
(2022) 03 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2761 Of 2021, Civil Miscellaneous No. 9336 Of 2021

Rakesh Gupta

APPELLANT

Vs

Airports Authority Of India And Others

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 226

Citation : (2022) 03 J&K CK 0037

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Sunil Sethi, Navyug Sethi, Inderjeet Gupta, Siddhant Gupta

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. Petitioner through the medium of instant petition has sought quashment of decision dated 6th December 2021, taken by respondents 1 to 3 whereby the petitioner has been technically disqualified in reference to Request for Proposal (RFP)–Tender E-Bid No.2021-AAI-82001-1 issued on 13.07.2021 for concession to design, fit-out, finance, develop, market, operate, maintain and manage the food and beverage outlets at Civil Airport, Jammu and Technical Bid of Respondent No.4 was accepted. He also sought quashment of decision contained in Minutes of LCAC meeting held on 7th December 2021 taken by the respondents 1 to 3 whereby while rejecting the technical bid of the petitioner, technical as well as financial bid of Respondent No.4 have been accepted notwithstanding the fact that the financial bid of the petitioner was much higher than the respondent No.4. The petitioner has also prayed for quashment of Letter of Intent No.AAI/ JU/Coml/1409/MCFB/3380 dated 12.12.2021 for concession to design, fit-out, finance, develop, Market, Operate, Maintain and Manage the food and Beverage outlets at Jammu Civil Airport whereby the aforesaid concession/contract has been awarded to Respondent No.4 and also

prayed for a direction to the Respondents to declare the petitioner qualified for allotment of aforesaid contract by accepting the technical bid as well as financial bid of the petitioner being higher than the respondent no. 4 and being fully in consonance with the terms and conditions stipulated in the tender document i.e. tender Reference No.AAI /JU/Coml/1409/MCFB Tender E-bid No. 2021-AAI-82001-1.

2. The brief facts leading to filing of the present writ petition, as stated by the petitioner therein, are that respondent no.1 was constituted by an Act of Parliament and came into being on 1st April 1995 by merging erstwhile National Airports Authority and International Airports Authority of India and therefore, respondent no.1 being a statutory body/State within the meaning of Article 12 of the Constitution of India and amenable to writ jurisdiction; that respondent no.1 intended to grant concession of design, fit out, finance, develop, market, operate, maintain and manage the Food and Beverage outlets at the concessioned premises in the Civil Airport Jammu and in this behalf respondent no.1-Autohrity decided to carry out a competitive bidding process for selection of a bidder to whom the concession may be awarded and issued Request for Proposal (RFP) for aforesaid contract/concession under Tender Reference no.AAI/ JU/ Coml/1409/ MCFB Tender E-Bid no.2021-AAI-82001-1 on 13th July 2021; that allotment of contract for the above concession was of two-tier system, viz. technical bid and financial bid, and to be eligible for being a selected bidder, a bidder was required to demonstrate both technical capacity and financial capacity and in this regard was to satisfy the criteria as shown in clause 2.1.4 of RFP. The petitioner claims that being fully eligible and qualified as per the terms and conditions of RFP (Annexure-II) he also applied for allotment of the contract/concession afore-stated in his favour as he duly fulfilled the technical eligibility criteria defined in clause 2.1.4 of RFP. It is stated that Petitioner is currently functioning as a Flight Kitchen Operator as is requirement of sub-clause B (iv) besides is having more than two years of experience in the Food and Beverage services business as on 13.07.2021, as is the requirement of sub-clause (A) and the Petitioner thus fully fulfilled the requirements of clause 2.1.4 (I) (A) and B (iv) of REP. It is also contended that Station Manager Air India Ltd. has issued Certificate dated 26th October 2021 certifying that the Petitioner is providing in-flight catering services since 01.02.2016 to 31.01.2018 and since 01.02.2018, the same agreement has been extended on the same terms and conditions which is valid till 09.02.2023. It is also contended that the petitioner is the proprietor of M/s Airport Restaurant at Civil Airport, Jammu for the last considerable span of time. He further contends that prior to allotment of contract/license in favour of the mother of the petitioner, namely, Smt. Savita Rani, the contract/license to run airport restaurant was allotted to the father of the petitioner, namely, Sh. Badri Nath. After the death of mother of the petitioner, the license agreement for running the airport restaurant at Civil Airport Jammu has been transferred in the name of the petitioner. It is also contended in the petition that the gross turnover of the Airport restaurant of the petitioner for the financial year 2018-19 was to

