**(2013) 12 RAJ CK 0091**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 13744 of 2013

Saraf Carpet and Textiles APPELLANT

Vs

State of Rajasthan RESPONDENT

**Date of Decision :** 09-12-2013

**Acts Referred:**

**Citation :** AIR 2014 Raj 41 : (2014) 3 BC 273

**Hon'ble Judges :** Mohammad Rafiq, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

Mohammad Rafiq, J.—All these four writ petitions seek to assail empanelment of respondent No. 4 as Shopping Emporia for Carpets in S.B. Civil Writ Petition No. 13743/2013 and S.B. Civil Writ Petition No. 13743/2013 and for Jewellery items in S.B. Civil Writ Petition No. 13745/2013 and S.B. Civil Writ Petition No. 13746/2013 for luxury trains namely Palace on Wheels and Royal Rajasthan on Wheels for the season 2013-14. Facts of the case are that Rajasthan Tourism Development Corporation, Jaipur (shall hereinafter be referred as the "RTDC") on 10/6/2013 floated a tender for empanelment of Shopping Emporia for luxury trains namely Palace on Wheels and Royal Rajasthan on Wheels for the season 2013-14. It was notified that tender form can be purchased from the office of Executive Director RTDC on 14/6/2013 during office hours and shall be submitted in the office up to 3.00 p.m. on 15/7/2013 and technical bids shall be opened on the same day on 4.00 p.m. The respondents supplied detailed instructions with the tender form under the caption "submission of bid documents". Clause 3 of the "submission of bid documents" stipulates the last date and time for submission of tender up to 3.00 p.m. on 15/7/2013. Clause 4 thereof provides that technical bids shall be opened at 4.00 p.m. on 15/7/2013 itself. Clause 6 thereof provides that sealed bids in two separate envelopes placed in common cover would be received in the office of Rajasthan Tourism Development Corporation Ltd., Jaipur located at Hotel Swagatam Campus, Near Railway

Station, Jaipur up to 3.00 p.m. on 15/7/2013. If the same day happens to be a holiday bids would be received and opened on the next working day. Clause 8 thereof provided that bids received after expiry of schedule time shall not be accepted. Clause 6(e) of "conditions of bid documents" provides that the location of the showroom of bidder-firm should be prominent on the regular prescribed route of the city sight seeing tour of the Palace on Wheels for tourists. According to the averments made in the petitions, petitioners and other two bidders submitted their bids within scheduled time up to 3.00 p.m. on 15/7/2013. Technical bids were scheduled to be opened at 4.00 p.m. on 15/7/2013 itself in the presence of bidders. Technical bids of petitioners and other two bidders were opened. All the three bidders were called for opening of the financial bids on 15/7/2013. But to their utter shock and surprise, when financial bids were opened on 25/7/2013, financial bid of respondent No. 4 was also opened though its technical bid was not opened on 15/7/2013 at 4.00 p.m. as its technical bid was not received up to the time of sealing the bid box. Even then, respondent No. 4 was declared successful bidder. Petitioner submitted written objections to the Managing Director, RTDC but their objections were not entertained.

2. Ms. Sonal Singh, learned counsel for petitioners argued that while showroom of the petitioners is situated on the prescribed route on Amer Road, showroom of respondent No. 4 is neither situated on the prescribed route of the city site seeing route of the Palace on Wheels/Rajasthan Royals on Wheels for tourists as the regular prescribed route of the city site seeing tour is from the Albert Hall situated in Ram Niwas Garden, Hawa Mahal, City Palace, Jalmahal and Amer Road, whereas the location of showroom of respondent No. 4 is in Mansarovar, which does not come in the regular prescribed route of the city site seeing tour. Condition No. 6(e) of "conditions of bid documents" has thus been violated. Condition No. 6(f) also requires that there should be provision for lifts of upper floors. Condition No. 6(d) thereof further requires that the bidder, showroom/firm should have showroom approved convenient parking space for 4-5 large size luxury coaches. Condition No. 6(k) thereof further requires that the bidder should have spacious air-conditioned arcade/emporium to accommodate 100 persons at a time. It should have enough numbers of neat and clean toilets along with attendants. All these conditions were not fulfilled by respondent No. 4, who according to the petitioners does not have sufficient space in the showroom.

