(2023) 09 UK CK 0134

In the Uttarakhand High Court

Case No : Writ Petition (M/B) No. 119 Of 2023???????

SBI General Insurance Company Ltd. APPELLANT

Vs

State Of Uttarakhand & Others RESPONDENT

Date of Decision : 12-09-2023

Acts Referred:
Constitution Of India, 1950 — Article 12, 226

Citation : (2023) 09 UK CK 0134

Hon'ble Judges : Vipin Sanghi, CJ;Rakesh Thapliyal, J

Bench : Division Bench

Advocate : Venkatesh Dhond, S.K. Jain, Punit Damodar, Siddharth Jain, Raveena Kinkhabwala, C.S. Rawat, B.S. Parihar, Saurav Adhikari, Sudhir Nandrajog , T.A. Khan, Tuhia Singh, Mohd. Shafy, V.K. Kohli, Kanti Ram Sharma

Final Decision : Allowed

Judgement

Vipin Sanghi, CJ

1. The petitioner- SBI General Insurance Co. Ltd. has preferred the present writ petition to assail the Work Order dated 07.06.2023, issued by respondent no.2, i.e. the Director, Horticulture and Food Processing, Uttarakhand, addressed to all the District Magistrates, State of Uttarakhand, conveying the authorization of the Agriculture Insurance Company of India Ltd., i.e. respondent no.4, for Cluster No.1 (Almora, Bageshwar, Pithoragarh), Cluster No. 3 (Dehradun, Haridwar, Tehri), and Cluster No.4 (Rudraprayag, Chamoli, Pauri and Uttarkashi), and HDFC Ergo General Insurance Company Ltd., i.e. respondent no.5, for Cluster No.2 (Nainital, Champawat, Udham Singh Nagar), as the implementing agencies for providing Restructured Weather Based Crop Insurance Scheme (for short "RWBCIS") from season Kharif- 2023 to 2025, and season Rabi 2023-26.

2. The petitioner also assails the communication dated 18.05.2023, issued by respondent no.2, whereby the petitioner was informed that its financial bid submitted in response to the limited tender invited under the RWBCIS, aforesaid,

had not been opened, since the petitioner, and two other bidders, did not mention the premium rates on the term-sheets in accordance with point No.13 of the tender conditions.

3. The petitioner also seeks a direction to respondent no.2 to reopen the tender process, and consider the petitioner's financial bid in terms of the tender document. The petitioner seeks a restraint against respondent no.2, from issuing a Notification in furtherance of the Work Order dated 07.06.2023, aforesaid, in favour of respondent nos.4 and 5.

4. At this stage, we may observe that respondent nos.4 and 5 were initially not impleaded as party respondents. On 15.06.2023, when the writ petition was taken up for preliminary consideration, learned counsel for the petitioner stated that the petitioner shall impleaded the successful bidders. Consequently, respondent nos.4 and 5 were impleaded as party respondents.

5. The case of the petitioner is that the petitioner is an Insurance Company incorporated under the Companies Act, 1956. It carries on business of providing general insurance services. In the year 2016, the Government of India launched the Pradhan Mantri Fasal Bima Yojana (for short "PMFBY") with the intention of supporting sustainable production in the agricultural sector. One of the schemes, which was introduced under the PMFBY was the RWBCIS Scheme. The RWBCIS scheme was introduced with the intention of mitigating the hardship of the farmers against the likelihood of financial loss on account of anticipated crop loss resulting from adverse weather conditions. On 08.04.2020, the CEO of the PMFBY issued a Model Tender Document to the Principal Secretaries of all the implementing States, which set out the terms and conditions to be incorporated by the Implementing State while inviting bids from the empanelled insurance companies under the PMFBY and RWBCIS Scheme.

6. Respondent no.2, i.e. Directorate of Horticulture and Food Processing, Uttarakhand, is the authority in-charge of, and responsible for implementation of the Weather Based Crop Insurance Scheme in the State of Uttarakhand. Respondent no.2, accordingly, issued the limited tender document dated 01.05.2023, and invited few of the insurance companies to participate in the said limited tender, including the petitioner and respondent nos.4 and 5.

7. The tender was invited to call for bids from the empanelled insurance companies, including the petitioner, for awarding contracts under the RWBCIS Scheme for a period of three years, i.e. for Kharif 2023-25, and Rabi 2023-26 on the terms and conditions set out in the tender document. A two bid system was adopted, whereunder the technical bid and financial bid had to be submitted in different sealed envelopes, and the financial bids of only those bidders could be opened, whose technical bids were declared to be responsive. The bids were required to be submitted by the empanelled insurance companies in a sealed envelopes with the office of respondent no.2. The last date for submission of the bid was 16.05.2023 till 02:00 PM.

