
(2009) 03 AHC CK 0110

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5004 of 2009

Sn Enviro-Tech Pvt.Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-03-2009

Acts Referred:

Citation : (2009) 03 AHC CK 0110

Hon'ble Judges : Sunil Ambwani, J and Virendra Singh, J

Final Decision : Dismissed

Judgement

1. Heard Shri S.D. Singh and Shri S.K. Singh for the petitioner. Shri Ashwini Kumar Mishra appears for HapurPilkhuwa Development Authority. Shri Anoop Trivedi appears for respondent No. 6. Shri S.A. Murtaza appears for the respondent No. 5.

2. HapurPilkhuwa Development Authority (HPDA) published a tender notice dated 10.7.2008 inviting sealed Turnkey tenders on two bid system, from contractors having work experience of atleast five years in organised sector, Government/ Semi Government organisations and public sector undertakings, public and private limited companies for the project known as "2.10 MLD (210 KL/Day) Common Effluent Treatment Plant (CETP) for proposed Textile Centre Scheme, HPDA at Pilkhuwa (U.P.).

3. The treatment process was to consist of preliminary treatment, physicochemical followed by Activated Sludge Process. The invitation was open to all bidders, who fulfil the criteria: (a) constructed at least one CETP/ETP (for Textile Effluent Treatment) having capacity of 2.50 MLD to 25.0 MLD in last three years, (b) Total turn over of atleast Rs. 12 crores in last three financial years, (c) Liquid Assets at least Rs. 10.00 million (Rupees One crore only). The petitioner company registered under the Companies Act, 1956 claiming to be pioneer in the field of executing and establishing the sewerage treatment plant, water treatment plant and affluent treatment plants and other similar activities purchased and submitted the tender document.

4. HPDA cancelled the invitation of tender notice dated 10.7.2008 and refunded the earnest money of Rs. 10 lacs to the petitioner on 29.8.2008. It is alleged by the petitioner that thereafter HPDA violated the eligibility criteria by issuing fresh tender notice on 3.9.2008, whereby experience of construction of 2.50 MLD to 25.0 MLD was reduced to 2.5 MLD. The turnover of the company bidding for contract was reduced from 12 crores to Rs. 7.50 crores.

5. In response to fresh tender notice dated 3.9.2008 the petitioner again submitted his tender along with earnest money. A prebid meeting was held on 10.9.2008. The Enviro Engineers, a partnership firm, respondent No. 6 had also purchased the tender documents on 15.9.2008 and participated in the prebid meeting. Both the bidders submitted their bids in two parts namely PartA, which is stated to be technical bid, and PartB called as financial bid in sealed cover valid for a period of 90 days. HPDA found technical bids of both the parties in order and opened the price bid on 23.9.2008. It is stated by the petitioner in para 21 of the writ petition that as against the price bid of respondent No. 6 of Rs. 11,32,10,000/ (Rupees eleven crores thirty two lacs and ten thousand only), the price bid of the petitioner was Rs. 9,68,54,000/ (Rupees nine crores sixty eight lacs fifty four thousand only). The HPDA instead of awarding the contract to the lowest bidder cancelled the bid and returned the earnest money of the petitioner by its letter dated 11.11.2008. The Executive Engineer, HPDA informed the petitioner that his offer was received on 18.9.2008 of which price bid was opened on 23.9.2008, which were higher and was not found acceptable, and that on this ground his bid was cancelled. He was required to collect his earnest money on any working day from his office. Aggrieved the petitioner has filed this writ petition.