3. Ms. Sonal Singh, learned counsel for petitioners has argued that bids submitted by respondent No. 4 could not have been accepted after sealing of the bid box. When the bid box was opened, three bids were found therein. Though respondent No. 4 belatedly submitted the bids but on record, it has been shown by respondent Nos. 2 and 3 that tender in one category was received at 3.05 p.m. and another category at 3.10 p.m. Respondents claimed that their technical bids were opened on 22/7/2013 but petitioners had no notice of this fact, although as per stipulation in the condition of tender, all such bids were required to be opened in the presence of all bidders. Thereafter, although when the financial bids were opened on 25/7/2013, it was for the first time came to the

 

notice of the petitioners that two additional bids were received. Ms. Sonal Singh, learned counsel for petitioners has argued that conditions of the NIT categorically indicated that the tenders can be submitted up to 3.00 p.m. on 15/7/2013 and the technical bids would be opened at 4.00 p.m. oh that very day, in the presence of all bidders, respondents-RTDC could not unitarily accept the tender form belatedly submitted by respondent No. 4. It was argued that when the technical bids of respondent No. 4 were opened allegedly on 22/7/2013, no notice or opportunity of hearing was given to the petitioners before 22/7/2013. Tenders of respondent No. 4 ought not to have been received in breach of Condition No. 8 incorporated in the NIT.

4. Ms. Sonal Singh, learned counsel for petitioners argued that technical bids of respondent No. 4 were opened behind back of petitioners and all concerned persons. The technical bids of respondent No. 4 therefore could not have been opened on 22/7/2013. Not only receipt of the belated tender/bid is shrouded in mystery but opening of the technical bid on 22/7/2013 by the RTDC in a clandestine manner shows undue favour given to respondent No. 4. A Government undertaking cannot be expected to act in such a clandestine and arbitrary fashion. The Government or its agency in award of the contract like this one, have to act in a fair, reasonable and transparent manner. In support of her argument, learned counsel for petitioners has placed reliance on the Division Bench judgment of Jammu & Kashmir High Court in Selvel Media Services Pvt. Ltd. Vs. State of J. and K. and Others, and judgments of Supreme Court in Sorath Builders Vs. Shreejikrupa Buildcon Limited and Another, , New Horizons Limited and Another Vs. Union of India (UOI) and Others, B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, , Harminder Singh Arora Vs. Union of India (UOI) and Others, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

5. Per contra, Shri Amit Kuri, learned counsel appearing for respondent Nos. 2 and 3-RTDC argued that writ petitions cannot be entertained in a private contractual dispute involving disputed questions of fact. Petitioners have no enforceable legal right, Petitioners entered into contract and signed conditions of bid document with full knowledge, which was clear in regard to accepting or rejecting the offer. Condition No. 30 of "conditions of bid documents" provides that the Managing Director of Rajasthan Tourism Development Corporation Ltd., Jaipur reserves the right to accept/reject any offer without assigning any reason. Petitioners are now estopped from challenging the tender process. On merit, learned counsel argued that bids of respondent No. 4 were received only five minutes late in one category and ten minutes late in another category, which cannot be said to be an enormous delay. Technical bids of respondent No. 4 were not opened at 4.00 p.m. on 15/7/2013 because they were not put in the bid box. Only bids of petitioner and other two bidders put in the bid box were opened at 4.00 p.m. on 15/7/2013. Bids of respondent No. 4 were opened on 22/7/2013 after notice to them. It was argued that notice was not required to be given to

 

the petitioners at the time of opening of the technical bids of respondent No. 4 as technical bids of petitioners and other two bidders were already opened at 4.00 p.m. on 15/7/2013.