8. The case of the petitioner is that on 16.05.2023, the petitioner submitted its technical and financial bids in terms of the tender document in two sealed envelopes within the time stipulated. The petitioner further states that on 16.05.2023, two representatives of the petitioner were present at the office of respondent no.2 prior to the opening of the bids. At around 01:55 PM, the said representatives sought to hand over to the government officials, the duly filled individual term sheets, and requested them to accept and consider the same in addition to the bid documents already submitted by the petitioner in the sealed envelopes. However, the government officials acted in an arbitrary and unreasonable manner, and refused to accept the duly filled individual term-sheets without assigning any reasons in respect thereof.

9. The further case of the petitioner is that its representatives were present on 16.05.2023 at 02:00 PM in the meeting held between respondent no.2 and the empanelled insurance companies and other government officials. After opening the technical bids, the financial bids of only four empanelled insurance companies were opened. However, the financial bids of the petitioner, and other two insurance companies, were not opened, on the ground that the petitioner and the two other bidders did not submit the premium rates for each crop in each individual term-sheet. The petitioner represented against the non-opening of its financial bid, and also raised the issue with the Chief Executive Officer of the PMFBY on 17.05.2023. The petitioner claimed that it had submitted its bid in accordance with the tender document, but its bid was wrongly not considered by respondent no.2.

10. The petitioner claimed that it had adhered to the guidelines/ provisions of the tender document, and it was subjected to a differential treatment at the time of technical bid evaluation. In response to the petitioner’s letter dated 16.05.2023, respondent no.2 issued the impugned letter dated 18.05.2023, giving the reason for its financial bid not being opened. Respondent no.2 claimed that since the petitioner had failed to fill the individual term-sheets, the petitioner was disqualified in the technical bid evaluation. Two other insurance companies, out of seven, were similarly disqualified.

11. The petitioner further states that on 19.05.2023, the CEO of the PMFBY requested respondent no.2 to examine the matter thoroughly, and take prompt action on the concerns raised by the insurance companies, since it is crucial to maintain transparency, integrity and fairness in the tender process to safeguard the interests of all stakeholders involved. Despite the said communication, respondent no.2 has not opened the petitioner’s financial bid.

12. On the contrary, on 07.06.2023, the Work Order has been issued by respondent no.2 in favour of respondent nos.4 and 5, as aforesaid. Respondent no.4 has been awarded the task of granting insurance under the RWBCIS Scheme in respect of Cluster Nos.1, 3 and 4, and respondent no.5 has been awarded the contract for granting the insurance under the RWBCIS Scheme in respect of Cluster No.2 for the Kharif seasons 2023-25, and Rabi seasons

2023-26.

13. The respondents have relied up Clause 13 of the Tender Conditions in their impugned communication dated 18.05.2023. According to the respondents, the petitioner has not complied with the condition set out in Clause 13, which required the bidders to fill up the financial bid table in the individual term-sheets.

14. Before we deal with the case of the parties in relation to the requirement laid down in Clause 13 of the Tender Conditions- interpretation whereof is central to the determination of this case, we may set out the said clause hereunder. Clause 13 of the Tender Conditions reads as follows:-

15. The translation of the aforesaid clause in English is as follows:-

"13. The proposed premium rate is to be provided in the financial bid table of the crop-wise and district-wise term sheet provided by the department (in percentage and should not exceed two decimal points). The financial bid table is set out in Annexure- J".

16. The case of the petitioner is that on a reading of Clause 13 of the Tender Documents, what emerges is that the proposed premium rates were required to be mentioned, crop-wise, and district-wise in the financial bid table, as set out in Annexure J of the tender document. The petitioner states that the petitioner has submitted its bid containing premium rates for each crop and district in the financial bid table, as set out in Annexure J to the tender document, in terms of Clause 13, and its bid is complete in all respects and was in accordance with the terms and conditions, as set out in the tender document.

17. The petitioner submits that the rejection of its technical bid on the alleged non-compliance of Clause 13, aforesaid, is arbitrary, illegal, and in violation of the terms and conditions of the tender document. The petitioner submits that the tender does not contain any term, which required the bidders to fill up the premium rates on individual term-sheets, and to submit the same in the sheet collection box.

18. The petitioner submits that assuming, while denying, the petitioner was required to submit the duly filled individual term-sheets, containing the proposed premium rates, the representatives of the petitioner had handed over the same, duly filled, to the respondents prior to the opening of the tender. However, they were not accepted by them without assigning any reason. Though, the petitioner claimed that one of the insurance companies had submitted its bid only for two out of four clusters, and yet it was not disqualified, the petitioner has neither named the said insurance company/ bidder, nor pressed the said issue at the hearing of the petition.

19. The petitioner submits that the premium rates quoted by respondent nos.4 and 5 are higher than the premium rates quoted by the petitioner in its financial bid, resulting in higher cash out flow for the State Government and the Central Government towards their share of the premium subsidy.

