

(2010) 03 GAU CK 0008
In the Gauhati High Court
Case No : Writ Appeal No. 261 of 2009

T.K. Engineering Enterprises

APPELLANT

Vs

Tama Fabrication Works and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 GLT 280

Hon'ble Judges : C.R. Sharma, J; Amitava Roy, J

Bench : Division Bench

Advocate : K.N. Choudhury and I. Choudhury, for the Appellant; B. Banerjee, S.N. Sarma and P.D. Nair, for the Respondent

Judgement

C.R. Sarma, J.—The judgment and order dated 13.8.09 passed in WP(C) No. 116 (AP) of 2009 is in challenge in this writ appeal.

2. The Deputy Director, Urban Development Housing, Pasighat Division, Pasighat issued notice inviting item rate bid (for short "NIB") dated 11.9.08 for the execution of the work, namely, "Improvement of road Network" at Pasighat at an estimated value of Rs. 495.63 lakhs. Following the said issuance of NIB, a corrigendum dated 14.9.08 was issued extending the last date of submission of tender upto 4.10.08. In response to the said NIB, the Appellant, the Respondent No. 1 and others participated by submitting their tenders. The tender process involved two bid systems i.e. "Technical Bid" and "Financial Bid". Those who qualified in the technical bid, were entitled to participate in the "Financial Bid". The Appellant, the Respondent No. 1 and one M/s Renija Enterprise were evaluated as technically responsive. Therefore, as per terms of the NIB, the said tenderers were allowed to participate in the financial bid. A Screening Committee (internal committee) was constituted, vide order dated 10.9.08 for evaluation of the comparative merit of the bids. Accordingly, the committee aforesaid scrutinized the bids. The bid of the M/s Renija Enterprise was rejected on the ground that the bid value of Rs. 368.91 lakh quoted by the said firm was

abnormally low and unworkable. The bid value quoted by the Appellant was Rs. 450.72 lakhs while the bid value quoted by Respondent No. 1 was Rs. 473.60 lakhs. Though the bid value quoted by the Appellant was lowest, the Screening Committee, after making calculations/correction with regard to certain items, quoted by the Appellant, found some discrepancies in respect of the total amount and as such, the bid value, quoted by the Appellant, on being corrected got enhanced to Rs. 763.91 lakh. In view of such correction/calculation, the Respondent No. 1 became the lowest bidder. Accordingly, the Screening Committee observed that the amount quoted by M/s. Tama Fabrication Works i.e. the writ Petitioner in WP(C) No. 116 (AP) of 2009 (Respondent No. 1 in this appeal) was found to be 4.40% below the estimated cost, while the total bid value of the Appellant i.e. M/s. T.K. Engineering Enterprises stood at Rs. 54.10% above the estimated cost. Therefore, the Screening Committee recommended the rate quoted by M/s. Tama Fabrication Works, the Chief Engineer i.e. Respondent No. 4 refused to accept the said recommendation of the Screening Committee and by his note dated 27.2.09 made recommendation in favour of the Appellant and sought approval of the competent authority for accepting the tender of the Appellants on the grounds (i) that the committee constituted on 10.9.08 was cancelled w.e.f. 2.2.09 and the committee being an internal committee, its purpose was to evaluate the tender and to place the merit and demerit before the competent authority for further decision and not to compel the authority to accept the recommendations; (ii) that M/s T. K. Enterprise, though quoted the bid value at Rs. 450.72 lakh, the said amount got enhanced to Rs. 763.90 lakh due to correction made by the committee; (iii) that M/s T. K. Enterprise agreed to execute the work within the quoted rate for which, a chance should be given to the said firm; (iv) that the allotment of the work to M/s T. K. Enterprise would result in saving of Rs. 22.88 lakhs, whereas allotment of the work to M/s. Tama Fabrication Works (Respondent No. 1) would cost the exchequer Rs. 22.88 lakhs more. With the above observations, the Respondent No. 4 placed the matter before the Secretary (UD) and accordingly, the proposal being approved, the contract work was awarded to the Appellant.