6. Shri S.D. Singh, learned counsel for the petitioner submits that the award of contract to respondent No. 6 is totally bad, per se illegal, arbitrary and violative of the principles of natural justice. He submits that the respondent No. 6 did not have work experience, competence and credit of construction of 2.50 MLD CETP/ETP (Textile Effluent Treatment). This fact was duly informed and was cleared by the petitioner to respondents vide his letter dated 28.11.2008. HPDA maintained silence on this serious issue. The respondent No. 6 did not have experience of construction of CETP/ETP (for textile affluent treatment) with capacity of 2.50 MLD and was not qualified for participating in the financial bid. Shri S.D. Singh further submits that effluent procedure for technical bids in para 3.14.4.2 of the Part A; technical bid, Volume 1, general instructions. The tender committee was required to first open the envelopes containing PartA; technical bids only to examine whether the bids are complete, required information had been furnished and all the documents were properly signed. After the detailed scrutiny of the entire technical bid, clarifications were to be obtained from the bidders within time frame and after necessary clarifications and decision to be taken regarding technical viability, the envelope containing PartB was to be opened. The HPDA committed gross irregularity in accepting the technical bid of respondent No. 6 to be valid. He submits that Para 3.14.5.2 of Part A; provides for Evaluation

Procedure for Financial Bids, and that while considering PartB (financial bid) only the rates and break up of payment terms was to be found and the case to be decided on merits. Any amendment in PartB was not allowed. The conditional offer making workability of cost proposal ambiguous was to be rejected. Shri S.D. Singh submits that the bids were required to be checked by the Committee for any arithmetic errors. If there was any discrepancy between the amount in figures, and in words, the amount in words was to govern. Para 3.14.5.2 of the general conditions of contract are quoted as follows:

"3.14.5.2 Evaluation Procedure for Technical Bids:

While considering PartB, only the rates and breakup of payment terms shall be viewed and the case shall be decided on merits. Any amendment in PartB shall not be allowed and the conditional offers making the workability of cost proposal ambiguous shall be rejected. Bids will be checked by the Committee for any arithmetical errors. If there is discrepancy between amount in figures and in words, the amount in words will govern. The Total Bid price (Grand Total amount in words) stated at the end of Schedule of Prices (Section 2 of Financial Bid) will be considered and shall be binding upon the bidder correction of any arithmetical and computational errors of the Bidder shall not be entertained.

HPDA reserves the right to accept or reject the tender, without assignment of any reason and decision shall be final and binding."

7. Shri S.D. Singh submits that under Clause 3.13.4 of the general conditions the modification and withdrawal of bids was not allowed. There was a clear mandate in Clause 3.14.5.2 that the total bid price (grand total amount in words stated at the end of the schedule of price) will be considered and shall be binding upon the bidder. No kind of arithmetical or computational error could be entertained. The respondent No. 6 had quoted the price at Rs. 8,74,75,000/, whereas the petitioner had quoted Rs. 8,62,00,000/. The petitioner was thus lower in his offer by Rs. 12,75,000/. The HRDA in collusion with respondent No. 6 without any justification and authority manipulated the documents in order to favour the respondent No. 6 and accordingly prepared documents without any justification and authority.

8. In short Shri S.D. Singh submits that the respondent No. 6 did not fulfill the eligibility criteria as he did not have experience of construction of atleast 1 CETP/ETP (for Textile Effluent Treatment) having capacity of 2.50 MLD to 25.0 MLD in last three years or even the revised criteria in the tender notice dated 3.9.2008 of construction of atleast 1 CETP/ETP (for Textile Effluent Treatment) having capacity of minimum 2.50 MLD in last three years. The financial bid offered by the petitioner was lower than the respondent No. 6 and was illegally and arbitrarily accepted to favour respondent No. 6.

