(2011) 04 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8563 of 2010 and 8800 of 2009

RTS Power Corporation Ltd. and Another APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 226

Citation : (2012) 1 BC 236 : (2012) 1 RLW 18

Hon'ble Judges : Munishwar Nath Bhandari, J

Bench : Single Bench

Advocate : Mahendra Singh, for the Appellant; R.K. Agarwal with Mr. Alok Chaturvedi, N.K. Maloo with Mr. Vinod Kumar Tamolia, Advocate and Mr. Pradeep Kalwania, Addl. G.C. for the State, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—Since in both the writ petitions, a common legal issue is involved, thus heard and decided by this common order.

2. The matter pertains to tender invited by the respondents for supply of ACSR conductors in one case and in other case, power transformers.

3. The writ petitions have been filed mainly to challenge the condition of "past supply criteria" in the tender notice which makes petitioner company to be non-responsive.

4. It is stated that the petitioner company is manufacturing electrical equipments/ items including various kinds of conductors, cables and transformers with ISO-9001 Certificate. The petitioner company is thus producing quality product with I.S. Specifications, yet it has been technically disqualified from the tender, in view of Clauses 2.01.3, 2.02.3 and 2.03 of the tender notice. Aforesaid clauses provide "past supply criteria" firstly, past supply to the extent of 40% of NIT quantity in any one year during last five years. Alternatively it may have supplied less than 40% of NIT quantity but to be more than 20% in one year out of last

five years. In case of supply of less than 20% of NIT, bidder to be considered as non-responsive.

5. Learned Counsel for petitioner submits that after unbundling of the Rajasthan State Electricity Board, there exist five companies. Other than the respondent company, no other Company has imposed similar condition while inviting tender. This is more so when all the five companies are 100% Government owned companies thus they are under an obligation to have one and the same condition of tender. The petitioner company made supplies to the satisfaction of the other companies. However, the respondent company has debarred petitioner company to get contract on account of arbitrary condition in the tender. This is more so when as per the order issued by the State Government, Rajasthan based industries, that too of small scale level are required to be promoted. However, ignoring the aforesaid, respondent company has prescribed "past supply criteria to the effect that a new entrepreneur cannot take business even if the company is having best equipment, design as well as product. In the light of the aforesaid, there exists no nexus to provide a condition of the nature indicated above. This in fact is to create monopoly in favour of big manufacturers to curtail the small-one. According to the aforesaid, even there is a violation of Article 19 apart from Article 14 of the Constitution of India. In the competitive market, the respondent Company should have come out with a condition where they can concentrate on the quality of the product and competitive rate. However, while imposing condition of "past supply criteria, aforesaid object has been ignored. The petitioner company was otherwise shown its willingness for inspection and testing of their product as per the condition No. 14 of the tender and even they are ready to adhere to condition No. 15 of the tender condition. The tender document further provides the details of manufacturing capacity and financial sources thus there is no reason to have "past supply criteria".

6. Learned Counsel for petitioner referred documents at Annexures 10 to 11 to show certification of the quality as well as sastisfactory supply certificate of electricity companies. In the light of the aforesaid it is submitted that tender condition of "past supply criteria" deserves (sic) truck down and accordingly petitioner be allowed to participate in the tend

7. Learned Counsel for petitioner has place (sic) upon the judgments in the case of Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others, , New Horizons Limited and Another Vs. Union of India (UOI) and Others, and Rasbihari Panda, etc. v. State of Orissa, 1969(1) SCC 141:

8. Learned Counsel appearing on behalf of respondents on the other hand submits that there is no illegality or arbitrariness in the tender condition providing "past supply criteria". When the supply Is to be made in bulk to an electricity transmission company, such condition can always be put. By imposing such a condition no monopoly is created. In fact number of companies have qualified in technical bid and for supply of ACSR conduct (sic) many as six

companies have been given order on the rate below the rate (sic) the petitioner company. For other product, due to stay order, further action (sic) not be taken. The challenge to the "past supply criteria" is not otherwise (sic) being a policy decision and when no allegations of mala fide exist.