3. Being aggrieved by the said allotment on the basis of the above recommendation, alleging illegality, biasness, nepotism and partiality against the Respondent No. 4, the Respondent No. 1 as writ Petitioner approached this Court by filing a writ petition seeking interference of the Court by invoking its jurisdiction under Article 226 of the Constitution. The Appellant as Respondent No. 6 contested the claim, by filing an affidavit in opposition, wherein it was averred that the committee members had illegally tampered certain figures in the final bid of the Respondent No. 6 and that the bid value was raised to Rs. 763.91 lakhs against the quoted bid value of Rs. 450.72 lakhs.

4. The learned Single Judge, having heard the parties and perusing the materials available on record, placed before him, came to the finding that there was no reference with regard to the cancellation of the committee on 2.2.09 and that no file in support of the said cancellation could be produced. The failure of the

official Respondents to produce the relevant file, if any, led the learned Single Judge to disbelieve the existence of any such cancellation order. It was observed that the committee constituted on 10.9.2008 was in existence and therefore, the evaluation and recommendation made by the said committee had force. It was also found by the learned Single Judge that the Respondent No. 4, while making consultation/negotiation with regard to the rate with the Appellant did not take the Respondent No. 1 into confidence and as such the decision of the Respondent No. 4 was arbitrary, irrational and without sanction of the accepted procedure and norms. Considering the entire matter and the rival submissions made by both the parties, the learned Single Judge while setting aside the impugned Government order dated 16.3.2007 by which the work was allotted to the Appellant, inter alia, passed the following orders:

Considering the facts and circumstances of the case and the dictum of the Apex Court that the writ Court should not sit as an Appellate Court while exercising power of judicial review. I would not deem it fit and proper to pass any direction/order to settle the contract work with the Petitioner firm, for it is beyond the scope of judicial review and the same should be left with the authorities concerned to get the bids of the responsive tenderers on record re-assessed/re-evaluated and recommended, in favour of a deserving party, through the existing tender committee forthwith, preferably within a period of 15 (fifteen) days from the date of passing of this judgment and order to re-assess/re-evaluate/re-scrutinize the tender papers and make recommendation for settlement of works, to the Respondent Secretary, who shall after due consideration, pass necessary order keeping in mind the greater public interest involved. Be it made clear that, in case the Respondent-authorities desire to settle the tender by negotiation, it should be done by associating both the Petitioner and the Respondent No. 6 as per the law and procedure indicated above.

With the aforesaid directions, this petition stands partly allowed and disposed of. No order as to costs.

5. Being aggrieved by the said judgment and order on various grounds and contentions the details of which will be noticed later, the Respondent No. 6 in the writ petition as Appellant, has come up with this appeal.

6. We have heard Mr. K. N. Choudhury, learned senior counsel for the Appellant, Mr. S.N. Sarma, learned senior counsel appearing for the Respondent No. 1 and Mr. B. Banerjee, learned Counsel appearing for the State Respondents.

7. Mr. K. N. Choudhury, learned Senior counsel taking us through the various clauses of the NIB, the impugned judgment and order, the recommendation of the committee and the note given by the Respondent No. 4 submitted that the committee, constituted on 10.9.08, having been dissolved on 2.2.09, the said committee had no authority to evaluate/scrutinize the bids and to make recommendation in favour of the Respondent No. 1. It is also contended that the Respondent No. 4, being the employer, was the authorized officer to make his

own assessment and recommendation. The learned senior counsel further contended that the corrections made by the committee, which was a non est one on the date of recommendation was unwarranted and as such the Respondent No. 4 was not liable to accept the said recommendation. It is also submitted that negotiation being made by the Respondent No. 4 with the Appellant the latter had agreed to execute the work at the original rate quoted by him, which was lower than the rate quoted by the Respondent No. 1 and as such the Respondent No. 4 correctly made the recommendation in favour of the Appellant. Therefore, according to the learned senior counsel the allotment of work in favour of the Appellant, whose bid value was lower than that of the rate quoted by the Respondent No. 1 was lawful and as such there was no scope for the learned Single Judge in exercise of the powers under Article 226 of the Constitution to interfere with the decision regarding allotment of the work.