6. Shri Amit Kuri, learned counsel appearing for RTDC argued that bid of respondent No. 4-M/s. Neel Kanth Exports was accepted in terms of Rule 49 of the General Financial and Accounts Rules, which provides that the department/ office shall continue to receive delayed tenders i.e. tenders received before the time of opening but after the prescribed time of receipt of tenders. The use of word "shall" in this rule makes the rule mandatory therefore even after expiry of time of 3.00 p.m. on 15/7/2013, when respondent No. 4 submitted its bids, respondents had to accept the same. The answering-respondents received total nine delayed bids. Time and date of their receipt was also marked by the receiving officer as well as committee. No illegality has been committed by the tender committee in accepting the delayed tenders. It was submitted that the production unit/factory of respondent No. 4 is situated on the city site seeing route for the passengers/tourists of Palace on Wheels and Royal Rajasthan on Wheels. The city site seeing route for the passengers/tourists of Palace on Wheels takes a start from'' Gandhi Nagar Railway Station, Jaipur and the same is carried ahead to Birla Mandir thereafter to Jantar Mantar then to City Palace and thereafter to Amer. From Amer, Jaipur, the passengers/tourists are boarded for Tonk Road via Mansarovar to Durgapura as the destination is Durgapura Railway Station. It is thus clear that showroom of respondent No. 4 is situated on the prescribed route and is not off the route. In any case, tender in one category submitted by respondent No. 4 was delayed only by five minutes and in another category by ten minutes. There was thus hardly any delay. Learned counsel then sought to justify the empanelment of respondent No. 4 in preference to petitioners with reference to comparative table of the offer given by them and argued that while petitioners M/s. Saraf Carpet (in SBCWP No. 13744/13) and M/ s. Jaipur Boutique (in SBCWP No. 13743/13) offered net bid amount of Rs. 35,95,520/- & Rs. 39,89,904/-, respectively, respondent No. 4-M/s. Neelkanth Handicrafts offered net bid amount of Rs. 63,15,892/- (in SBCWP No. 13744/13 & SBCWP No. 13743/13). Similarly, petitioners M/s. Antiquirate Pvt. Ltd. (in SBCWP No. 13745/13) and M/s. Silver Art Palace (in SBCWP No. 13746/13) offered net bid amount of Rs. 47,19,120/- and Rs. 44,94,400/-, respectively, respondent No. 4 offered net bid amount of Rs. 90,12,532/-, much higher than petitioners.

7. Shri Amit Kuri, learned counsel while referring to Rule 1 of General Financial and Accounts Rules, Part-II Chapter-I relating to stores argued that this chapter contains general rules applicable to all departments, regarding stores required for use in the public service. Sub-rule (2) of Rule 1 provides that services include (i) for maintenance of office equipments, computers etc., (ii) for hiring of vehicles, tentage, equipments, etc. and (iii) for occasional works for which in house personnel are not available e.g. organizing fairs, festivals, exhibitions, specific events designing of tableaus, photography etc. Learned counsel then

 

referred to Rule 38 of the GF&AR Rules, Section II Part-II, which pertains to purchase through tenders and argued that this rule also substantiates the stand of the RTDC that Rule 49 of the said GF&AR Rules, Part-II, would justify acceptance of delayed tender. Learned counsel for RTDC has in support of his arguments placed reliance on the judgments of Supreme Court in Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others, Tejas Constructions and Infrastructure Pvt. Ltd. Vs. Municipal Council, Sendhwa and Another, and Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others,