9. So far as other electricity companies in State of Rajasthan are concerned, they are not in the field of transmission of electricity but are distribution or generation companies. After unbundling of the Rajasthan State Electricity Board, five companies were created out of which three are distribution companies and one is generation company. The respondent Company is the only transmission company in the State of Rajasthan, thus type of ACSR conductors required are of different quality than supplied by the petitioner company to other electricity companies. Even ISI certification to the petitioner company is of aluminium conductor and not of quality conductor needed by the respondent. So far as the condition of "past supply criteria imposed by the respondent is concerned, that is, as per their policy decision and to safeguard the quantity to be supplied by the bidder. Looking to the fact that the respondent company is a transmission company, thus, it cannot take any risk of delay in supply of required material as their service is of essential nature. In the light of the aforesaid and the fact that the Court is having very limited jurisdiction to interfere in such matters, writ petitions preferred by the petitioner may be dismissed.

10. Reference of the judgments in the case of Siemens Public Communication Networks Private Limited & Anr. v. Union of India & Ors., 2008 (16) SCC 215, Electrical Manufacturing Company Ltd. Vs. Power Grid Corporation of India Ltd. and Another, , Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, and Sorath Builders Vs. Shreejikrupa Buildcon Limited and Another, has been given.

11. I have considered rival submissions of the parties and scanned the matter carefully after going through the judgments cited at the Bar.

12. Since the petitioner has challenged the condition of "past supply criteria" of the tender, it would be gainful to quote the said condition for ready reference:

2.01 Past Supply Criteria :

2.01.1 The bidder should have supplied a minimum 40% of the NIT quantity of ACSR PANTHER or higher rating conductor in any one year (i.e. continuous period of 12 months) during the last five years as on the date of technical bid opening to meet the past supply criteria for full NIT quantity.

2.01.2 In case of those bidders who have supplied less than 40% of the NIT quantity but more than 20% of NIT quantity of ACSR PANTHER or higher rating conductor in any one year (i.e. continuous period of 12 months) during last five years as on the date of technical bid opening, the quantity for which the bid will be considered to be meeting the past supply criteria shall be worked out proportionately on the basis of quantity supplied (i.e. to qualify for full NIT quantity, the quantity supplied is to be 40% of NIT quantity).

2.01.3 The bids of those bidders who have supplied less than 20% of ACSE PANTHER or higher rating conductor in one year (i.e. continuous period of 12 months) during last five years as on the date of technical bid opening, will be considered non-responsive.

2.01.4 In support of fulfilment of the past supply criteria, the bidder shall furnish documentary evidence in the form of certificate from Chartered Accountant. This certificate should be either in original or copy duly attested by Notary. The bidder shall also sign and affix seal on the C.C. Certificate, The certificate should have membership number with the name and address of the chartered accountant, It should clearly indicate the quantity supplied, period of supply, voltage claps/ accuracy class of the material, etc.

13. Perusal of the quoted paras shows that there exists condition to remain responsive to the tender. Firstly one should have supplied minimum 40% of the NIT quantity in any one year during last five years and secondly if one has not supplied to the extent of 40% of NIT quantity then it should be more than 20% of the NIT quantity. In case past supply is less than 20% of NIT quantity, the bidder is treated to be non-responsive. The aforesaid conditions has been challenged mainly on the ground of discrimination inasmuch as it excludes company like the petitioner. Considering rival contentions, I have taken note of the fact that aforesaid condition has not been challenged on the ground of mala fide or on the ground to favour another company.