8. Refuting the said arguments, advanced by the learned senior counsel appearing for the Appellant, Mr. S.N. Sarma, learned senior counsel appearing for the Respondent No. 1 taking us through the various provisions of the NIB, more particularly the Clauses 25 and 27 has submitted that there being no record of deliberations with the Appellant as contemplated therein for obtaining its clarification or its consent regarding execution of the works, at the original rate quoted by him, the observation made by the Respondent No. 4 that the Appellant had agreed to execute the work at the originally quoted rate was not in conformity with the provisions of the NIB. The learned senior counsel further submitted that in view of the absence of any official order/record regarding cancellation of the committee w.e.f. 2.2.09, the observation made by the Respondent No. 4 that the committee stood cancelled prior to the recommendation made by the committee and the negotiation, if any, made in private by the Respondent No. 4 was arbitrary and violative of the established procedure for which the allotment in favour of the Appellant was liable to be set aside. The learned senior counsel further contended that the committee which was constituted on 10.9.08 and as correctly observed by the learned Single Judge, being in existence, the committee rightly evaluated and calculated the bid value submitted by the Appellant and found that the total bid value of the Appellant was much higher than the bid value of the Respondent No. 1. It is submitted that in any case, while negotiating the matter with the Appellant, the Respondent No. 4 should have invited the Respondent No. 1 also for negotiation and as such the said negotiation, if any, made with the Appellant to the exclusion of the Respondent No. 1 was arbitrary, bias and violative of principles of equal opportunity.

9. Mr. B. Banerjee, learned Govt. Advocate, Arunachal Pradesh while producing the relevant files could not place the order dated 2.2.09. To our pointed question regarding the order dated 2.2.09 i.e. order of cancellation of the committee and existence of any record regarding inviting the tender for negotiation, the learned Govt. Advocate submitted that the record was silent regarding cancellation of the order dated 2.2.09 and negotiation with the tenderers.

10. Having heard the learned Counsels for the parties, we have carefully perused the materials on record.

11. Admittedly, the Screening Committee was constituted on 10.9.08. As stated by the learned Government Advocate, there is nothing on record to find that the said committee was dissolved on 2.2.09 as mentioned by the Respondent No. 4 in his note dated 27.2.09. It is also an admitted position that the committee, on scrutiny made certain corrections regarding rates quoted by the Appellant in respect of certain items, as a result of which the total bid value quoted by the Appellant came to Rs. 763.90 lakh and it was found to be 54.10% above the estimated cost of the work while the total bid value quoted by the Respondent No. 1 was found to be 4.40% below the estimated value.

12. In view of above position, the committee finding the Respondent No. 1 the first lowest bidder recommended the rate quoted by the Respondent No. 1 for appropriate decision by the competent authority. On receipt of the said recommendation, the Respondent No. 4 reevaluated the matter and passed the following order:

(NSP-26)

90. The Deputy Director, UD & Housing, Pasighat has forwarded the tender documents along with technical and financial evaluation reports separately and financial bids in original. As per the report, it is stated that 11 sets of tender paper were sold out of which 4 (four) firms submitted their bids. One firm could not technically qualify. The financial bid of the three firms were opened and after scrutiny the financial bid of M/s Reniya Enterprise quoted Rs. 368.31 lakhs which was rejected at Divisional level being abnormally low over the estimated cost put to tender (i.e. 25.69% down). The financial bid of two firms was received in this office for scrutiny and acceptance. As per the report, the 1st lower tenderer is M/s T. K. Engineering Enterprises who quoted Rs. 450.72 lakhs (9.07% down) and 2nd lowest tendered is M/s Tama Fabrication Works quoted Rs. 473.72 (4.40% down) as compared with the estimated cost put to tender. The reference may be seen as at Flag-X/page 6 of Annexure-B).