9. Shri Ashwini Kumar Misra appearing for HPDA submits that the HPDA has engaged consultants, for providing technical assistance for settlement of contract. The Northern India Textile Research Association, the consultant

engaged by HPDA had estimated the cost of project at Rs. 5 crore on which the proceedings for settlement of contract were initiated and on which the terms and conditions of the eligibility criteria was prepared. In response to the first advertisement inviting tenders the authority had received only one tender from the petitioner. As per standard practice adopted by the HPDA unless two or more than two tenders were received, it was not feasible for the authority to consider the bids and thus fresh advertisement/fresh tender process was initiated. The contract in the present case was for construction of CETP having capacity of 2.1 MLD only. The prescription of eligibility criteria of experience of 2.525 MLD plant was not found relevant, particularly when such eligibility condition had resulted in lack of competitive bidding. The HRDA did not require the eligibility criteria of 2.525 MLD, when the proposed contract was for establishment of 2.1 MLD plant only. Similarly the turnover was originally fixed at 12 crores on the estimated cost of project fixed by the consultant at Rs. 5 crores. The change of eligibility criteria was thus based upon justifiable ground having intelligible differentia, which had direct nexus with the object sought to be achieved for making available the best financial and technical offers.

10. Shri Misra submits that it is wrong to say that the respondent No. 6 did not furnish work order to demonstrate its eligibility criteria as regards the construction of 2.1 MLD CETP. The respondent No. 6 submitted detailed document along with his technical bid including work order given by Haryana State Industrial Development Corporation Ltd. for designing construction, operation, maintenance of 5 MLD CETP Part2 at Industrial State Rai (Sonipat). The certificate of the award of work and the certificate dated 7.1.2008 of Jaishree Textiles, a unit of Aditya Birla NUVO Ltd. of completing the design, supply, erection, testing, and commissioning of ETP to treat total effluent of 3750 cubic mtr./day vide work order dated 15.6.2006. The experience of respondent No. 6 of turnkey operation and maintenance contract of common effluent treatment plant, detailed engineering, construction, supervision, erection and commissioning ETP was also appended to the technical bid.

11. With regard to the financial bid it is stated the HPDA received bids of Rs. 9.68 crores to the earlier tender notice, which were nearly double the estimated cost and thus the authority had taken decision not to award contract to the petitioner for Rs. 9.68 crores. The Tender Committee called upon consultant to give his view with regard to estimated cost of project. The consultant revised the estimate at Rs. 8.65 crores on which the Committee constituted by HPDA decided to cancel the previous bid.

12. It is stated by Shri Misra that HPDA had considered the letters signed by the petitioner, to the authority on 28.11.2008 objecting to eligibility criteria fulfilled by respondent No. 6. The HPDA found that objections to the eligibility of respondent No. 6 did not merit consideration. The Tender Committee had also enquired from Haryana State Development Corporation regarding claim of respondent No. 6, of having installed 5 MLD CETP to which the Corporation

informed the respondent on 28.11.2008 that claim was correct and genuine. He submits that the petitioner on his own had reduced the area of by sludge storage shed from 450 sq. mtrs. as required in the tender to 200 sq. mtr. The petitioner had also stated that it will not provide storm water storage tank and would charge extra for providing it, whereas under the tender storage tank was to have 550 k.ltrs. by most conservative estimation, if these two heads were included then also it would be below Rs. 40 lacs. With regard to financial bid it is stated that the total of respondent No. 6 was worked out to Rs. 8,59,75,000/, whereas the bid of the petitioner was Rs. 8,62,00,000/. Once various item wise figures quoted by respondent No. 6 were summed up, the grand total of the bid worked out to Rs. 8,59,75,000/, which was a lower offer as compared to the second lower offer of the petitioner at Rs. 8.62 crores. It is submitted that HPDA did not commit any illegality in acceptance of tender of respondent No. 6. The decision in this regard was taken by the committee consisting of Chief Engineer, Deputy Collector and Finance Controller of HPDA held on 28.12.2008 and was communicated to the petitioner.

13. Shri Misra submits that the HPDA settled the contract in favour of respondent No. 6 and that work order has been issued on 20.12.2008. In the supplementary counter affidavit it is stated that the respondent No. 6 has submitted final drawings, which were approved by the authority and consequent thereof actual work on the spot has commenced. Over a period of three months by 15th April, 2009, when the supplementary affidavit of Shri Indu Shekhar Singh, Executive Engineer, HPDA, Hapur was filed, nearly 25% work was completed on the spot and the authority has disbursed a sum of Rs. 1,51,00,000/ to the respondent No. 6. Entire project is likely to be completed in six months" time, after which the contractor has to maintain the plant for a period of one year.