the tune of Rs. 1.33 Crore, for the financial year 2019-20 was Rs. 1.96 Crore and for the financial year 2020-21 was to the tune of Rs. 58.78 lac. The turnover/sales during 2020-21 was significantly dropped due to outbreak of COVID-19 pandemic and lockdowns imposed by the Government as a result of which the airports throughout the country remained completely shut down. It is pertinent to mention that since March 2020 to 14th January, 2021 inflight catering has been closed as per the orders issued by the concerned departments of the Government of India. However, inflight catering was permitted for a short duration from 15th January 2021 till 14th April, 2021 when again the same has been closed under the orders issued by the concerned departments of the Government of India. It is also contended that air traffic remained suspended w.e.f. 19th March, 2020 till September 2020 and after resumption of air traffic/flights, the concerned catering agencies including the petitioner was permitted to supply packed water only in the flights. It is thus contended that due to this reason, the turnover/sales of the restaurant of the petitioner drastically took a deep dive. Hence, this petition on the grounds taken in it.

3. On notice, respondents have filed objections. Respondent Nos.1 to 3 contends that in meeting of LCAC for RFP for Concession to Design, Fit-out, Finance, Develop, Market, Operate, Maintain and Manage the F&B Outlets at Jammu Civil Airport was held on 07.12.2021. As per RFP para 2.1.5, the bidder must have minimum annual turnover Rupees One Crore only (for Jammu Airport) from F&B business during two (2) years (for which technical experience has been claimed) in the last seven (7) years. It is contended that as per the Profit and Loss account for the year ended 31st March, 2021 of Petitioner, the turnover from relevant business is Rs. 58,78,065.92, which is below the required turnover during the technical experience. Hence, it is contended that Petitioner was found ineligible in financial capacity of the tender. It is appropriate to reproduce Para 2.1.5 of RFP as under:

"2.1.5 Financial capacity ("Financial Capacity") – For demonstrating Financial Capacity the Bidder shall satisfy the following criteria :

The Bidder must have minimum annual turnover from F&B business during two (2) years (for which technical experience has been claimed) in the last seven (7) years, in accordance with the audited financial statements (i.e. profit and loss account and balance sheet along with schedules) as per the table below :-

Airport Category

Minimum annual turnover from F & B Business (Rs.)

Category-A (4 to 12 million

Five Crore only

Passengers per annum) Category-B (2 to 4 million Passengers per annum)

One Crore only

Category-C (1 to 2 million Passengers per annum)

One Crore only (for Jammu Airport)”

4. Learned counsel for Respondent Nos.1 to 3 contends that Licence Agreement with Petitioner was executed on 18.09.2019, so, the Turnover of the Petitioner has to be counted/computed from 17.09.2019. It is further contended that the meeting of LCAC for RFP for Concession to Design, Fit-out, Finance, Develop, Market, Operate, Maintain and Manage the F&B Outlets at Jammu Civil Airport was held on 07.12.2021 and Technical Bid of Master Concessionaire for F&B at Jammu Airport was opened on 30.09.2021 wherein two agencies, i.e., Petitioner and Respondent No. 4 participated. After scrutiny of the tender documents, shortfall documents were sought from the said two agencies through e-tender upto 29.10.2021. It is contended that the shortfall documents for the tender for Master Concessionaire for F&B at Jammu Civil Airport had been received from the two bidders Petitioner and Respondent No. 4 through CPP portal and accordingly, all the shortfall documents submitted by the bidders were checked and, however, clarifications had been sought from Commercial Deptt. NR in respect of consideration of technical experience and financial criteria in respect of Petitioner, which were claimed for the contract of Airport Restaurant at Jammu Civil Airport. The Law Deptt. vide email dated 30.11.2021 opined that the experience to be computed from 17.03.2019 in respect of the Airport Restaurant facility run by Petitioner. It is contended that Licence Agreement between the Petitioner and Respondent was executed on 18.09.2019, so the Turnover of the Petitioner has to be counted/computed from 17.09.2019. As per RFP para 2.1.5, the bidder must have minimum annual turnover Rupees One Crore only (for Jammu Airport) from F&B business during two (2) years (for which technical experience has been claimed) in the last seven (7) years. It is contended that as per the Profit and Loss account for the year ended 31st March, 2021 of Petitioner, the turnover from relevant business is Rs. 58,78,065.92, which is below the required turnover during the technical experience. It is, thus, contended on behalf of the respondents 1 to 3, Petitioner was found ineligible in the financial capacity of the tender and since Petitioner was found ineligible in Technical Bid so his financial bid was not opened. There is no question of rejection of financial bid of Petitioner as petitioner was ineligible in technical bid so his financial bid was not opened and result of financial bid was put on web-portal, the contract was allotted in favour of Respondent No. 4. It is also contended that the Petitioner is not providing inflight catering services since 01.02.2016 to 31.01.2018 and since 01.02.2018. Agreement with Petitioner was executed on 18.09.2019. It is not understandable how the petitioner has got certificate from Station Manager Air India Ltd. Respondent No. 1 to 3 have also submitted that Agreement with Petitioner was executed on 18.09.2019 and prior to 18.09.2019, the Licence of Airport Restaurant was in favour of Smt. Savita Rani. It is denied that Licence