91. As per the justification of the quoted amounts of both the tenders as submitted by the Deputy Director, UD & Pasighat (may refer comparative statement (abstract) at Annexure-D) the percentage quoted by M/s T. K. Engineering Enterprises and M/s Tama Fabrication Works are 1.84% below and 3.145% above the justified amount i.e. Rs. 459.19 lacs respectively.

92. The above mentioned documents were scrutinized by an internal committee and their findings as stated at Para 81 (Table 6) on NSP-23 & 24 shows that the percentage quoted by M/s T. K. Engineering Enterprises and M/s Tama Fabrication Works are 54.10% above and 4.40% below the total estimated cost put to tender i.e. Rs. 495.63 lakhs. The change of percentage in case of M/s. T. K. Engineering Enterprises has been effected by the committee by correcting the original quoted rates computation of carriage items in respect of 3(a), 3 (b), 4

(a) & 4 (b) of General Abstract and individually at pages 85/c, 88/c, 90/c and 92/c".

93. The Deputy Director, UD & H, Pasighat has recommended M/s Engineering Enterprises which according to the divisional justification is 9.70% below and 1.84% below the estimated cost put to tender i.e. Rs. 495.63 lakhs and Rs. 459.19 lakhs respectively. Whereas, as per the findings of the committee's justification, the percentage quoted by M/s T. K. Engineering Enterprises and M/s Tama Fabrication Works are 54.10% above and 4.40% below the total estimated cost put to tender i.e. Rs. 495.63 lakhs and the internal committee has recommended the case of M/s. Tama Fabrication Works.

94. On perusal of the original financial bids of the two firms as shown at there respective general abstracts Flagged "A & B" (envelop enclosed) the firms i.e. M/s T. K. Engineering Enterprises and M/s Tama Fabrication Works have offered to execute the works put to tender at a cost of Rs. 450.72 lakhs and Rs. 473.60 lakhs respectively with a clear difference of Rs. 22.88 lakhs in between them but the amount of M/s T. K. Engineering Enterprises has been increased to Rs. 763.90 lakhs as per the committee's finding and correction of carriage items as mentioned above by the committee itself.

95. It is pertinent to mention here that the committee's recommendation of M/s Tama Fabrication Works will incur an additional expenditure of Rs. 22.88 lakhs on same quantity of work above that of amount quoted by M/s T. K. Engineering Enterprises in its original financial bid notwithstanding the minor discrepancies in its individual entries in item rates. As such the committee's recommendation seems to overlook the financial benefits/savings to the State Govt. exchequer.

96. It may also be mentioned here that the committee constituted vide order No. DUD/Plg-313/2007-08/3897-99 dated 10th September 2008 for smooth and timely scrutiny of the Tender Papers was cancelled vide No. DUD/Plg-313/2007-08/7619-20 dated 2nd February 2009 (copy enclosed at page 110/c) earlier keeping in view of the problems experienced in the case of the Tender for C/o. Houses for Urban Poor/Safai Karmacharies at Papu Nallah, Naharlagun under BSUP which itself is yet to be finalized and lots of pressure is coming from tenderer to undersigned. The committee constituted took ample time and instead of decision making it creates problems in decision making process.

97. Further, in the instant case the internal committee has committed procedural violation as they have tried to compel the authority to accept the committee's recommendation not keeping provision/option for taking decision the higher authority, such practice is not appreciable. The committee's purpose was to evaluate the tender and to pace the merit and de-merit before the competent authority for further decision, as the committee is simply and internal arrangement and not suppose to compel the authority to accept the committee's recommendation. Moreover, in this particular case, the committee constituted was cancelled on 2nd February 2009 as stated at Para 96 above.