14. Shri S.A. Murtaza appearing for Northern India Textile Research Association (NITRA) has filed an affidavit of Shri C.B. Chaurasia stating that contract was executed between HRDA and Northern India Textile Research Association on 11.8.2006 to make available all necessary help in identifying the documents, contracts, negotiations related publications both technical and nontechnical and as may be demanded by the opposite party. The land acquisition proceedings were held up by about 1? years as a result of which advertisement inviting tenders was issued in July, 2008. The date of opening the bid was extended from time to time upto 18.9.2008. For reasons best known to respondent Nos. 2, 3 and 4 they invited second tender without intimation to the Northern India Textile Research Association. The technical bid in accordance with the Para 3.14.4 of the tender document was to be opened in the first instance and the financial bid in the second instance. The respondent Nos. 2, 3 and 4 were required to move in accordance with guidance, superintendence and directions of NITRA, whereas they did everything on their own. They acted on their own sweet will and when they landed up in problem, they are trying to blame the consultant. In para 1 (j) of his affidavit Shri C.B. Chaurasia states that the technical drawings were not shown to NITRA and without their authority a sum of Rs. 1.51 crores has been

disbursed to respondent No. 6. It is stated: "it is further respectfully submitted that award of contract to respondent No. 6 was made by respondent Nos. 2, 3 and 4 clandestinely without any trace of evidence of whatsoever." In para 2 he has stated that on the day of opening of the bid while he verbally requested respondent No. 2 to 4 to give to the deponent a copy of the technical bid, same was refused by them. On the immediate day, he submitted a letter dated 23.12.2008 addressed to respondent No. 2 advising him to send copies of technical and financial bid so that they can be evaluated. The burden, however, cannot be shifted on him by technical evaluation of the competency of parties specially as to the alleged change in description of work to be performed by the petitioner. In para 6 Shri Chaurasia had defended himself that he was not responsible for escalation of the cost. He had prepared the estimate of the project and finally submitted it to the H PDA on 31.10.2008, which included excise duty and tax and on which total cost of the project was estimated at Rs. 865.55 lacs as upto October, 2008.

15. Shri Anoop Trivedi appearing for respondent No. 6 has filed affidavit of Shri Manish Jain, one of the partners of respondent No. 6 engaged in the business of designing construction and maintenance of water treatment plant, sewerage treatment plant, waste water treatment plant etc. since 1991. It is stated in para 6 of the counter affidavit that the firm has constructed several CETP/ETP having capacity of more than 2.5 million per day, and the turn over in the last three financial years prior to participating in the bid was more than Rs. 7.5 crores. The firm had legal assets over and above Rs. 1 crore. The documents submitted by the firm were completely legible and that firm was fully entitled to participate in the bid in pursuance of the tender notice. The technical bid submitted by the firm was approved and that firm was declared eligible for construction of financial bid.

16. Shri Anoop Trivedi would submit that competence, eligibility and qualifications of respondent No. 6 were not questioned by the petitioner prior to 27.11.2008. In fact the petitioner had manipulated the tender document. It had only consented to construct the sludge storage shed of 200 sq. mtr., whereas the tender requirement provided for construction of 750 sq. mtr. With regard to financial bid it is stated in para 39 that the respondent No. 6 had submitted a bid of Rs. 8,59,75,000/, whereas the petitioner submitted bid of Rs. 8,62,00,000/.

17. In the supplementary affidavit of Manish Jain it is stated in para 15 that under the agreement between respondent Nos. 2 and 6 dated 24.12.2008 the work has commenced on the site and that the answering respondent No. 6 has already executed construction work worth Rs. 3,18,00,000/. The certificate of the Executive Engineer dated 21.4.2009 has certified that M/s Enviro Engineers have executed work of approximately Rs. 3,18,00,000/, and that quality of work executed by them is satisfactory.

