**(2023) 08 OHC CK 0035**

**In the Orissa High Court**

**Case No :** Writ Petition (C) No. 19399 Of 2023

VA Tech Wabag Limited — APPELLANT

Vs

Steel Authority Of India Limited And Another — RESPONDENT

**Date of Decision :** 08-08-2023

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (2023) 08 OHC CK 0035

**Hon'ble Judges :** Dr. B.R. Sarangi, J;Murahari Sri Raman, J

**Bench :** Division Bench

**Advocate :** S.P. Mishra, Soumya Mishra, O. Parida, G.N. Parida, A. Agarwal, B.S Das, L.C. Behera, S. Sahoo, D. Marandi

**Final Decision :** Allowed

## Judgement

Dr. B.R. Sarangi, J

1. VA TECH WABAG LIMITED, which is a multinational company, having its headquarters at Chennai and listed in Stock Exchange, with over ninety-five years of plant building experience, turnkey execution and operation of water and wastewater treatment plants for both the municipal and industrial sectors, has filed this writ petition seeking to quash the letter dated 10.06.2023 under Annexure-16, by which the petitioner’s request for consideration of its bid for placement of order was denied in view of the tender terms and conditions and the fact that the petitioner’s debarment/ban order passed by the Delhi Jal Board continues to exist on that date. Essentially, the bid submitted by the petitioner has not been considered by opposite party no.1 due to debarment/ ban order issued by the Delhi Jal Board.

2. The factual matrix of the case, in a nutshell, is that, Steel Authority of India Limited (hereinafter to be referred as “SAIL”), a Central Public Sector Undertaking under the ownership of Ministry of Steel, Government of India, floated an Invitation for Bids (hereinafter to be referred to as “IFB”) on

19.07.2022 for the “Treatment System-2 under Implementation of Zero Liquid Discharge System Including Operation and Maintenance for Five Years at Rourkela Steel Plant, Rourkela, Odisha” (Package No. 04). The tender document was of two parts/sections. Section-I relates to the Commercial Volume that consists of the Invitation for Bids, Bid Data Sheet and Special Conditions of Contract (SCC) and Section-II relates to the Standard Bidding Document which consists of (i) Instruction to Bidders (ITB), (ii) Form of Contract Agreement, (iii) General Conditions of Contract (GCC) and (iv) Safety code for contractors.

2.1 Section-A of the Commercial Volume consists of the Invitation for Bids which states the scheduling of the Tender submission on 09.08.2021 at 14.30 Hours IST and the opening of the Tender on 09.08.2022 at 15.00 Hours IST. Further, the information for bids stipulated that the bids to be submitted by prospective bidders along with Rs.70,00,000/- (Rupees Seventy Lakhs only) towards Earnest Money Deposit. The time for completion of work was stated as 18 (Eighteen) months from the effective date of the contract. The bid submitted was stated to be kept valid for 180 days from the scheduled date of tender opening. The bid consists of three parts: Part I – Bid Security, Bid Security exemption document/ Bid Securing Declaration and Integrity Pact; Part II - Eligibility Criteria Fulfilment & Techno-Commercial Bid; and Part III - Price Bid only.

2.2 Section-B of the Commercial Volume contains the Bid Specific Data [Bid Data Sheet] for the bidders including but not limited to Technical and Financial Eligibility Requirements together with the undertakings/ declaration by the bidder for compliance in accordance with Company law. The Bid Data Sheet further provides that the Bid-specific data for the Facilities including plant and equipment to be procured, installed and commissioned, shall amend and/or supplement the provisions in the Invitation for Bids (IFB) and Instructions to Bidders (ITB). Whenever there is a conflict, the provisions therein shall prevail over those in the IFB and ITB.