98. Keeping in view the facts as stated above, it is recommended that as M/s T.K. Engineering Enterprises has originally quoted Rs. 450.72 lakhs which was escalated due to correction did in the original quoted rate and agreed to execute within the quoted rate, hence a chance may be given to the firms which will result in saving of Rs. 22.88 lakhs whereas on the other hand awarding of works to M/s Tama Fabrication Works will incur an extra amount of Rs. 22.88 lakhs from the Govt. exchequer.

In view of above, the matter is submitted to Secretary (UD) for obtaining approval of competent authority for acceptance of the tender of M/s T. K. Engineering Enterprises please.

Sd/- Secretary (UD)

13. In the said note, it was recorded, that M/s. T. K. Engineering Enterprises quoted 450.72 lakhs (9.07% down), that the second lowest tender was submitted by M/s. Tama Fabrication Works quoting Rs. 473.60 (4.40% down), that the documents were scrutinized by internal committee and that the finding at Para 81 (Table 6) on NSP-23 and 24 showed that the percentage quoted by M/s. T. K. Engineering Enterprises was Rs. 54.10% above, while percentage quoted by M/s. Tama Fabrication Works was Rs. 4.40% below. As mentioned in the said note, the rates quoted by M/s T. K. Engineering Enterprises, were calculated and corrected by computing the carriage items in respect of 3(a), 3(b), 4(a), and 4(b) of General Abstract and individually at pages 85/c, 88/c, 90/c and 92/c. It was also noticed that the amount of T. K. Engineering Enterprises got increased due to the corrections made by the committee and that there were some minor discrepancies in the individual entries in item rates in respect of the tender of M/s T. K. Engineering Enterprises. As discussed earlier, the grounds for recommending M/s T. K. Engineering Enterprises were that the said firm had agreed to execute the work at the quoted rate, that the allotment of the work to M/s Tama Fabrication Works would cost the exchequer Rs. 22.88 lakhs more while the allotment of the work to M/s. T. K. Enterprise would result in saving of Rs. 22.88 lakh and that the committee constituted on 10th of September, 2008 for smooth and timely scrutiny was cancelled on 2.2.09 i.e. prior to the recommendation by the committee. In making the said observation, the Chief Engineer no where stated that the corrections made by the committee in respect of the quoted rate of M/s T. K. Engineering Enterprises were wrong or arbitrary. He, however, negated the said recommendation of the committee on the grounds that the committee was already dissolved vide order dated 2.2.09 for which the committee being a non est one, the recommendation made by it was not valid and also that M/s T. K. Engineering Enterprises had agreed to execute the work at the original rate. There is nothing on record to find that M/s. T. K. Engineering Enterprises was either consulted or that it had given any written consent to execute the work on the basis of the original rate quoted by it notwithstanding the corrections aforesaid. Fact remains that the bid value of the work, in respect of M/s T. K. Engineering got enhanced and thus became higher than the rate

quoted by the Appellant on being calculated/corrected by the committee disclosing certain inherent mistake in the bid value quoted by the Appellant. The Respondent No. 4 also in his note aforesaid stated that there was some minor discrepancies in the individual rates quoted by the Appellant. It is an admitted position that the bid value quoted by the Appellant, after correction made by the committee stood at Rs. 763.90 lakhs. There is nothing on record to find that the said calculation or correction made by the committee was without any basis or that the same was erroneous. In view of the above, undisputedly some corrections (arithmetical) were required in the bid value of the Appellant and the committee had made the corrections.

In the event of such correction, certain procedure as provided by the NIB, is required to be followed before allotting the work to the tenderer whose bid value is corrected and found to be higher than the other tenderer on such correction.

Clause 27 of the NIB, which reads as follows prescribes the following procedure for correction of error.

27.1? "Financial bid" determine to substantially responsive, it will be checked by the Employer for any arithmetic error. Error will be corrected by the Employer as follows:

(a) where there is a discrepancy, between the rates in figure and in words, the rates in words will govern, and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate is quoted will govern.