18. The writ petition was filed on 28th January, 2009. On 30.1.2009 the Court had directed all the respondents to file their counter affidavits. After the affidavits were exchanged the matter was heard in part on 22.4.2008 and there

after it was listed for hearing on 15.5.2009 and the judgment was reserved.

19. The thrust of the argument of Shri S.D. Singh is lack of competence of respondent No. 6 and the method of calculation of financial bids.

20. The HPDA is an authority constituted by the State Government under Section 4 of the U.P. Urban Planning and Development Act, 1973. It has a right to choose any person for entering into contract and can reject any tender even if it is for a lower amount. The Courts do not ordinarily interfere in the matter of government contracts unless the government acts arbitrarily and excludes persons by discrimination or violates terms and conditions laid down in the tender notice. The Court may also interfere, if the decision to award contract has been taken by adopting an unfair or secret procedure or has been arrived at unreasonably. The public interest is dominating factor in judicial review of government contracts. The public purpose, however, may justify the acceptance of a bid. It is open for the government to adopt any fair and reasonable policy for settlement of contract. However, where the tenders are invited and the government does not reject all the tenders, it cannot make discrimination in favour of any tenderers contrary to the terms of the notice inviting tenders.

21. In *Tata Cellulor v. Union of India*, (1994) 6 SCC 651 the Supreme Court has laid down the guidelines for judicial review of government contracts. The judicial review is concerned with reviewing, not merits of the decision in support of which the application for judicial review is made but the decision making process itself. The Court will not substitute its own decision and will exercise judicial restraint in interfering with the administrative action. The Court does not act as a super board or as an appellate authority in reviewing such decisions. In paragraph 77 the Supreme Court has summed up the concerns of the Court in his judicial review of government contracts:

"77. The duty of the Court is to confine itself to the question of legality. Its concern should be:

- (1) Whether a decisionmaking authority exceeded its powers?
- (2) committed an error of law,
- (3) committed a breach of the rules of natural justice,
- (4) reached a decision which no reasonable tribunal would have reached or,
- (5) abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decisionmaker must understand correctly the law that regulates his decisionmaking power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness,

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the Court should, "consider whether something has gone wrong of a nature and degree which requires its intervention."

22. Explaining the irrationality, which can also be referred to as "Wednesbury unreasonableness", which means that where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. Explaining further the other facets of irrationality the Supreme Court held in para 81 that it is open to the Court to review the decisionmaker's evaluation of the facts. The Court will intervene if the facts taken as a whole could not logically warrant the conclusion of the decision maker. If the weight of the facts appointing to one course of action is overwhelming, then a decision cannot be upheld. A decision would be regarded as unreasonable, if it is impartial and unequal in its operation as between different classes.

23. The terms of the invitation to tender should not open to judicial scrutiny, because the invitation to tender is in the realm of contract. The decision to accept the tender or award the contract is reached by process and negotiations, which goes through several stages. The government must have freedom of contract and fair play in the choice for functioning in an administrative sphere. The decision should not be quashed, if they impose heavy administrative burden and may lead to increase an unbudgeted expenditure. The decision in *Tata Cellular* has been consistently followed by the Supreme Court.