2.3 Section-D under Annexure-A deals with Check List for submission of Bid. In view of the conditions stipulated in IFB, the Petitioner-Company having more than ninety-five years of plant building experience, turnkey execution and operation of water and wastewater treatment plants for both the municipal and industrial sectors and having a successful track record of executing over 6000 municipal and industrial projects globally with quality and commitment towards timely delivery was fulfilling the technical and financial eligibility/requirements, submitted its bid in respect of works enlisted under Package No. 04 of the IFB being eligible to participate in tender process as it was not serving any banning orders issued by SAIL debarring them from carrying on business dealings with SAIL. Along with the bid, the petitioner, as required by the opposite parties in the Tender document, had furnished a declaration for blacklisting dated 12.09.2022 and had disclosed in the bid submission that the petitioner was not blacklisted/ banned from business dealings by any organization, except in Delhi Jal Board vide letter dated 15.10.2020. The said letter was challenged by the petitioner before the High Court of Delhi in W.P.(C) 8342/2020 & CM APPL. 27045/2020. In the said declaration the petitioner had also highlighted about the debarment guidelines issued by the Government of India (Ministry of Finance No. F.1/20/2018-PPD) dated 02.11.2021 and stated that the debarment issued by Delhi Jal Board will not prevent the petitioner from participating in bidding contracts in line with clause 5 (d) which states that it shall not be circulated to other Ministries/ Departments and it will only be applicable to all attached/ subordinate offices, autonomous bodies, Central Public Sector Undertakings (CPSUs), etc. of the Ministry/ Department issuing the debarment order and neither the petitioner is blacklisted, nor any action has been taken against as defaulter/ barred from participating in tenders by any Odisha State Government agencies/ semi-Government agencies. The petitioner also deposited Earnest Money Deposit/Bank Guarantee to the tune of Rs.70,00,000/- (Rupees Seventy Lakhs only) on 22.08.2021 which is valid till 30.06.2023 before the opposite parties on 12.09.2022 for executing the works, i.e., Package No. 04, as per the tender notice.

2.4 The nature of the Tender in question was a "Hard Copy Submission Tender" and the evaluation of the same was divided into two parts, i.e., technical and financial. The technical evaluation was to be carried out in accordance with the requirements set forth in the technical specification in the bidding document. There was also scope for evaluating additional documents in the manner prescribed under Clause 3 of the technical specification. The price evaluation was also to be done on the basis of "Total Contract Price Net of Input Tax Credit for GST" as quoted by the bidders in the summary price schedule. In addition to the same, the price quoted by the bidders towards five years of operation and maintenance was also to be considered for price evaluation of the bidders.

2.5 Pursuant to the technical evaluation, the financial bid was to be opened on 18.11.2022. On 16.11.2022, the petitioner was invited by opposite party no. 2 for opening of the price bid submitted against the subject tender and the petitioner was requested to send an authorised representative to attend the meeting on its behalf. As required, the petitioner nominated & deputed its personnel to attend the price bid.

2.6 Though opposite party no. 2 had recognized that the bid of the petitioner was the lowest to its counterparts and was announced as L1 by the functionaries of the opposite party no. 2, but there was an unusual delay in the issuance of Letter of Award (LOA) and while the petitioner was waiting for the LOA, the petitioner received an e-mail dated 29.12.2022 from opposite party no. 2 seeking the status of the Writ Petition being W.P.(C) No. 8342 of 2020 which was instituted by the petitioner against Delhi Jal Board in respect of a separate tender where the Delhi Jal Board had debarred the petitioner. In response to the same, the petitioner submitted its extensive reply on 06.01.2023 disclosing all the relevant facts and the status of the said case as required by opposite party no. 2, where it was indicated that the High Court of Delhi had concluded hearing of the matter and passed a judgment on 22.12.2022 by upholding the debarment of the farm, which is being challenged in the appeal and the same is pending. Although the writ petition was filed against the debarment order dated 15.10.2020 issued by the Delhi Jal Board for a period of three years from the date of issue of the letter, but by way of interim order the High Court of Delhi had passed an order that the order of debarment/ blacklisting passed by Delhi Jal Board shall not prevent the petitioner for contracts with other organizations till further orders.