27.2? The amount stated in the "Financial Bid" will be corrected by the Employer in accordance with the above procedure and the bid amount adjusted with the concurrence of the Bidder in the following manner.

(a). If the bid price increases as a result of these corrections, the amount as stated in the bid will be treated as the bid "price".

(b). If the bid price decreases as a result of these corrections, the decreased amount will be treated as the bid "price".

Such adjustment bid price the bid price shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount the bid will be rejected, and the bid security may be forfeited in accordance with Sub-clause 16 6(b).

As indicated by the committee, the bid value quoted by the Appellant on being correctly calculated the price increased. In such a situation, as prescribed by the Clause 27.2, the bid amount is required to be adjusted with the concurrence of the bidder and upon such concurrence, the bid price originally quoted by the bidder could be treated as the bid price. But, before proceeding to allot the work on such bid price, which is lower than the corrected price, the concurrence of the

bidder is to be obtained and this is a mandatory requirement of the prescribed procedure. Clause 25 of the NIB, which is extracted as below, provides the procedure for clarification of the financial bids.

25.1? In assist in the examination, evaluation and comparison of bids, the employer may, at his discretion, ask any bidder for clarification and the response shall be in writing or by cable, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 27.

In view of the said provision, in the event of any discrepancy with regard to the financial bid, the employer is authorized to obtain clarification seeking response in writing or by cable. Therefore, any clarification, in respect of the financial bid due to correction of arithmetic errors, is to be obtained in writing or by cable. This implies that there should be some record of obtaining clarification. As there was discovery of discrepancy in the price bid, the employer should have obtained clarification from the bidder, i.e. the Appellant in writing or by cable. According to Respondent No. 4, as it appears from his aforesaid note that the Appellant agreed to execute the work at the rate quoted by him. But there is nothing on record to find that any clarification was obtained in writing or by cable. Therefore, the observation of the Respondent No. 4, in his note, that the bidder agreed to execute the work at the rate quoted by him is not supported by record. As required by the provisions prescribed by Clauses 25 and 27, the Respondent No. 4, in view of the discrepancy in the price quoted by the Appellant, should have obtained clarifications/concurrence/consent/confirmation in writing to the effect that the work would be executed at the originally quoted rate i.e. at Rs. 450.72 lakh, notwithstanding the enhancement of the price due to arithmetical correction. As the matter involves huge public fund, the Respondent No. 4, who was entrusted to discharge public fund was required to scrupulously observe the prescribed norms in making the recommendation. In absence of any record of the clarification obtained from the Appellant whereby it had accepted the correction made by the committee" and had agreed still to execute the works at its originally quoted rate, we are constrained to hold that clauses 25 and 27 had not been complied with before awarding the contract to it. High standard of fairness and transparency is required to be maintained in decision making process relating to public fund.

14. In the case of Association of Registration Plates Vs. Union of India (UOI) and Others, the Hon"ble Supreme Court observed:

Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest.

15. In the case of Jagdish Mandal v. State of Orissa and Ors. reported in (2007) 14 SCC 517 the Hon'ble Supreme Court laid down the circumstances and the principles under which judicial review of the matters relating to Government contracts/tender can be made.

16. In the above mentioned case, the Hon'ble Supreme Court observed that a court, before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.

17. In view of the above principles and discussions made earlier, it is found that the Respondent No. 4 made the recommendation in favour of the Respondent No. 1 without following the established procedure as laid down in Clauses 25 and 27 of the NIB. The way the allotment was made in favour of the Appellant leads one to deduce that the exercise was informed with irrelevant considerations in favour of the Appellant. If there was no lack of bonafide or fairness then there was no reason for the authority not to maintain the record of the deliberations with it, if any, as required by Clauses 25 and 27. In the absence of any official record, the finding of the Respondent No. 4 that the committee constituted on 10.9.98 was dissolved prior to the making of the recommendation by the committee in favour of the Respondent No. 1 the consequent allotment of the work in favour of the Appellant ignoring the recommendation of the committee was sufficient to hold that the allotment of the work was arbitrary and vitiated by bias and that the same was done with the intention to favour the Appellant.