24. In *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517 the Supreme Court has reiterated the powers of judicial review in the matters relating to tenders or award of contracts by the State bodies. It was held that evaluating tenders and awarding contracts are essentially commercial function. The principles of equality and natural justice are not ordinarily invoked and should stay at a distance. If the decision relating to award of contract is bonafide, and is in public interest, the Court will not in exercise of power of judicial review, interfere even if a procedural aberration or error has crept in assessment or prejudice to a tenderer is made out. The power of judicial review is not permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contract with a grievance can always seek damages in civil Court. The Supreme Court held; "attempts by unsuccessful tenderers with

imaginary grievances, wounded pride and business rivalry to make mountains out of mole hills of some technical/procedural violation or some prejudice to self, to persuade Courts to interfere should be resisted. Such interference either interim or final may hold up public works for years or delay relieve and succor to thousands and millions and may increase the project cost manifold." Before interfering in tender or contractual matters in exercise of powers of judicial review, the Court should pose to itself the following questions:

(i) whether the process adopted or decision made by the authority is malafide or intended to petitioner summoning; 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 the public interest is affected.

25. The Supreme Court followed the principles of judicial review of contracts by State bodies laid down in *Sterling Computers Ltd. v. M&N Publication Ltd.*, (1993) 1 SCC 445; and *Tata Cellular (supra)* in its subsequent decisions in *Raunaq International Ltd. v. I.V.R. Construction Ltd.*, (1999) 1 SCC 492; *Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC 617; *Association of Registration Plates v. Union of India*, (2005) 1 SCC 679 and *B.S.N. Joshi & Sons Ltd. v. Nair Coal Service Ltd.*, (2006) 11 SCC 548.

26. Northern India Textile Research Association appointed by HPDA as consultant has estimated the cost of the project at Rs. 5 crores. The terms and conditions as well as the eligibility criteria was molded on the basis of the advice received from the consultant. The authority received only one tender in response to the advertisement inviting tenders dated 10.7.2008. HPDA decided to adopt standard practice of considering offers only if two or more tenderers submit their tenders in pursuance to the advertisement. As government body HPDA could have rejected the only tender, and to issue fresh advertisement calling for more than one offers. There was no illegality in such a decision, which were apparently taken to bring in more participation for evaluation of the technical expertise and the financial bid. The decision was within competence of the HPDA and cannot be faulted or reviewed on the ground that decision was reached to exclude the petitioner and to favour respondent No. 6.

27. Before publishing advertisement inviting fresh tenders the HPDA reconsidered the matter and found that since the contract was to be executed for construction of CETP having capacity of 2.1 MLD, the prescription of eligibility criteria of experience of 2.525 MLD plant was not relevant. This decision was also taken in the background that the eligibility condition in the cancelled tender process had resulted into lack of competitive bidding. The turn over of the tenderer fixed at 12 crores was also found to be unrealistic as the cost of project was reported by the consultant to be of 5 crores. Fresh tender notice dated 3.9.2008 amended the eligibility clause and invited bids from all bidders, who fulfilled the criteria; (a) constructed atleast 1 CETP/ETP for textile effluent treatment having capacity of minimum 2.50 MLD in last three years; (b) total

turn over of atleast Rs. 7.5 crores in the last three financial year and (c) legal assets of atleast Rs. 1 crore.

28. The submission of the counsel appearing for the petitioner that the eligibility was lowered to suit the requirements of respondent No. 6, appears to be attractive but taking into consideration the requirements of HPDA, it cannot be said that the eligibility criteria of having constructed CETP/ETP having capacity of 2.525 MLD was relevant, when contract required establishment of only 2.1 MLD plant. The consultant of the authority presented revised estimated cost of assets at Rs. 8.75 crores on which the total turn over of the tenderer was also lowered at Rs. 7.50 crores. The HPDA has relied upon decision taken by tender committee to revise the conditions both for the purposes of capacity as well as total turn over on the recommendations made by consultant and to invite bids for larger participation of technically qualified persons in the tender process. Both the petitioner and the respondent No. 6 submitted their tender documents in response to the tender notice dated 3.9.2008 and participated in the tender process. Technical bids were opened on 26.11.2008 in the presence of the petitioner and the respondent No. 6. In para 18 of the counter affidavit it is stated that the petitioner did not raise any objection to the technical bid of the respondent No. 6, when the bids were scrutinised. After two days on 28.11.2008 a letter was sent by the petitioner to HPDA objecting to the fulfilment of the eligibility criteria by respondent No. 6. In this letter the petitioner did not give any details and made a vague assertion that during the process of tender opening it was observed that M/s Enviro Engineers clearly does not meet the "eligibility criteria" put to tender and in such circumstances it was ineligible bidder. It is stated that the matter was immediately brought to the notice of HPDA officials after the technical bids were opened but the objections to the eligibility criteria were neither specified in the letter dated 28.11.2008 nor have been detailed in the writ petition. In para 18 of the writ petition it is stated that whereas the petitioner had fulfilled the eligibility criteria, respondent No. 6 did not furnish any such document, which could show that firm had ever constructed CETP/ETP for textile effluent treatment having capacity of 2.50 MLD within the period as prescribed in the said clause.