14. The first question comes as to whether this Court is having jurisdiction to interfere in the policy decision and accordingly to strike down the condition of supply in the NIT. The issue aforesaid came up for consideration before the Hon''ble Apex Court many times and if judgment in the case of Siemens Public Communication Networks Private Limited (supra) is looked into, then complete answer exists. The relevant paras are quoted thus:

19. It would be appropriate to first deal with the scope of power of judicial review, more particularly, in the matter of tenders before we take note of various conclusions arrived at by the High Court.

20. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., it was observed as follows (SCC pp 147-48, paras 11-15):

11. The principles which have to be applied injudicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three Judge Bench in Tata Cellular v. Union of India. It was observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect

the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the bestquotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down

12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. 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. The Government must have freedom of contract. In other words, 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 principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure....

13. In Sterling Computers Ltd. v. M & N Publications Ltd, it was held as under-- (SCC p.458, paras 18-19)

18. While exercise the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the ''decision-making process''. By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such inquiry. But at the same time... the Courts can certainly examine whether decision-making process was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.

14. In Raunaq International Ltd. s.I.V.R. Construction Ltd. it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial

considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of ability to deliver the goods or services as per specifications.

15. The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd. and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own methods to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all is concerned. Even when some defect is found in the decision-making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere.

26. In Jagdish Mandal v. State of Orissa the scope of limited power of judicial review in tender and award of contracts was also lucidly stated in para 19 as follows--(SCC pp. 531-32, para 22)

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made ''lawfully'' and notto check whether choice or decision is ''sound''. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, Courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil Court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade Courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. 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'';

(II) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

40. On examining the facts and circumstances of the present case, we are of the view that none of the criteria has been satisfied justifying Court''s interference in the grant of contract in favour of the appellants. When the power of judicial review is invoked in the matters relating to tenders or award of contracts, certain special features have to be considered. A contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. In such cases principles of equity and natural justice stay at a distance. If the decision relating to award of contracts is bonafide and is in public interest, Courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna.

15. In the case of Raunaq International Ltd. (supra), it is held that award of contract in a case of commercial transaction can be based on many considerations and out of which paramount consideration can even be as to whether the person tendering has the ability to deliver the goods or services as per specifications. The relevant paras of the aforesaid judgment are thus quoted hereunder for ready reference:

9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be--

(1) the price at which the other side is willing to do the work;

(2) whether the goods or services offered are of the requisite specifications;

(3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tendererto fulfil the requirements of the job is also important;

(4) the ability of the tenderer to deliver goods or services or to do the work of

the requisite standard and quality;

(5) past experience of the tenderer and whether he has successfully completed similar work earlier;

(6) time which will be taken to deliver the goods or services; and often

(7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public Interest? (1) Public money would be expended for the purpose of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work--thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, would lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

16. Similar view has also been given in the case of Electrical Manufacturing Company Limited (supra). Relevant paras of the aforesaid judgment are quoted hereunder:

9. Mr. Sudhir Chandra, learned Senior Counsel for the appellant has submitted that the appellant has been denied the contract in question on an erroneous interpretation of Clause 1.1 of Annexure-A of the special conditions of the contract. The aforesaid Clause 1.1. states--

1.1. Technical experience--The bidder shall have satisfactorily completed as a prime contractor or as a sub-contractor or as a member in a joint venture, 345/400 KV double circuit or higher voltage class transmission line(s) within the last seven (7) years as on date of bid opening. The bidder''s experience should include the following:

(i) The bidder should have surveyed, optimized tower locations, erected and strung with tension stringing equipment, not less than following cumulative route length of transaction lines of 345/400 KV double circuit or higher voltage class involving bundle conductor.

Package A-7 : 100km

Package A-8 : 100km.

11. On the other hand Mr. K.K. Venugopal, learned Senior Counsel for the respondent submitted that Sub-clause (i) of Clause 1.1. has to be read along with the main Clause 1.1 which stipulates that the bidder should have satisfactorily completed the requisite length of 100 km. He submitted that the petitioner has only satisfactorily completed 83 km. of transmission line as on 9.1.2008 and, therefore, did not fulfil the technical experience required by Clause 1.1.