20. Upon issuance of notice, the respondents have filed their counter-affidavits. The respondents have contested the petitioner's claims, and they submit that the petitioner was rightly disqualified at the evaluation of the technical bid, as the petitioner failed to fill the premium rates offered by it, in the Financial Bid Table at the end of the term-sheets. They also submit that the petitioner was well-aware of its obligation to fill its premium rates in the Financial Bid Table of the term-sheets, and that is why they offered the duly filled in term-sheets after the close of the tender. They submit that, having failed to fill the term-sheets, the petitioner cannot seek another chance to make up the said deficiency, which was fatal to its bid.

21. The submission of Mr. Dhond, learned Senior Counsel for the petitioner, is that on a plain reading of Clause 13 of the tender document, it is clear that the bidders were required to fill in the premium rates, crop-wise and district-wise, in the financial bid table, as per the term-sheet, contained in Annexure J to the tender document.

22. To appreciate his submission, we may set out a sample term-sheet, which reads as follows:-

23. To appreciate the rival submissions, we may also extract only one page of Annexure J to the tender document, which contains the Financial Bid Format. While the first five columns were already filled up, the bidders were required to quote their proposed premium in respect of each crop; in each district, and; crop season, in the last two columns. The crop season; district name, and; crop name given in each row, corresponds with one term-sheet provided with the bidding document. Annexure-J to the NIT reads as follows:-

"Financial Bid Format"

Cluster No.

Crop

Season

Notified

Scheme

District

Name

Crop Name

Premium (%)(P)

Premium (in words)

Cluster-1

Kharif

RWBCIS

Almora

Chillies- Hills

Cluster-1

Kharif

RWBCIS

Almora

French BeanHills

Cluster-1

Kharif

RWBCIS

Almora

Ginger-Hills

Cluster-1

Kharif

RWBCIS

Almora

Potato- Hills

Cluster-1

Kharif

RWBCIS

Almora

Tomata- Hills

Cluster-1

Kharif

RWBCIS

Bageshwar

Chillies- Hills

Cluster-1

Kharif

RWBCIS

Bageshwar

French Bean- Hills

Cluster-1

Kharif

RWBCIS

Bageshwar

Ginger- Hills

Cluster-1

Kharif

RWBCIS

Bageshwar

Potato- Hills

Cluster-1

Kharif

RWBCIS

Bageshwar

Tomato- Hills

Cluster-1

Kharif

RWBCIS

Pithoragarh

Chillies- Hills

Cluster-1

Kharif

RWBCIS

Pithoragarh

French BeanHills

Cluster-1

Kharif

RWBCIS

Pithoragarh

Ginger- Hills

Cluster-1

Kharif

RWBCIS

Pithoragarh

Potato- Hills

Cluster-1

Kharif

RWBCIS

Pithoragarh

Tomato- Hills

Cluster-1

Rabi

RWBCIS

Almora

Apple - ?5 Years

Cluster-1

Rabi

RWBCIS

Almora

Apple- Ultra

High Density- ?

3 years

Cluster-1

Rabi

RWBCIS

Almora

Citrus- ? 5 years

Cluster-1

Rabi

RWBCIS

Almora

Kiwi Fruit

Cluster-1

Rabi

RWBCIS

Almora

Litchi- Hills ? 5 years

Cluster-1

Rabi

RWBCIS

Almora

Mango- Hills ?5 years

Cluster-1

Rabi

RWBCIS

Almora

Peach - ? 5 years

Cluster-1

Rabi

RWBCIS

Almora

Peas (Field

Peas/ Garden Peas/ Matar)- Vegetables Hills

Cluster-1

Rabi

RWBCIS

Bageshwar

Apple- ? 5 years

Cluster-1

Rabi

RWBCIS

Bageshwar

Apple- Ultra High Density- ?

3 years

24. The issue which arises for consideration is whether the failure of the petitioner to fill the financial bid table at the bottom of the term-sheet, containing its name, signature and seal, and the premium rates in percentage terms, is fatal to its bid in the light of Clause 13 extracted hereinabove.

25. Mr. Dhond, learned Senior Counsel for the petitioner submits that Clause 13, aforesaid, required the bidders to provide their premium rates season-wise, crop-wise and district-wise, after examining and studying the information disclosed in the term sheets in respect of each season, crop and district. For example, the term-sheet sets out the name of sowing season, i.e. whether it is Rabi or Kharif; the years covered by the insurance scheme, i.e. 2023-24, 2024-25, and 2025-26; the name of the crop- for example apple ultra high density, and; name of the district. It goes on to provide specific inputs in respect of the temperature fluctuation, density, rainfall, unseasonal, and excess rainfall, heavy rainfall, high wind speed, hail storm in respect of each district, to enable the insurance companies to make an informed bid/ offer of the premium rates, that the insurance companies would charge in respect of the crop in question; for the season in question; for the years in question, and; for the district in question.