8. Shri Giriraj Bardhar, learned counsel appearing for respondent No. 4 opposed the writ petitions and argued that RTDC has discretion to receive delayed tenders, though submission of tender was not intentionally delayed. Delay was also very insignificant. In one category of Carpets was delayed by five minutes and in another category of Jewellery, by ten minutes. In view of Rule 49 supra, the RTDC had competence to accept the delayed tenders. Condition No. 30 of "conditions of bid documents" clearly provides that the Managing Director of Rajasthan Tourism Development Corporation Ltd., Jaipur reserves the right to accept/reject any offer without assigning any reason. Condition No. 27 provides that in case of any dispute, the same shall have to be referred to the Managing Director of RTDC for arbitration and all legal matters shall be subject to jurisdiction of Jaipur city and his decision shall be binding on both the parties. Apart from Section II of Rule 38 of the GF&AR Rules, Part-II, learned counsel also relied on Rule 45 of the said GF&AR Rules, which provides that the tender notice shall contain certain things. Rule 46 thereof speaks about cost of tender forms for open tender and Rule 48 speaks about receipt of tender forms. All the provisions relied on along with Rule 49 fully justify action of the RTDC in accepting the tenders of respondent No. 4. It was denied that respondent No. 4 does not have specious showroom. It has specious showroom, which is more than 30,000 square feet and is sufficient to accommodate 400 people approximately at a time. RTDC has evaluated the technical bid of respondent No. 4 for selection of the shopping emporia at Jaipur in comparison with the bids of all others and then only has approved its technical bid. Learned counsel has also submitted that respondent No. 4 has offered higher bid amount than petitioners and in this regard, learned counsel invited attention of the court towards comparative table annexed with the reply as Ann. R/1. Difference in the bid amount has already been explained to the court by learned counsel appearing for the RTDC. This difference in all the categories is almost double, thus much higher than what is quoted by the petitioners. Learned counsel argued that after empanelment of respondent No. 4, RTDC has already started the work by sending the tourists on Palace on Wheels and Royal Rajasthan on Wheels from 29/7/2013 to their showroom. An agreement was executed between respondent No. 4 and RTDC on 3/8/2013. The empanelment is for a period of one year. Already, four months have gone by from that date and at this stage, no interference should be made by this Court. Learned counsel on the scope of

 

jurisdiction by the High Court in such matters has relied on the judgment of Supreme Court in BECIL Vs. Arraycom India Ltd. and Others,

9. Ms. Sonal Singh, learned counsel for petitioners rejoined and submitted that GF&AR Rules are essentially meant for store purchases by the Government and its department, which may include papers, stationery, hiring of vehicles, tentage, equipments and for occasional works for which'' in house personnel are not available e.g. organizing fairs, festivals, exhibitions, specific events designing of tableaus, photography etc. but it has no relation with empanelment of Shopping Emporia for conducting tourists and is certainly not covered in the scope of the aforesaid rules. In any case, learned counsel argued that every State action ought to be fair and transparent. Empanelment of the respondent No. 4 has been made in non-transparent and opaque manner.

10. I have given my thoughtful consideration to the rival submissions and perused the material available on record and the case law cited at the bar.

11. Although, it is a fact that the bid amount, which has been offered by respondent No. 4 is much higher as compared to bid of the petitioners and other two bidders. There is there-fore no dispute on the fact that bid amount offered by respondent No. 4 is highest. But this is not the issue. What the petitioners have alleged is that even though as per NTT, bids forms were to be received only up to 3.00 p.m. on 15/7/2013 but nine bids/tenders in different categories were submitted by respondent No. 4 with delay. In these writ petitions, we are concerned with only four of them. Two of these were submitted by respondent No. 4 at 3.05 p.m. and remaining two at 3.10 p.m. The documents titled "submission of documents" supplied along with NIT has given the guidelines to be followed and another document "conditions of bid documents", the guidelines to be followed in the tender process for empanelment of Shopping Emporia. Condition No. 3 of first document has indicated the last date and time for submission of tender up to 3.00 p.m. on 15/7/2013. Condition No. 4 has indicated opening of technical bid at 4.00 p.m. on 15/7/2013 itself. Condition No. 6 provides that sealed bids in two separate envelopes placed in common cover would be received in the office up to 3.00 p.m. on 15/7/2013 and if the same day happens to be a holiday, bids would be received and opened on the next working day. Condition No. 8 provides that bids received after the expiry of schedule time shall not be accepted. As regards "opening of bids", it is stated therein that at the first stage, technical qualifying bids along with the bid condition documents and earnest money shall be opened and thereafter the financial bids of only those firms/showrooms shall be opened, who qualify in the first stage bid. Even though, the respondent-RTDC in the conditions of NIT notified in advance the time and date for receiving bids and opening of technical bids in that the bids shall be received up to 3.00 p.m. on 15/7/2013 and technical bids shall be opened on the same day at 4.00 p.m. and also notified in advance that bids received thereafter shall not be entertained. Yet surprisingly, the respondents-RTDC accepted bids of respondent No. 4 at 3.05 p.m. in one