12. The dispute thus in this case is whether the appellant has the requisite technical experience mentioned in Clause 1.1 of the special conditions of the contract.

13. Mr. K.K. Venugopal, learned Senior Counsel for the respondent submitted that the appellant has satisfactorily completed only 83 km. of transmission lines as on the date of the opening i.e. 8.1.2008/9.1.2008 instead of the requisite 100 km. He submitted that the appellant had in addition laid various incomplete transmissions lines, but these cannot be added to the lines satisfactorily completed because they are incomplete.

15. Mr. Sudhir Chandra, learned Senior Counsel for the appellant has submitted that the view taken by the High Court that satisfactorily completing the line means commissioning the line is not correct. We are of the opinion that even if satisfactorily completion may not necessary mean commissioning of the line but it certainly means completion of the entire length of the line and thereafter testing the line to find out whether it is functioning satisfactorily. Without testing it how can one be sure that it has been completed satisfactorily. For instance, if an electrical line is laid inside a person''s house, the only way to find out whether electrical line has been laid satisfactorily is to find out by pressing the switch and seeing whether the bulb in the house is lighted or the fan starts running. Merely putting wires dangling inside the house but which do not light the bulb or turn the fan on cannot be said to be satisfactorily completion of the electrical line.

16. In the present case, as can be seen from the chart set out above the appellant has not completed the lines from Trivenveli to Udmalpet nor from Tapp to Kankaroli. Unless the entire line is laid and is found to be functioning satisfactorily, it cannot be said that there was satisfactory completion of the line.

19. In our opinion the expression "satisfactory completion governs Subclause (i) of Clause 1.1 also. Hence, mere surveying, optimizing tower locations, erecting and stringing with tension stringing equipment the requisite length of transmission lines will not be enough to give the necessary technical experience because it is possible that even after doing the above work the transmission lines may not function. Unless after doing the above works the line is tested and found

to be successfully functioning it surely cannot be said that there was satisfactory completion of the transmission lines.

20. Apart from the above, completion of a part of the line will be of no avail and the entire line from one location to another has to be completed before there can be said to be satisfactory completion of the line. Completion of part of the line has to be totally ignored as a line is one integral whole and cannot be divided into sections.

17. Perusal of the judgments referred to above shows that this Court is having limited jurisdiction to interfere in policy decision like involved herein. This is more so when no allegation of mala fide exists. The allegation made by the petitioner is only of discrimination inasmuch as those who are not having past supply criteria to the extent of 20% of the NIT quantity are made ineligible. According to him, this is to create monopoly in favour of others. Considering the facts on record, I find that no monopoly has been created in favour of anyone, inasmuch as in the first case, many bidders have qualified in the technical bid and out of them six bidders have been given supply order, thus, question of creating monopoly in favour of one does not exist on facts. Same way looking to the nature of the work of transmission of electricity undertaken by the respondent Company, condition of "past supply criteria" can be imposed as it needs bulk supply in time. In the present matter rates quoted by the petitioner Company were not the lowest.

18. In the first writ petition, tender was opened and even supply has been completed in absence of stay order, thus S.B. Civil Writ Petition No. 8563/2010 literally becomes infructuous. It is also noted that the respondent Company is only transmission company in the State of Rajasthan thus type of the transmission linesmaintained are not of the same capacity as of the distribution company rather they are of heavy capacity. On record, it has is come that transmission company is required to lay high power transmission line, whereas distribution company does not need same capacity and it is for that reason only that the petitioner Company has not supplied Panther or Zebra ACR cables in bulk to any of the distribution companies. The type of supply made to those companies are of different cables. In the background aforesaid and facts available on record does not show even discrimination in putting the condition under challenge.