26. Mr. Dhond submits that the term-sheet, after giving of the aforesaid information, no doubt, contains the financial bid table at the bottom of the term-sheet, wherein the name of the insurance company, and the premium rate could be indicated. His submission is that, however, Clause 13, after stating that the financial bid table has to be filled up in the term-sheet, goes on to state that the financial bid table is contained in Annexure J to the tender document. He submits that, therefore, the petitioner was led by the respondents to proceed to fill the premium rates in the Financial Bid Table in Annexure J. He submits that a perusal of Annexure j would show that all the relevant information contained in each individual term-sheet, namely, Cluster number, crop season, i.e. whether it is Rabi or Kharif; name of the district, and crop name, are filled up in Annexure J, and all that the bidders were required to do was to fill the premium rate in percentage terms in figures and words. He submits that the petitioner has provided the premium rates in Annexure J, both in words and figures for each of the crop, falling in each cluster, and; in each district. He submits that it is not the

respondents' case that the petitioner has not filled Annexure J, or that Annexure J, as filled by the petitioner, is incomplete. He submits that the premium rate that the petitioner may have filled in the individual term-sheets- had the same been filled, could not have been different from the premium rates filled in Annexure J, and therefore, the respondents have the premium rate quoted by the petitioner, which constitutes the petitioner's financial bid. Therefore, the respondents had all the information that was asked from the petitioner- bidder, to evaluate the petitioner's technical and financial bids. He submits that the information/ rates that the respondents desired in the term-sheet, was a duplication of the aforesaid exercise, and filling of the premium rates in Annexure J, i.e. the financial bid format was sufficient.

27. Mr. Dhond has also drawn our attention to Clause 19 of the tender document, which reads as follows:-

28. The translation, thereof, reads as follows:-

"19. The terms-sheet of the limited tender is enclosed. The tender can be downloaded from the tender section of the department's website shm.uk.gov.in".

29. Mr. Dhond submits that in Clause 19, the respondents have not stated that the term-sheet is required to be filled by the bidder in addition to the financial bid table/ format contained in Annexure J. He submits that the term sheets do not form part of the Financial Bid Statement-Annexure J, which was required to be filled. In this regard, he has drawn the attention of the Court to the tender document, which shows that after Annexure J ends, Annexure K starts, which has tabulation titled "Financial Bid Evaluation Method". It contains, inter alia, the columns "Last Season Insured Area X; Sum Insured (Rs. Ha. or Rs./ Tree Y, and; Expected total Sum Insured (Rs.) Z". Only after Annexure K ends, the term-sheets follow in the tender document.

32. The submission of Mr. Dhond is that wherever the respondents desired mandatory submission of documents, it was specifically so stated in the tender document. However, there was no such stipulation in relation to the term-sheets, that they too have to be submitted.

33. Mr. Dhond has also drawn the attention of the Court to the Model Tender Document under the PMFBY and RWBCIS, version 1.0, issued on 08.04.2020. He submits that the Model Tender Document, in Section-B, under the heading 'Preparation and submission of bids', discloses the manner of filling the financial bid. The same reads as follows:-

"Financial Bid

1. The Bidder shall directly upload all-inclusive financial quote as its Financial Bid in the format set out I Annexure-J and/ or as per the online bid submission format (BoQ) of the procurement portal of the state. The online bid should be submitted on or before the time stipulated in Tender notice. The Bidder shall not include any other documents as part of the Financial Bid.

2. The Bidders are required to quote Crop-wise, District-wise Actuarial Premium Rates for providing the Insurance Cover and this shall be inclusive of all costs, including cost of implementation expenses, IEC & BCC expenses, Manpower, overheads etc. as per the format specified as per Annexure J.

3. Premium quoted should be in percentage terms up to two decimal places". (emphasis supplied)

34. Mr. Dhond submits that Annexure J in the Model Tender Document is on the same lines as Annexure J to the tender in question, and the bidder is required to fill up the financial bid in the format set out in Annexure J. The bidders are required to quote, crop-wise and district-wise, actuarial premium rates for providing insurance cover, and it also provides that the premium quoted should be in percentage terms, upto two decimal digits- as provided in Clause 13 of the tender, in question. There is no term in the Model Tender Document requiring the bidders to fill the premium rates in the term-sheet itself.

35. Annexure J to the Model Tender Document, like Annexure J to the tender in question, contains the following fields:-

"Financial Bid Format

Cluster No.

Crop Season

Notified

Scheme

District Name

Crop Name

Last Season's Insured Area

Sum Insured (Rs/Ha.)

Premium (%)(P)

Premium (In words)

36. On the other hand, Mr. B.S. Parihar, learned Standing Counsel for the State, has placed reliance on Clauses 1 and 2 of the tender document. These clauses read as follows:-

37. Their translations read as follows:-

"1. Each firm/ company will have to give tender/ premium rates for each crop and each district under the cluster. If the premium rate is not presented crop wise/ district wise by any participating company in respect of any concerned district/ crop, then the tender will be considered cancelled.