 

category and at 3.10 p.m. in another category. This was indeed contrary to conditions notified in advance. There is no explanation forthcoming if actual tenders were received with delay of only 5 or 10 minutes, why then technical bids in respect of such tenders were not opened with other three bidders at 4.00 p.m. on 15/7/2013? And why those tenders of respondent No. 4 were separately opened on 22/7/2013 and that too without any notice to the petitioners and other two bidders? What has been vaguely suggested is that since technical bids of the petitioners only were found in the bid box and not of respondent No. 4, they were not opened at 4.00 p.m. on 15/7/2013. If that was so, fairness demanded that respondent-RTDC should have at the earliest point of time combined financial bids submitted by respondent No. 4 with those of petitioners and other two bidders so as to not to give rise to any doubt in the mind of petitioners and other bidders. And then, no notice was given to the petitioners and other two bidders and why were they not associated with the process when technical bids of respondent No. 4 were opened on 22/7/2013. Petitioners have categorically alleged that they were not aware about opening of the technical bids of respondent No. 4 till 25/7/2013 when on that day to their utter shock and dismay, financial bids of respondent No. 4 were opened. Financial bid of respondent No. 4 was not received in time when the sealed bid box was opened and only three bids were found therein, how could their bids be considered, is difficult to appreciate. Respondents in reply to para 7 of the writ petition have not categorically denied these averments in para 7 of their reply but they have failed to give explanation why notice was not served upon other bidders or why they have not been informed about opening of the technical bid of respondent No. 4 on 22/7/2013. This gives credence to allegation of petitioners that bid of respondent No. 4 was in fact received much belatedly but on record, it was shown to have been received at 3.05 p.m. Respondents have produced on record note-sheet signed by respondent No. 2 and other officials indicating delayed receipt of the tenders after due time of closing of the tender document. Even if this is accepted as correct, there is still no explanation why technical bids of the respondent No. 4 received with delay of only five to ten minutes was not opened with those of other two bidders, when time of fifty minutes was still left in between.

12. The Jammu and Kashmir High Court in Selvel Media Services Pvt. Ltd. Vs. State of J. and K. and Others, supra was dealing with a case where notice inviting tender for award of advertising rights was issued by the Government. Last date for submission of bid document was fixed on or before 10/3/2008 up to 4.00 p.m. Three parties submitted their bids. Third bid of the appellant was received with the delay of one day. Appellant maintained before the Jammu and Kashmir High Court that he sent the bid earlier on 10/3/2008 but the same could not be received in the Corporation office on account of strike by its workers. In those facts, it was held by the High Court, as under:--

13. The appellant has not been able to make out any plausible or tenable cause or justification, for, the delayed submission of the bid. It appears that the

 

appellant had adopted a wrong mode of submission which was prohibited by NIT conditions. By the time the realization dawned on the appellant of correcting the same, it was too late to catch the train. The NIT terms do not provide for any exercise of discretion for relaxing the term with regard to receipt of the bid after the last date. In the absence of such power or stipulation in the NIT, the principal employer can only choose not to award any contract or go in for re-tendering. However, the Commissioner of the Corporation conscious of appellant''s bid being an ineligible one, having been received late, though being the highest amount quoted, ruled that respondent No. 7, whose bid was the highest among eligible bidders, to match the price quoted by the appellant.

13. In the present case too, notice inviting tender categorically indicated that tender form will be received up to 3.00 p.m. on 15/7/2013 and will be opened on the same at 4.00 p.m. Detailed NIT also provided that tenders will be received up to 3.00 p.m. on 15/7/2013 and will be opened on the same day up to 4.00 p.m. in the presence of tenderers. Condition No. 8 of "submission of bid documents" supplied along with the tender document provided that "bids after expiry of scheduled time shall not be accepted". Respondents are now seeking to justify acceptance of such bids by invoking Rule 49 of the General Financial and Accounts Rules, which has nothing to do with the empanelment of Shopping Emporia for conducting the tourists in luxury trains namely Palace on Wheels and Royal Rajasthan on Wheels to showrooms. The said rule applies to the Government departments for procurement of stores in various Government offices and also for procurement of services such as for maintenance of office equipments, computers etc., for hiring of vehicles, tentage, equipments, for occasional works for which in house personnel are not available e.g. organizing fairs, festivals, exhibitions, specific events designing of tablaus, photography etc.