29. In the course of arguments the counsel for the petitioner has referred to the experience of the petitioner in designing, constructing, commissioning Common Effluent Treatment Plant with special reference to the work of any effluent treatment plant for Haryana Development Authority, Panipat in one year. He, however, could not point out any deficiency in the technical bid of respondent No. 6. It is submitted that the work order of Haryana State Industrial Development Corporation Limited dated 6.9.2006 in favour of respondent No. 6 is not with reference to the CETP for textile effluent treatment, and that the work of designing, construction, operation and maintenance of 5 MLD CETP Part2 at Industrial Estate Rai did not include the civil work for construction of ETP. The documents submitted by respondent No. 6 with regard to modification of the existing effluent treatment plant of Jaishree Textiles, a unit of Aditya Birla NUVO

Ltd. dated 15.9.2006 mentions under the head "your scope of work" that immediately on award of work you will submit detailed drawing, design of ETP to carry out civil work at site. Civil work for ETP shall be carried out by us." Shri S.D. Singh submits that respondent No. 6 did not carry out civil work for ETP for Jaishree Textiles and lack requisite qualifications for carrying out civil work for establishment of ETP. He, however, has made no comments on the work carried out by respondent No. 6 for Haryana State Industrial Development Corporation Ltd., which included designing, construction, operation/maintenance of 5 MLD CETP Part2 at Industrial Estate Rai, Sonipat and other works carried out by respondent No. 6, a list of which has been appended to the counter affidavit.

30. In the counter affidavit of Shri C.B. Chaurasia, the Assistant Director of Northern India Textile Research Association it is stated that HPDA acted against the contract with NITRA as consultant of the project in procedure to do having on their own and by acting on their sweet will. It is stated by him that technical drawings were not shown to NITRA before entering into contract and disbursing Rs. 1.51 crores and that the constructions were allowed to proceed without approval of the general arrangement drawing. He has referred to his letter dated 23.12.2008 in which he had advised HPDA to send copies of technical and financial bids in case HPDA wishes to get technical bids so that the same could be evaluated as per the terms and conditions of the tender document. He has stated that NITRA as consultant was not at all invited in technical evaluation of the bids and thus HPDA cannot shift the burden of responsibility of technical evaluation of the competence of the parties as to the alleged change in distribution of work to be performed by the petitioner.

31. Shri Chaurasia has not denied that the second tender notice inviting tenders was issued after consulting NITRA. He does not appear to have any objection to the technical competence and experience of the petitioner to complete the contract. His objection primarily appears to be the exclusion of NITRA from the scrutiny of the technical bid clarifications, and in awarding the contract without approving the drawings submitted by the respondent No. 6. The memorandum of understanding dated 11th August, 2006 entered into between the HPDA and NITRA provides for giving consultancy to HPDA, the details of which are provided in the agreement. The areas of the consultancy in Para 2 (iii) and consultancy to built any affluent treatment plant; and (iv) technical verification and vetting of conveyance system of affluent treatment plant. The agreement does not provide for any supervisory role in considering the technical bids, in terms of the invitation for tender issued by the HPDA. Shri Chaurasia has not pointed out to any deficiency in the technical qualifications of respondent No. 6 or any defect in the drawings. The role of the consultant in the contract does not include advice to be given by consultant at the time of considering and acceptance of the technical and financial bids. The objections taken by Shri C.B. Chaurasia do not appear to be valid. His further observation that when respondent Nos. 2 to 4 landed up in problem, they are trying to squarely blame on the consultant, is also not based upon any material on record. The HPDA has not admitted of any

such problem for which they have blamed the consultant.