2. Allotment of clusters to insurance company (Cluster 1, Almora, Bageshwar, Pithoragarh), (Cluster 2, Nainital, Champawat, Udham Singh Nagar), (Cluster 3, Dehradun, Haridwar, Tehri, (Cluster 4, Rudraprayag, Chamoli, Pauri, Uttarkashi) will be done on the basis of the average (L1) premium rates offered cluster-wise, according to the term sheets".

38. Mr. Parihar submits that Clause 2, aforesaid, also makes it clear that the bidders were required to bid the premium rates according to the term-sheet. Therefore, according to him, it was imperative on a reading of Clause 13, and Clause 2, that the bidder fill the premium rates in the term-sheets, apart from filling the same in Annexure J. In response to our query, he does not dispute that the petitioner had, indeed, provided the premium rates in respect of all the clusters, crop-wise, district-wise and season-wise in Annexure J, i.e. the financial bid table/ financial bid format.

39. In response to our pointed query, he also does not dispute that the petitioner's financial bid could have been examined by looking into the premium rates quoted by the petitioner in Annexure J, i.e. the financial bid table/ format.

40. When the hearing took place on 07.08.2023, Mr. Parihar pointed out that even in respect of the previous tendering process initiated in the year 2021, with identical terms and conditions, the petitioner itself had submitted the tender along with the duly filled in the term-sheets containing the financial bid statement. In the light of the aforesaid statement, we directed the respondents-State to produce before us the relevant terms and conditions of the tender floated in the year 2021, and the relevant extract of the bid submitted by the petitioner, on the next date of hearing. The said documents were produced before us, and we have perused the same.

41. Clause 13 of the Tender No.27/ फसल बीमा/2020-21, dated 18.04.2020, issued by the Directorate, Horticulture and Food Processing Department, which correspondence to Clause 13 of the tender in question, reads as follows:-

(emphasis supplied)

42. When translated, the said clause reads as follows:-

13. The actual premium rate (in percentage up to two decimal places) is to be provided in the financial bid table of the crop-wise and district-wise term-sheet provided by the department. In the tender document provided and signed by the department, the premium rate will have to be filled in the attached Annexure-J and in the term sheet. The premium rate quoted on any other sheet will not be considered as valid." (emphasis supplied)

43. What emerges upon comparison of Clause 13 of the present tender, with Clause 13 of the Tender dated 18.04.2020, for the year 2020-21, is that Clause 13 of the Tender dated 18.04.2020, in clear terms required the bidders to fill the premium rates not only in Annexure J, but also in the term-sheet. It also went on

to state that if the premium rates are entered on any other sheet-, the same would not be considered as valid.

44. Therefore, the submission of Mr. Parihar that the petitioner itself understood the meaning of Clause 13-contained in the present tender, to mean that the bidder was required to fill in the premium rates not only in Annexure J-the financial bid table/ format, but also at the bottom of the term-sheets in the financial bid table, cannot be accepted, because the relevant Clause 13 of two tenders is materially different. There is no other condition in any of the clauses of the tender dated 18.04.2020, which is relevant for the present discussion.

45. Mr. Nandrajog, learned Senior Counsel, who appears for respondent no.4, submits that the petitioner was present in the pre-bid meeting held on 21.04.2023, through its representatives. In the said pre-bid meeting, it was agreed at Point No.10, as follows:-

46. The true translation of the same reads as follows:-

“10- Allocation of cluster shall be done on the basis of the cluster-wise weighted average (L1) premium rate given according to the district-wise / crop-wise termsheet provided by the department.”

47. He has also drawn the attention of the Court to Clause 12 of the Minutes of the said meeting, which reads as follows:-

48. True translation of the said Clause reads as follows:-

“12. Only after taking affidavit from farmers and issuance of implanting affidavit from each farmer of apple, peach, lemon group, mango, litchi, apple (ultra high density), kiwi crop in the scheme, the farmers will be covered with the insurance”.

49. He submits that, therefore, the bidders were conveyed the fact that they had to fill the premium rates, not only in Annexure J- the financial bid table/ format, but also in the term-sheet.

50. Mr. Nandrajog has further submitted that a perusal of the averments made in Paragraph Nos.9 to 12 of the petitioner show that even the petitioner understood Clause 13 to mean, that the petitioner is obliged to fill the offered premium rates in the financial bid table contained in the term-sheets. He submits that the present is a case where the petitioner neglected to fill the premium rates in the term-sheets while submitting its bids in sealed covers, but later realized its mistake, and therefore, wants to make up the said failure, by submitting the premium rates in term-sheets, which was not permissible after the time of closure of tender, since the sealed bid had already been submitted by the petitioner. He submits that it was not the petitioner’s case that the petitioner did not understand the terms and conditions properly, and was misled while initially submitting its bids, and that the petitioner was not obliged to fill the premium rates in the term-sheets.