14. In Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, the Supreme Court held that while exercising 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. The courts have inherent limitations on the scope of any such enquiry. 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.

15. The Supreme Court in Sorath Builders Vs. Shreejikrupa Buildcon Limited and Another, supra was dealing with a case where notice was issued by the respondent University for construction of veterinary college building. Large number of online applications were invited on 21/11/2008. Pre-qualification documents were required to be physically received by 27/11/2008. Three bids were received. One was disqualified at the threshold as the bidder was not having the requisite experience. Of the remaining two, the bid of respondent No.

 

1 was lower. However, since the documents of respondent No. 1 were sent three days after the last date fixed for receiving of these documents by the University, his bid was not considered. Respondent No. 1 filed writ petition before the High Court for quashing the decision of the University declaring him disqualified. The High Court allowed the petition holding that the University acted arbitrarily in requiring the pre-qualification documents to be sent physically so as to reach the University by 27-11-2008. Decision of the University accepting the bid of the appellant was quashed with a further direction that the University shall issue a fresh tender notice with the same terms and conditions but providing for seven day''s time for submitting the pre-qualification documents after the end date for downloading the bid documents. In those facts, it was held by the Supreme Court that respondent No. 1 was negligent and was not sincere in submitting his pre qualification documents within the time schedule laid down despite the fact that he had information that there is a time schedule attached to the notice inviting tenders. Despite being aware of the said stipulation he did not submit the required documents within the stipulated date. Pre-qualification documents were received by the respondent No. 2-University only after time schedule was over. The terms and conditions of the tender as held by the Supreme Court are required to be adhered to strictly, and therefore, the respondent No. 2-University was justified in not opening the tender submitted by respondent No. 1 on 01.12.2008, which was late by three days. No grievance could also be made by the respondent No. 1 as lapse was due to his own fault. The High Court''s prime consideration in setting aside the award of contract made in favour of the appellant, was that had the bid of respondent No. 1 been considered as it was lower, there would have been saving of public money. Supreme Court did not upheld that finding.

16. The Supreme Court in New Horizons Limited and Another Vs. Union of India (UOI) and Others, held that the State, in exercise of its various functions, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly and reasonably. The action of the State in the matter of award of a contract has to satisfy this criterion. Moreover, a contract would either involve expenditure from the State exchequer or augmentation of public revenue and consequently the discretion in the matter of selection of the person for award of the contract has to be exercised keeping in view the public interest involved in such selection. The decisions of the Supreme Court, therefore, insist that while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet-will and like a private individual, deal with any person it pleases, but its action must be in conformity with the standards or norms which are not arbitrary, irrational or irrelevant. It is, however, recognized that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere.

17. Those observations of the Supreme Court would also apply to the facts of the

 

present case as transparency and fair play in action demanded that the respondents once having notified that technical bid would be received by 3.00 p.m. on 15/7/2013 and will be opened on the same day at 4.00 p.m. and any bid received after the last date and time, would not be accepted then, why the RTDC entertained two bids of respondent No. 4 received at 3.05 p.m. and another received at 3.10 p.m. Fact that they did not open the technical bids of respondent No. 4 with those petitioners and other two bidders received in time, creates doubt if at all those bids were received with, the delay of only 5 to 10 minutes. And why then the respondents belatedly opened the technical bids of the respondent No. 4 by full one week up to 22/7/2013? Moreover, when they opened the financial bid of respondent No. 4 on 22/7/2013, why they did not associate them with other bidders at the time of bidding process?

18. The Supreme Court in B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, held that if there are essential conditions, the same must be adhered to. If a party failed and/or neglected to comply with the requisite conditions which were essential for consideration of its case by the employer, it cannot supply the details at a latter stage or quote a lower rate upon ascertaining the rates quoted by others. Their Lordships held that if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions.