was transferred in favour of the Petitioner. It is submitted that Licence Agreement with Petitioner was executed on 18.09.2019, so, the Turnover of the Petitioner has to be counted/computed from 17.09.2019. It is further contented that in LCAC meeting dated 07.12.2021, it is declared that Respondent No. 4 is eligible for Technical and Financial Capacity and Financial Bid of the Technically qualified bidder, i.e., respondent No.4 was opened on 06.12.2021. Since Petitioner was found ineligible in Technical Bid so his financial bid was not opened.

5. Respondent No.4 in his objections stated that pursuant to the bidding process in response to Request for Proposal (RFP) Tender E-Bid No. 2021-AAI-82001-1 issued on 13.07.2021 for concession to design, fit-out, finance, develop, market, operate, maintain and manage the food and beverage outlets at Civil Airport, Jammu, the Respondent No. 4 herein being fully eligible and qualified submitted its technical and financial bid. Respondent No. 4 also submitted that after scrutiny of the tender documents, shortfall documents were sought from the bidders through e-tender up to 29.10.2021 and after receipt of the shortfall documents, the Respondent No. 1 to 3 awarded the contract in favour of the Respondent No. 4 on 12.12.2021 after evaluation of the received bids as per the applicable procedure and issued a Letter of Intent to Award (LOIA) to the Respondent No.4. He further submitted that the Respondent Authority executed the Concession Agreement for Concession to Design, Fit-out, Finance, Develop, Market, Operate, Maintain and manage the Food and Beverage Outlets at Civil Airport Jammu on 12.01.2022.

6. Heard learned counsel for the parties, and perused the record.

7. Learned senior counsel appearing for the Petitioner has argued that the petitioner fulfilled all the terms and conditions of NIT because as per clause 2.1.5 of RFP, the turnover of the petitioner for 3 years, i.e., 2018-2019 & 2019-2020 & 2020-2021 was Rs.1.33 Crore and Rs.1.96 Crore & Rs.58.78 lacs and that Station Manager, Air India Ltd., also issued a certificate certifying that the Petitioner is providing inflight catering services since 01.02.2016 to 31.01.2018 and since 01.02.2018, the same agreement has been extended on the same terms and conditions, which is valid till 09.02.2023. Learned Counsel for the Petitioner has also averred that Respondent No.4 does not have experience of running Restaurant at Airports nor has any experience of inflight catering and that financial bid of the petitioner is higher than Respondent No.4. To buttress his arguments, learned counsel for the Petitioner has referred to the Judgments of the Supreme Court in *Tata Cellular Vs. Union of India* (1994) 6 SCC 651, *Air India Limited Vs. Cochin International Airport Limited* 2000 (2) SCC 617, *Sterling Computers Ltd. V. M&N Publication Ltd.*, 1993 (1) SCC 445.

Learned Senior counsel further argued that decisions taken by Respondents No. 1 to 3 may be quashed and Petitioner be awarded the contract by accepting his Technical Bid and by accepting his Financial Bid.

