercial bid, had quoted amounts towards annual maintenance cost for all five years of the project. It is the stand of respondent No.1 that bidders are entitled to quote operation and maintenance which is also a component for operation and expenditure cost for all five years and by merely looking into the commercial bid of respondent No.2, it cannot be inferred whether the cost claimed under operation expenditure is in the nature of annual maintenance cost or operation and maintenance support cost. The Scrutiny Committee, on evaluation, found that on some of the items namely, 44 out of 141 line items, operation expenditure cost is claimed for first three years also. Therefore, the opinion of the project management consultants was sought which informed the Committee that operation expenditure may include operation and maintenance support cost also and it is necessary to seek clarification from respondent No.2 who was lowest bidder as to whether the cost quoted by it in respect of 44 line items constitutes annual maintenance cost or operation and maintenance support cost. Accordingly, a clarification was sought vide communication dated 21.10.2018 from respondent No.2. In response, respondent No.2 vide communication dated 26.10.2018 submitted a clarification and explained the reasons for quoting operation and expenditure cost in respect of 10 line items and withdrew

operation and expenditure claim in respect of 34 line items. Thereupon, once again, an opinion was sought from the project management consultants. The aforesaid consultants, vide communication dated 05.11.2018, informed the Committee that the clarification submitted by the respondent No.2 is in conformity with the commercial conditions stipulated in request proposal document. Thereafter, the Committee in its meeting held on 14.11.2018, considered the commercial bid of respondent No.2 keeping in view the recommendations made by the project management consultants and came to the conclusion that the amount quoted by L1 bidder is on higher side. Thereupon, the respondent No.1 was suggested by the Committee to negotiate on the bid value with respondent No.2 before taking an action for approval of the same. After holding negotiations, the commercial bid of respondent No.2 for a sum of Rs.46.60 crores instead of an amount of Rs.48.47 crores which was initially quoted by respondent No.2 was approved. Admittedly, the commercial bid of the respondent No.2 is lower than that of the petitioner.

14. Thus, from the above narration of facts, it is evident that the decision by the respondent No.1 to award the contract to respondent No.2 has been taken bona fide and in public interest. It is pertinent to mention here that in this petition, neither the members of the Committee nor any member of project management consultants has been impleaded as respondent. On receipt of the commercial bid of respondent No.2, opinion of project management consultants was sought which opined that clarification should be sought from the respondent No.2 with regard to his bid. Thereafter, the clarification was sought from respondent No.2 and on receipt of clarification from respondent No.2 the matter was again referred to project management consultants which after going through the clarification submitted by the respondent No.2 opined that the clarification of the respondent No.2 which is a public limited company, is in conformity with the commercial conditions mentioned in the request for proposal document. Thereafter, the matter was considered in the meeting on 14.11.2018 and decision was taken to negotiate the price bid with respondent No.2 and after negotiation, the decision was taken to award the contract in favour of respondent No.2. The process of awarding the contract in favour of respondent No.2 neither suffers from any malafides, not intended to favour respondent No.2 and is neither arbitrary and irrational. It also does not affect the public interest as admittedly, the bid of the respondent No.2 is lower than the commercial bid of the petitioner. There is no deviation from the essential terms and conditions of the contract as the project management consultants i.e. a Committee of experts have opined that commercial bid of the petitioner is in conformity with the conditions mentioned in the request for proposal document. Besides that, decision has been taken to award the contract in favour of respondent No.2 namely Bharat Electronics Limited by a Committee of experts and this Court, in exercise of powers under Article 226 of the Constitution of India cannot sit in appeal over the decision taken by the experts. Reference may be made to the reliefs claimed by the petitioner in the writ petition which read as under:

"(i) Declare that the commercial bid of the respondent No.2 is non-responsive, contains material deviations and is not in conformity with the terms of the tender issued by the respondent No.1.

(ii) Issue a writ of certiorari or any such other appropriate writ, order or direction in the nature thereof to quash any award of the works under the tender to the respondent No.2 by way of any notification of award or letter of intent / award or work order or a signed contract or any other such documents issued and/or executed between the respondent No.1 and the respondent No.2 vide Annexure-B and B2 dated March 2018, in RFP No.SSLC/CR/2017-18.

(iii) Issue any other appropriate writ, order or directions as the facts and circumstances of the present case may require."

15. From perusal of the relief clause, it is graphically clear that petitioner has not prayed for any consequential relief in addition to seeking the relief for quashment of the commercial bid of respondent No.2. Therefore, no effective relief can be granted to the petitioner in this petition. In any case, even if a legal point is made out by the petitioner, then also no interference is called for in the fact situation of the case as power of judicial review has to be exercised with circumspection and only in furtherance of public interest and no case of interference on the ground of public interest is made out by the petitioner.

16. Reliance has been placed on behalf of the petitioner to the decisions in the case of LARSEN AND TOURBO LIMITED, WEST BENGAL ELECTRICITY BOARD, MONARCH INFRASTRUCTURE LIMITED, supra. The ratio laid down in the aforesaid decisions do not apply to the fact situation of the case in view of the obtaining factual matrix which has been stated in the preceding paragraphs. At this stage, it is relevant to take note of Section 16 of the Karnataka Transparency in Public Procurements Act, 1999 which reads as under:

"(1) Any tenderer aggrieved by an order passed by the Tender Accepting Authority other than the Government under Section 13 may appeal to the prescribed authority within thirty days from the date of receipt of the order :

Provided that the prescribed authority may, in its discretion allow further time not exceeding thirty days for preferring any such appeal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

(2) The prescribed authority may after giving opportunity of being heard to both the parties pass such order thereon as it deems fit and such order shall be final.

(3) The prescribed authority shall as far as possible dispose of the appeal within thirty days from the date of filing thereof."

17. On this ground also, no interference is called for as the petitioner has an alternative efficacious remedy of filing an appeal against an order passed by the tender accepting authority under Section 16 of the aforesaid Act.

18. In view of preceding analysis, no case for interference in exercise of powers

of judicial review under Article 226 of the Constitution of India is made out. However, the petitioner shall be at liberty to take recourse to the remedy which is available to him under the Karnataka Transparency in Public Procurements Act, 1999. Needless to state that in case such an appeal is filed, the Appellate Authority shall decide the appeal without being influenced by any of the observations contained in this order.

With the aforesaid liberty, the petition is disposed of.