19. In Harminder Singh Arora Vs. Union of India (UOI) and Others, supra, the Supreme Court held that if the tender forms submitted by any party is not in conformity with the conditions of the tender notice the same should not have been accepted but the authorities concerned arbitrarily and in a fanciful manner accepted the tender of respondent. The State of its instrumentality has to act in accordance with the conditions laid down in the tender notice. In any case if the authorities chose to accept the tender of respondent for supplying pasteurized milk, the appellant should also have been given an opportunity to change its tender. The authorities have, however, given preference to the tender of respondent for offering to supply pasteurized milk contrary to the terms contained in para 2 of the tender notice.

20. It was held by the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, that it is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them. It was held by the Supreme Court in paras 10, 11 and 12 of the report, as under:-

10. Now, there can be no doubt that what paragraph (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered 2nd class hotel or restaurant and he must have at least 5 years'' experience as such and if he did not satisfy

 

this condition of eligibility his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Viteralli v. Seton(l) where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword. Xxxxxxxxxxxxxxxxxxxxxxxxxxxx

21. The Supreme Court in Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others, held that 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. 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. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities.

22. The facts in Tejas Constructions and Infrastructure Private Limited (supra) are entirely different. In that case, there was violation of terms of agreement between the parties regarding a project, whereas in the present case, only empanelment has been made and it is not a case of execution of any project. In Asia Foundation & Construction Ltd. (supra) again, their lordships held that larger public interest has to be kept in view in case of high cost govt. projects based on loan from international financial institutions such as Asian Development Bank or World Bank and that the courts must keep in mind cost escalation of the project as a result of delay that would be caused by its interference.

23. In BECIL Vs. Arraycom India Ltd. and Others, the case cited by the learned counsel for respondent No. 4, their lordships of the Supreme Court held that in contracts to be given by Government authorities or statutory bodies or instrumentalities of the State, Article 14 of the Constitution applies. Hence, there should be transparency by holding an open public auction/tender because such contracts often involve huge amounts of public money. Ordinarily, the lowest bidder should be given the contract, although it is not an invariable rule in all cases. It was further held that in administrative matters, the scope of judicial review is limited and the judiciary must exercise judicial restrain in such matters.

 

The Supreme Court in the aforesaid judgment held that scope of judicial review is limited but at the same time, it was also held therein that Article 14 of the Constitution of India applies to any contract to be awarded by the government or its instrumentality and there should be transparency.

24. In the present case, this Court is persuaded to make interference because action of the respondents lacks transparency and is shrouded in opacity for the reasons discussed above. If the respondents had not received the competitive rates from those who submitted their bids in time, it was always open for them to invite fresh tenders giving opportunity to all the parties to submit fresh tenders. The manner in which the respondents empanelled the respondent No. 4, cannot be approved of. Contention that clause 30 of "submission of bid documents" empowers that the Managing Director of RTDC reserves the right to accept/reject any offer without assigning any reason therefor if the tender of respondent No. 4 has been accepted with somewhat delay, that would not vitiate the process of tender, is noted only to be rejected as that clause may be applied in the peculiar fact situation for accepting or rejecting the tender but not for justifying the deviation from the schedule of receiving tenders/bids after last date and time fixed therefor.

25. In the result, all the writ petitions succeed, and are hereby allowed. Empanelment of respondent No. 4-M/s. Neel Kanth Exports, Jaipur as Shopping Emporia for luxury trains namely; Palace on Wheels and Royal Rajasthan on Wheels for the season 2013-14 pursuant to Tender No. POW/Require/13-14/979 dated 10/6/2013 for Carpet and Jewellery items in all the four writ petitions is set-aside. In order however to save the respondents-Rajasthan Tourist Development Corporation, Jaipur from losses, till it invites fresh tenders and finalise the process of new empanelment, the respondents-Rajasthan Tourist Development Corporation, Jaipur may despite quashment of the empanelment, continue to operate the contract with respondent No. 4-M/s. Neel Kanth Exports, Jaipur as Shopping Emporia up to 10/01/2014 on proportionate reduction of the bid amount and not thereafter. All the writ petitions are allowed with the aforesaid directions.