8. Learned counsel of the respondents 1 to 3 has contended that decision of

Respondent No.1 to 3 to Award Contract in favour of Respondent No. 4 is legal and strictly in accordance with the Terms and Conditions of RFP. Since Respondent No. 4 was Technically qualified so his financial bid was opened on 06.12.2021 wherein Respondent No. 4 quoted Rs. 18,00,081/- (for 237 sqm) per month plus applicable Govt. taxes. He further submitted that Petitioner has annexed the balance sheet as on 31st March 2019 of Savita Rani and balance sheet of Savita Rani as on 31st March 2019 showing turnover of 1.33 crore cannot be considered for the Technical experience of petitioner Rakesh Gupta. So as per clause 2.1.5 and Licence Agreement dated 18.09.2019 the turnover for the year 2019-2020 which is 1.96 Crore and turnover for the year 2020-2021, i.e., 58.78 lacs was considered by Respondent No. 4 and, as such, the Petitioner was declared disqualified in the Technical Bid because as per clause 2.1.5, the petitioner must have turnover of one crore in 2 years. He further argued that Station Manager Air India Ltd. is no authority to issue certificate of experience to the petitioner that too of the period when the Licence Agreement was not executed with the petitioner. It is argued that licence agreement with petitioner was executed on 18.09.2019 and turnover of the petitioner has to be counted after 17.09.2019. Respondent No. 1 to 3 also submitted that Agreement with Respondent No. 4 has been executed on 12th January 2022. It is further submitted that Respondent No. 4 has also furnished interest free security of Rs. 1,69,92,800/-. In support of his arguments, learned counsel for the respondents 1 to 3 also relied upon various judgments viz.

(i) Writ Petition No. 35845 of 2019 Titled M/s BRANDMIDA HOSPITALITY AND AVIATION SERVICES (P()) LTD. Versus AIRPORT AUTHORITY OF INDIA & ORS.

(ii) (2012) 8 SCC 216 titled MICHIGAN RUBBER (INDIA) LIMITED Versus STATE OF KARNATAKA & ORS.

(iii) (2014) 3 SCC 760 titled MAA BINDA EXPRESS CARRIER & ORS. Versus NORTH-EAST FRONTIER RAILWAY & ORS.

9. Learned counsel for Respondent No.4 has insisted that since Respondent No.4 fulfilled all the terms and conditions of RFP so Respondent No. 4 was awarded the Letter of intent dated 12.12.2021 and Respondent No. 1 to 3 has executed Agreement with Respondent No. 4 on 12.01.2022. In support of his arguments, he relied upon following judgments:-

i) Tata Cellular v. Union of India, (1994) 6 SCC 216.

ii) Uflex Ltd v. Govt of Tamil Nadu & ors., 2021 SCC Online SC 738.

iii) Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors. CA Nos. 4912-4913/2011 (Arising Out of SLP (C) Nos. 3157-3158/2011).

iv) Gayatri De v. Mousumi Cooperative Housing Society Ltd. & Ors. (2004) 5 SCC 90.

10. From the above, it is not in dispute that respondent No.1 – Airports Authority

of India is engaged in development, operations and maintenance of Airports in India. To provide enhanced facilities to the airport users, the respondent No.1 intended to grant the concession to design, fit-out, finance, develop, market, operate maintain and manage the Food and Beverage outlets of the concessioned premises in the Civil Airport, Jammu. In this behalf, respondent No.1 authority decided to carry out a competitive bidding process for selection of a bidder to whom the concession may be awarded and issued Request for Proposal (REP) for aforesaid contract/concession under Tender reference No.AAI/JU/Coml/1409/MCFB Tender E-Bid No.2021-AAL-82001-1 on 13.07.2021. The allotment of contract for aforesaid concession was of two-tier system, viz. technical bid and financial bid. To be eligible for being a selected bidder, a bidder was required to demonstrate both technical capacity and financial capacity. For demonstrating technical capacity, the bidder was required to satisfy the criteria as envisaged in REP. The petitioner, as has been claimed by him, being eligible and qualified as per the terms and conditions of REP, also applied for allotment of the contract/concession afore-stated in his favour. The meeting of LCAC for RFP for Concession to Design, Fit-out, Finance, Develop, Market, Operate, Maintain and Manage the F&B Outlets at Jammu Civil Airport was held on 07.12.2021. As per RFP para 2.1.5, the bidder must have minimum annual turnover of Rupees One Crore only (for Jammu Airport) from F&B business during two (2) years (for which technical experience has been claimed) in the last seven (7) years. As per the profit and loss account for the year ended 31st March, 2021 of petitioner, as contended by the respondents, the turnover from relevant business is Rs.58,78,065.92, which is below the required turnover during the technical experience, hence petitioner was found ineligible in financial capacity of the tender. Since petitioner was found ineligible in technical bid, so his financial bid was not opened and at the same time respondent No.4 fulfilled the terms and conditions as mentioned in clause 2.1.5, so his financial bid was accepted. Here it may be mentioned that the moment the petitioner responded to NIT flouted by respondent-authority, the petitioner made himself bound by the terms and conditions of NIT. He cannot, when he saw himself not amongst the successful bidder(s), be permitted to turnaround and dispute the veracity of any of the terms and conditions of the NIT and/or the decision taken by respondent in line with the NIT. Obtaining of any situation, including COVID, as projected by petitioner did not and cannot be said to have impacted petitioner alone, but the whole globe and respondent no.4, therefore, is not exception, yet he answered the prerequisites of NIT. That aspect of the matter cannot be ignored and respondent no.4 cannot be said to have not been impacted by COVID. If petitioner says and seeks any relaxation in view of COVID, then in such circumstances, it is not only petitioner but other similarly situated persons, having same turnover as projected by petitioner, were/are required to be called to compete for NIT. Obviously, such persons had not applied or responded to NIT knowing that they would not succeed having less turnover. Again, such a situation cannot be asked by the Court as it would amount to be a decision-making authority which is the domain of respondent-authority and not that of the