51. Mr. Rawat, learned Chief Standing Counsel has also argued on behalf of the

State, and he submits that in matters of tender, the Courts should be slow to interfere with the tender process. He places reliance on the recent judgment of the Supreme Court in Tata Motors Ltd. vs. the Brihan Mumbai Electric Supply & Transport Undertaking (Best) & others, 2023 SCC OnLine SC 671. He has particularly placed reliance on Paragraph Nos.48, 52 and 53 of the said judgment, which read as follows:-

"48. This Court being the guardian of fundamental rights is dutybound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See : Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489).

52. Ordinarily, a 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 unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India, reported in (2005) 1 SCC 679.

53. 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.,

reported in (2000) 2 SCC 617 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 method 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 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."

52. He has also relied up the operational guidelines issued by the Central Government in March, 2016 with regard to the RWBCIS scheme, which, inter alia, states that the State/ U.T. Government should ensure issuance of the notification and its circulation to all concerned agencies/ departments/ institutions atleast one month prior to the commencement of the crop season/ risk period, which should necessarily contain, inter alia, "(c) Term-sheets/ product structures of various crops and Reference Unit Areas (RUA)". He, therefore, submits that the term-sheet is an integral part of the tender, which all bidders were obliged to fill, and by not filling the term-sheet, and by signing the same, the bidder may resile from its bid later on.

53. Mr. Kohli, learned Senior Counsel, who appears for respondent no.5, has submitted that respondent nos.4 and 5 have already granted cover of Kharif Season to the tune of Rs.417.89 Crores at premium @ Rs.91063. He submits that the premium to the tune of Rs.20.89 crores has been collected from the farmers. He submits that, in case, this Court were to interfere with the award of contract to respondent nos.4 and 5, the same would lead to irreparable financial injury to them, since they have already taken effective steps to implement the contract, and incurred financial liability under the contracts awarded to them.

54. We have considered the rival submissions of the parties, and examined the record relied up by them carefully. We have also examined the content and nature of the term-sheets, which formed part of the tender documents. We have also given due consideration to the terms and conditions to the tender, particularly, Clause 13 thereof, which calls for interpretation, to resolve the controversy raised by the petitioner.

55. The tender in question was a limited tender issued to a few large and reputed insurance companies. The tender in question, undisputedly, adopted two bid system. The bidders were required to submit their bids in two different envelopes- the first containing the relevant documents required to establish the eligibility of the bidder, which is popularly known as the technical bid. The second sealed envelope had to contain the financial bid of the bidders. Even the Model

Tender Document issued under PMFBY and RWBCIS on 05.04.2020, stated in Section-V that "each bidder shall only submit one bid consisting of the Bid Application Letter-the Technical Bid and the Financial Bid".

56. The concept of the two bid system is that, first the eligibility of the bidders is to be determined, and thereafter, the financial bids of only those bidders are opened who are declared to be technically responsive. This is done, so that the declaration of the eligibility of the bidder is not influenced by the financial bid that the bidder may have submitted. The essential eligibility criteria/ conditions cannot be relaxed merely because the financial bid of any bidder is more beneficial. The rules of the game- which are set at the beginning, cannot be changed or relaxed midway. The technical bid submitted by the petitioner and two other bidders, when opened on 16.05.2023, were held to be technically non-responsive for not submitting the duly filled in term-sheets, which formed part of the tender document. The respondents have relied upon Clause 13 of the tender conditions to disqualify the petitioner, and two other bidders.

57. We would proceed to examine the merit of the stand taken by the respondents- authorities in the context of what we have observed hereinabove, in relation to the mechanism in which the two bid system works.

58. In our view, while interpreting Clause 13 of the tender conditions, we should not only be guided by the literal and grammatical meaning of the said clause, but we should also keep in mind the fact that we are dealing with a tender, which has adopted the two bid system.

59. If the submission of the respondents- authorities-that the bidders were obliged to disclose the offered/ suggested premium rates in words and figures upto two decimal points in the financial bid table at the bottom of the term-sheets, and that the bidders were also obliged to enclose the term-sheets along with the technical bid, were to be accepted, it would mean that the financial bids of the bidders would have been disclosed by them, and known to the respondents- authorities, at the stage of opening of the technical bids, and even before the financial bids were opened. In fact, the disclosure of the financial bid/ offered rates in the term-sheets, would have reduced the tender process to a one-stage/ one- bid process, as by merely opening the technical bid, the financial bid of the bidders would get disclosed, without having to open the financial bid subsequently. The acceptance of this submission of the respondents- authorities would clearly mean that the two bid system adopted by them for the tender process in question would lose its meaning, since the bidders would have disclosed the premium rates offered/ suggested by them, even in their technical bids by filling the financial bid table contained at the bottom of the term-sheets. In our view, this exposes the fundamental flaw in the approach and understanding of the respondents- authorities, of their own tender document and its terms and conditions.