18. In the present case in hand, it is found that the Respondent No. 4 refused to accept the recommendation of the committee on the ground that the committee constituted on 10.9.08 was not in existence on the date of recommendation and that the Appellant agreed to execute the works at the originally quoted rate i.e. the rate which was less than the corrected bid value. But as discussed above, records do not support the said view that the committee was dissolved on 2.2.09 and that the corrections made by the committee were erroneous and also that the clarification was obtained as per the prescribed procedure. Though the allotment of the work in favour of the Appellant at its originally quoted rate, would have led to saving of Rs. 22.88 lakh, the work should not have been allotted in violation of the established/prescribed procedure. The way, the work was allotted in favour of the Appellant amply suggest that it was done only with

a view to favour the Appellant even in violation of the established procedure. Therefore, in the attending factual circumstances of the case in hand, we find the answers to the above referred questions (para 16) in positive.

19. In view of the above discussions, we find that the decision making process was malafide, arbitrary, discriminatory, irrational and not in conformity with the provisions prescribed by the NIB. Therefore, in our considered opinion, the impugned order dated 16.3.09 was liable to be set aside in exercise of the writ jurisdiction under Article 226 of the Constitution. In view of the above discussion, we are inclined to conclude that the learned Single Judge committed no illegality by setting aside the impugned order dated 16.3.09. Hence, we find no merit in this appeal requiring interference with the impugned judgment and order aforesaid.

20. The learned Single Judge also issued direction asking the official Respondents to get the bids of the responsive tenderers on record re-assessed/re-evaluated and recommend, in favour of a deserving party, through the existing tender committee forthwith, preferably within a period of 15 (fifteen) days from the date of passing of this judgment and order to re-assess/re-evaluate/re-scrutinize the tender papers and make recommendation for settlement of works to the Respondent Secretary, who should, after due consideration, pass necessary order keeping in mind the greater public interest involved. It was also made clear that, in case the Respondent authorities desired to settle the tender by negotiation, it should be done by associating both the Petitioner and the Respondent No. 1 as per the law and procedure indicated above.

21. In view of the procedure prescribed by Clauses 25 and 27 of the NIB, if the bid value, quoted by an eligible tenderer, is found to be higher than the originally quoted price then the employer can seek clarification regarding such correction. Following such initiative, if the bidder agrees to execute the entire work at the original price, quoted by him, which was found to be the first lowest bid, then the employer can take steps to allot the work to such bidder after obtaining his written consent and maintaining record in this regard. For applying such exercise, the employer is not required to re-assess/re-evaluate the tender and to involve the other bidders. But if the tenderer, who is invited for such clarification refuses to execute the work at the originally quoted price and insists for executing the work at the corrected amount, there remains no option for the employer but to allot the work to the other eligible bidder whose bid price is found to be the lowest. However, if the employer desires to allot the work to a bidder at a rate, other than the one quoted by the bidders all the qualified bidders would have to be invited for negotiation. Therefore, the direction made by the learned Single Judge requiring the State Respondents to associate both the Appellant as well as the Respondent No. 1, at this stage is not warranted. In view of the provisions laid down in Clauses 25 and 27, we would like to make it clear that the Respondent-authority may, at the initial stage, first invite the Appellant for obtaining his clarification as to whether he would like to execute the

entire work at the price originally quoted by it. If it agrees to do so, then the question of involving the Respondent No. 1 would not arise. However, if the Appellant does not accept the corrected bid and refuses to execute the work at its originally quoted rate, its bid would be cancelled. If the State Respondents in any case is inclined to allot the work at any different rate, they would essentially have to invite both the tenderers for negotiation and select the one best suitable for the project This exercise as the stipulations of the NIB require has to be first undertaken at this stage. Ordered accordingly.

22. With the above modification in respect of the direction made by the learned Single Judge, this writ appeal is disposed of. No cost