19. So far as the State Government''s order to promote small scale units established in Rajasthan is concerned, such is not a statutory order. A transmission company is required to maintain supply of electricity thus type of work to be undertaken by them cannot be equated with others for adherence to the Government order. The respondent Company needs not only good quality product but timely supply of it so that on account of delay or non-supply, it may not cause any disruption in supply of power. Looking to overall facts and circumstances available on record, a case is not made out so to show even violation of Articles 14 and 19 of the Constitution of India. This is more so when

the petitioner Company is not debarred to supply the material of the nature involved herein because in future if less quantity of supply is required and if petitioner Company is found to have supplied more than the required quantity in one year out of five years, it would technically qualify. Hence, I do not find that there is violation of Article 19(1)(g) of the Constitution of India, In the aforesaid factual aspect, I considered the judgments cited by the petitioner also.

20. In the case of New Horizons Limited (supra), the issue was regarding experience of a joint venture company. 60% of the joint venture was owned by an Indian group of companies having no experience whereas 40% with foreign company having long experience as well as resources. In the aforesaid background, it was held that the experience should have been taken note of after lifting the corporate veil. It was accordingly held that State action should be in conformity with the standards and norms which are not arbitrary, irrational or irrelevant, but to be recognized on the certain measure of''free play in the joints''. Taking note of the facts of that case, it was held that joint venture experience of various constituents should have been taken into consideration by Tender Evaluation Committee. Therein the case of Tata Cellular Vs. Union of India, was considered wherein following principles were laid down for judicial review:-

(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 facets 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.

21. Though the following observations were also made which are also quoted thus:

(1) It is open to the Court to review the decision-maker''s evaluation of the facts. The Court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld.

(2) A decision would be regarded as unreasonable if it is partial and unequal in its operation as between different classes.

22. In the case of New Horizons Limited (supra) no doubt it was held that past experience may be relevant but present status of experience along with equipments and resources at the disposal of the company should also be taken into consideration. The fact therein was regarding the experience of the constituted company in joint venture, thus, taking note of those facts, decision was given. The case in hand is not of similar nature rather a company is taken as non-responsive if its supplies in one year of last five years is less than 20% of the NIT quantity. Such a decision has been kept looking to the requirement of timely supply as the respondent Company is engaged in transmission of electricity. In absence of timely and proper maintenance with required material may cause disruption In electricity supply. In the aforesaid background, the "past supply criteria" cannot be said to be irrational or arbitrary. This is more so when in the recent judgment of Siemens Public Communication Networks Private Limited (supra), all these aspects were considered and referring the judgment of Raunaq International Ltd. v. /. V. R. Construction Ltd. (supra), it was held that whether a person tendering is having capacity to deliver the goods or services can be one of the considerations in tender. So far as the judgment in the case of Rashbihari Panda, etc. (supra) is concerned, the issue was altogether different. Therein by virtue of the condition mentioned in the tender, it was creating monopoly in favour of old contractor, which is not the case herein, thus, judgment in the aforesaid case provides no assistance to the petitioner.

23. In the case of Reliance Energy Ltd. (supra), it was held that the Government contract should provide ''level playing field'' to all bidders. Therein it was held that equally placed competitors should be allowed to bid in Government contract. If case in hand is taken note of, equally placed competitors have been allowed to bid. If a contractor has no past experience of supply of similar product or having very little or less experience, cannot be said to be equally placed competitors. In the aforesaid judgment itself, judicial review in such contractual and administrative matters have been kept very is limited. Looking to the aforesaid and the facts of this case, I do not find that a case is made out to cause judicial review in the tender condition. In my opinion, judgments in the cases of Raunaq International Ltd. (supra) and Electrical Manufacturing Company Ltd. (supra) give complete answer to the issue herein.

24. In view of discussion aforesaid, I do not find any illegality in the condition of tender under challenge thus I am not inclined to interfere in the tender process, more so out of the two cases, in one case supply has already been completed.

25. The writ petitions are accordingly dismissed with no order as to costs.