60. We may now proceed to closely examine Clause 13 of the tender conditions.

Clause 13, as translated, has already been set out hereinabove in Paragraph No.15. What Clause 13 states is that the proposed premium rates is to be provided in the financial bid table of the crop-wise and district-wise term-sheet provided by the department. However, the said clause does not stop there. It goes on to inform the bidders, that the financial bid table is set out in Annexure-J. Annexure- J, undisputedly, forms part of the financial bid that the bidders were obliged to submit. Therefore, Annexure- J would be placed in the sealed financial bid, and would not be contained in the technical bid of the bidders. The only reasonable and grammatical interpretation of Clause 13 of the tender conditions, in our view, is that the bidders were obliged to fill the financial bid table set out in Annexure-J, by looking at, and examining the data contained in the term-sheets provided with the tender.

61. What is the nature of the documents called 'term-sheet'? We have extracted a sample term-sheet in Paragraph No.22 hereinabove. A perusal of the sample term-sheet would show that the respondents provided to the prospective bidders all the relevant and material data that they would require to assess the premium rates that they could offer to provide insurance to the specific crop; in respect of the specific district, and; in respect of the specific crop season, i.e. Kharif or Rabi. The term-sheet is really in the nature of a data sheet provided by the respondents- authorities to the prospective bidders, which contains information with regard to the temperature variations; rainfall variations etc., which factors would have a bearing on the risk encountered by a particular crop cultivated by the farmer.

62. No doubt, at the end of the term sheet, the financial bid table exists. However, on examination of the complete term-sheet, it is clear to us that the same is a data sheet- or a work sheet, provided to the bidders, wherein they could fill out- for their own purpose, as their homework, the premium rates that they would be willing to offer/ suggest as a part of their financial bid.

63. As pointed out by Mr. Dhond, that there is not a single clause in the tender, which clearly states that the bidders are obliged to submit the term-sheet, either as a part of the technical bid, or as a part of the financial bid. The documents that the bidders were obliged to submit were clearly set out in the other terms and conditions of the tender taken note of hereinabove while recording the submissions of Mr. Dhond.

64. Pertinently, Clause 19- which specifically dealt with the term-sheet, while stating that the term-sheet of the limited tender is enclosed, and the tender can be downloaded from the tender section of the department's website, does not state that the term-sheet is required to be submitted by the bidders. The Model Tender Document under the PMFBY and RMBCIS, Version 1.0, issued on 08.04.2020, contained the relevant clause in relation to the submission of the financial bids, which we have taken note of in Paragraph No.33 hereinabove.

65. The present tender has been invited under the PMFBY & RWBCIS, and the

terms and conditions set out in the tender in question are, more or less, identical with the Model Tender Document, Version 1.0, dated 08.04.2020. Even the relevant clause relating to the financial bid, does not require the bidders to submit the term-sheet duly filled in with the premium rates offered/ suggested by the bidders. In our view, it does not stand to reason that the bidders would have been required to fill in the same financial data, i.e. their financial bid, twice over in the bid submitted by them. The financial bid can only be submitted in the sealed cover containing the financial bid, and nowhere else. Therefore, the interpretation given by the respondents- authorities to their own tender document, that the bidders were required to fill in their financial bid, firstly, in the term-sheet, and secondly, in Annexure- J- the financial bid statement, is completely erroneous and cannot be accepted.

66. The submission of Mr. Parihar, founded upon Clauses 1 and 2 of the terms and conditions, is neither here, nor there. Clause 1 merely states that the bidders are obliged to give /tender premium rates for each crop and each district under the cluster, and failure to do so, would disqualify the bid of the bidder. Clause 2 merely provides a mechanism for evaluation of the financial bids, and for determination of L1 bidder. The use of expression "………according to the term sheets" in Clause 2, does not mean that the said clause required the bidders to submit the term-sheets with the offered/ suggested premium rates filled in. In only means that the bidder should study the data contained in the term-sheets, and thereafter, makes its financial bid according to the term-sheet.

67. As we have already noticed, Mr. Parihar, admitted that the petitioner had, indeed, submitted the premium rates in respect of all the clusters- crop-wise, district-wise, and season-wise in Annexure- J, i.e. the financial bid table/ format, and that the petitioner's financial bid could have been examined by looking at the premium rates quoted by the petitioner in Annexure- J of the financial bid table/ format. Reliance placed by Mr. Parihar in the manner, in which, the petitioner had submitted its bid in respect of the tendering process initiated in the year 2021, has already been considered by us in Paragraph Nos.40 to 44 hereinabove, and we do not find any merit in the said submission, for the reason, that the relevant Clause 13 in the tender contained in the NIT dated 18.04.2020 was materially different from Clause 13 in the present tender, with which we are concerned.