Court. Pertinent to mention here that even in such a situation, respondent no.4 cannot be ignored as he has better and higher turnover than petitioner. That being so, the petitioner cannot be allowed to challenge the impugned decision dated 6th December, 2021 whereby his technical bid has been rejected on the ground that it does not conform to the terms and conditions of the Tender Notice viz. clause 2.1.5 of REP.

11. Maa Binda Express Carrier and another v. North-East Frontier Railway and others (supra). The cited judgement by learned counsel for the respondents 1 to 3 squarely covers the instant case. The Supreme Court in the cited case has held that the bidders, participating in tender process, cannot insist that their tenders should be accepted simply because a given tender is highest or lowest depending upon whether contract is for sale of public property or for execution of works on behalf of the Government. It would be advantageous to reproduce relevant portion of judgement hereunder:

"Suffice it to say that not only is the reserve price applicable as on date higher than the amount offered by the appellant but even the market survey has brought forth rates higher than what was offered by the appellant. Allotment of any contract at the rate offered by the appellant would, therefore, result in a substantial financial loss to the railways which is neither in the public interest nor necessitated by any legal compulsion. Time lag in such matters plays an important role as it indeed has in the case at hand.

8. The scope of judicial review in matters relating to award of contract by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognize that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well-settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor made to benefit any particular tenderer or class of tenderers. So also the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent

the tenderer has an enforceable right in the Court who is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See: Meerut Development Authority v. Association of Management Studies and Anr. etc. (2009) 6 SCC 171 and Air India Ltd. v. Cochin International Airport Ltd. (2000) 1 SCR 505).

10. The scope of judicial review in contractual matters was further examined by this Court in Tata Cellular v. Union of India (1994) 6 SCC 651, Raunaq International Ltd.'s case (supra) and in Jagdish Mandal v. State of Orissa and Ors. (2007) 14 SCC 517 besides several other decisions to which we need not refer. In Michigan Rubber (India) Ltd. v. State of Karnataka and Ors. (2012) 8 SCC 216 the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words:

"19. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) 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 authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

(f) (Emphasis supplied)

20. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(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. If the answers to the above questions are in negative, then there should be no interference under Article 226." (emphasis supplied)

.....

12. In the result this appeal fails and is hereby dismissed with costs assessed at Rs.25,000/-"

12. As has been now well settled that the Court in exercise of jurisdiction under Article 226 of the Constitution of India in the contract matters would not sit as a Court of Appeal over a decision taken by the person(s) having necessary expertise nor would substitute by its own decision. Jurisdiction of this Court in the contract matters is, therefore, limited and is required to be exercised sparingly and on the principles enumerated elaborately in the case of TATA CELLULAR v. Union of India, reported in (1994) 6 SCC 651. For facility of reference a proposed guiding exercise of power by the Court under Article 226 of the Constitution of India in contractual matters may be reproduced as under:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

13. I also lay my hands in a latest judgment of Hon'ble Supreme Court of India

dated 21.03.2022 titled M/s. N.G.Projects Limited Vs. M/s Vinod Kumar Jain and others, passed in Civil Appeal No.1846 of 2022 (Arising out of SLP (Civil) No. 2103 of 2022) wherein it is held that the High Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. It would be appropriate to reproduce paragraph No.23 of the said judgment as under :-

"23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work."

14. In view of the legal position, and scope of writ jurisdiction with regard to interference in the contractual matters as laid down in the judgments (supra), this Court does not find any illegality in the decision taken by the respondents to reject the technical bid of petitioner, which was found to be not supported by any qualifying documents. The impugned decision is, therefore, in consonance with terms and conditions of the contract and no explanation thereto can be found.

15. Viewed thus, this petition is found without any merit and is accordingly, dismissed along with connected CM(s).