32. With regard to financial bids the reliance of the petitioner on para 3.14.5.2 is wholly misplaced. While considering Part B (financial bid) the special clause provides that only the rates and break up of payment terms shall be viewed and the case shall be decided on merits. Any amendment in Part B shall not be allowed and the conditional offers making the workability of cost proposal ambiguous shall be rejected. It further provides that bids will be checked by the Committee for any arithmetical error. If there is any discrepancy between amount in figures and in words the amount in words will govern. The total bid price (grand total amount in words) stated at the end of the schedule of price (Section 2 of financial bid) will be considered and shall be binding upon the bidder. Any correction of any arithmetical and computational errors of the bidder shall not be entertained. In the end the qualifying clause provides that HPDA reserved the right to accept or reject the tender without assignment of any reason and decision shall be final and binding. The object of Clause 3.14.5.2 is fairly apparent. A bidder is not allowed either to make the workability of the cost proposal ambiguous, or to make any corrections for arithmetical and computational errors. In the present case according to the explanation of the HPDA in para 21 of the counter affidavit of Shri Indu Shekhar Singh, Executive Engineer, HPDA, it is stated that while evaluating the financial bid the Tender Committee calculated the item wise disclosure of the amount and while summing up the item wise amount the total of respondent No. 6 worked out to Rs. 8,59,75,000/, whereas the bid of the petitioner was Rs. 8,62,00,000/. The respondent No. 6 did not either amend the bid, or corrected and revised the estimates.

33. We do not find that there is any restriction placed by the general conditions of contract in para 3.14.5.2 in the final checking by the Committee for any arithmetical error. The restriction on the other hand has been placed upon the bidder, which has not been allowed to make any ambiguous proposal or to make any correction of any arithmetical and computational error. There is no denial of the fact that while summing up item wise amount the total of respondent No. 6 worked out to be lesser than the bid of the petitioner. The Committee was thus well within its authority to check the financial bid for any arithmetical error and did not commit any error in summing up the total of the item wise amount, to find that the financial bid of the respondent No. 6 was lower than the financial bid of the petitioner. The submission that in case of discrepancy between amount in figures and words, the amount in words will govern is not applicable to the present case. There was no such discrepancy between the amount in figures and words. The error was in the calculation of the item wise amount, which was correctly calculated by the Committee.

34. Having considered the arguments on the material placed before us, we are of the opinion that the respondent No. 6 fulfilled the eligibility conditions, in the tender notice. There were no defects in the technical bids and that financial bid

of the respondent No. 6 was lower than the financial bid of the petitioner. The HPDA did not commit any discrimination in awarding the contract to respondent No. 6 nor has acted in any manner, which may be said to have prejudiced the petitioner or is not in public interest. We further find that by the time the writ petition came up for hearing on 15.5.2009 nearly 25% of the work was completed on the spot for which the authority has disbursed a sum of Rs. 1,51,00,000/. Shri Manish Jain, one of the partners of respondent No. 6 in his affidavit dated 22.4.2009 has stated that contract was executed on 24.12.2008 and that construction work worth Rs. 3.18 crores has been executed on the spot. We are, therefore, of the opinion that at this stage any interference by the Court would not only entail delay the project but will also be against the public interest. No one has pointed out that work is not being carried out satisfactorily, or that there is any defect or delay in the execution of the contract by respondent No. 6.

35. The writ petition is dismissed with costs quantified at Rs. 10,000/.