68. Clause 13 of the tender dated 18.04.2020, in clear terms, states that the premium rates will have to be filled in the attached Annexure J and in the term-sheet. However, that is not how Clause 13 in the present tender is worded. In fact, it appears to us that the respondents realized their earlier mistake in requiring the bidders to disclose the offered premium rates in the financial bid table of the term-sheets, and, therefore, did away with the said requirement in the tender in question.

69. The submission of Mr. Nandrajog, learned Senior Counsel appearing for respondent no.4, premised upon Clauses 10 and 12, also does not impress us. Clause 10 merely states that allocation of cluster shall be done on the basis of

the cluster-wise weighted average (L1) premium rates given according to the district-wise/ crop-wise term-sheet provided by the department. Mere reference to the term-sheet provided by the department in Clause 10 does not mean that the bidder was also required to fill in the term-sheet and file it, either with the technical bid, or with the financial bid. Clause 12 of the terms and conditions, similarly, has not relevance to the controversy in question.

70. We also do not find any merit in the submission of Mr. Nandrajog, premised upon the averments made in Paragraph Nos.9 to 12 of the writ petition that the petitioner was aware of its obligation to fill the offered premium rates in the financial bid table contained at the bottom of the term-sheets.

71. The petitioner has very clearly stated in Paragraphs Nos.33, 35, 37 and 38 that "such a condition of filling premium rates on individual terms sheets and submitting the same in the term sheet collection box was not stipulated in the Tender Documents nor were the individual term sheets as part of Annexure- J of the Tender document"; that "the Respondent No.2 has failed to appreciate that there was no specific requirement set out in the Tender Documents to fill all the term-sheets as is sought to be wrongly contended by Respondent No.2", and; that "as per the terms of Clauses (i) and (ii) of Section- II of the Model Tender Document, the bidders are required to quote crop wise and district wise actuarial premium rates for providing insurance cover in their financial bids and the premium rates shall be the rate of premium payable up to 2 decimal points and shall be exclusive of GST. The terms set out in Clause 13 of the Tender Documents are similar to the terms of the Model Tender Document, and that the petitioner has filled in the premium rates for each crop and district in the financial bid table as set out in Annexure J of the Tender Documents in accordance with the terms of the Model Tender Document and the Tender Documents. Despite thereof, the financial bid submitted by the petitioner was not considered by the Respondent No.2 in a completely arbitrary and illegal manner".

72. Thus, it is the clear and categorical case of the petitioner that the petitioner was not obliged, under the tender conditions, to fill the premium rates in the financial bid table contained in the term-sheets and the financial bid had been filled in Annexure-J to the tender document. The act of the petitioner- in offering the filled in term-sheets after the close of the tender, but before its opening on 16.05.2023, thus, appears to be only by way of abundant caution, and nothing more.

73. Reliance placed by Mr. Rawat, learned Chief Standing Counsel, on Tata Motors Ltd. (supra), in the facts of the present case is of no avail. The Supreme Court in Paragraph No.52, of the aforesaid judgment, has itself observed that the writ court may step in when something very serious and palpable is pointed out. In our view, the present is one such case, where the way in which the respondents- authorities have evaluated the petitioner's technical bid appears to be a gross and palpable error on their part.

74. Reliance placed by Mr. Rawat on the operational guidelines issued by the Central Government in March, 2016 with regard to the RWBCIS scheme, is also of no avail, since it merely states that the term-sheets/ product structures of various crops and Reference Unit Areas (RUA) should be contained in the notification issued by the State/ U.T. Governments. Clearly, the Central Government directed all the States/ U.T. Governments, that while implementing the RWBCIS scheme, the prospective bidders should be provided with the relevant data to enable them to make their informed offers/ bids. It does not mean that the Central Government directed the State/ U.T. Governments to require the bidders to submit their financial bids in the term-sheets.

75. For all the aforesaid reason, we have no hesitation in concluding that the respondents- authorities have grossly erred in rejecting the technical bid of the petitioner on the ground that the petitioner had not filled in the financial bid table contained in the term-sheets, and had not submitted the term-sheets. Since that was the only ground on which the technical bid of the petitioner was rejected, and its financial bid not opened, we direct the respondents- authorities to open the financial bid of the petitioner. In case, the financial bid of the petitioner is found to be lower than that of respondent nos.4 and 5 in respect of any of the clusters, the respondents shall award the contract to the petitioner in respect of the cluster where the petitioner's financial bid is lower than the bid accepted by the respondents- authorities for that cluster. In that eventuality, since respondent nos.4 and 5 have already granted cover for Kharif season, the petitioner would be granted the contract for the remaining sowing season under the tender.

76. The writ petition is allowed with costs quantified at Rs.50,000/- to be paid to the petitioner by the State.

77. Pending application, if any, also stands disposed of.