2.7 On receipt of the letter dated 06.01.2023, opposite party no. 2 sought additional clarification vide its e-mail dated 20.01.2023 calling upon the petitioner to produce an order of a competent court of law for setting aside the order dated 22.12.2022 passed by the High Court of Delhi in W.P.(C) No. 8342 of 2020. In response to the same, the petitioner replied that an L.P.A No. 8 of 2023 was filed challenging the impugned judgement passed by the learned Single Judge in the writ petition. Without taking the same into consideration in its proper perspective, a communication was made to the petitioner on 16.06.2023 under Annexure-16 that the debarment of Delhi Jail Board still exists on that date, for which they are not in a position to consider the request made by the petitioner for issuance of LOA in its favour. Hence, this writ petition.

3. Mr. S.P. Mishra, learned Senior Advocate appearing along with Mr. Soumya Mishra, learned counsel for the petitioner vehemently contended that the work which had been allotted by Delhi Jal Board was completely distinct and separate from the nature of work to be undertaken by the opposite parties in the present bid document. The debarment order passed by Delhi Jal Board was confined to the said organisation and that has got nothing to do with any other organisation including the opposite parties. Therefore, the debarment of the petitioner by the Delhi Jal Board should not have stood on the way of issuance of LOA in its favour being a successful bidder. The opposite parties-organisation being a State instrumentality is to act in conformity with Article 14 vis-a-vis fairness in action. If the same has not been done, then the order so passed cannot be sustained in the eye of law. It is therefore contended that in exercise of power under judicial review, the Court may not sit as an appellate authority over the decision of the Government, but looking into the decision making process, it has to come to a conclusion that the same has not suffered from any vice of arbitrariness and unreasonableness within the meaning of Article 14 of the Constitution of India. Applying the same to the present context, the impugned letter under Annexure-16 cannot be sustained in the eye of law. It is further contended that giving of specific reason is one of the fundamentals of good administration. Transparency is the sine qua non of restraint on the abuse of powers vested on the competent authorities. Therefore, it puts a mandate to assign reason in support of the finding rendered. The requirement to record reasons emanates from the broad doctrine of fairness in the decision making process and salutary requirement of the principle of natural justice. The same having not been adhered to, the order impugned dated 10.06.2023 under Annexure-16 is liable to be quashed. To substantiate his contention, reliance has been placed on Food

 

Corporation of India v. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601; Tata Cellular v. Union of India, (1994) 6 SCC 651 and Master Marine Services (P) Ltd v. Metcalfe & Hodgkinson (P) Ltd. and another, (2005) 6 SCC 138.

4. Mr. Bhabani Shankar Das, learned counsel appearing on behalf of opposite parties no.1 and 2 vehemently justified the order dated 10.06.2023 under Annexure-16 and also contended that the request of the petitioner for consideration of its bid for placement of LOA was duly examined and could not be considered due to the banning order of Delhi Jal Board, which is in force, and thereby the petitioner, having been banned/ blacklisted, has been debarred from getting the LOA as per Clause-29 of the bid (commercial) which is a tender condition. Therefore, he seeks for dismissal of the writ petition. Reliance has also been placed on Clause-11.4 of the Guidelines on "Banning Business Dealing" attached with the Integrity Pact duly signed by the petitioner and also Clause-18 of the IFB. Thereby, contended that the opposite parties are well justified in passing the order impugned debarring the petitioner from getting the LOA in its favour. Since the debarment/ ban order passed by the Delhi Jal Board continues to exist on this date, the opposite parties are not in a position to consider the request made by the petitioner. Thereby, seeks for dismissal of the writ petition.

5. This Court heard Mr. S.P. Mishra, learned Senior Advocate appearing along with Mr. Soumya Mishra, learned counsel for the petitioner and Mr. B.S. Das, learned counsel appearing for opposite parties no.1 and 2 in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. Before delving into the merits of the case, it is apposite to refer to the relevant provisions of tender document:-

"SECTION-A

INVITATION FOR BIDS

"28. The Company reserves its rights to remove from the list of approved supplier/contractors or to ban business dealings, if any Agency has been found to have committed misconduct, and also to suspend business dealings pending investigation.

The procedure under which removal of an agency from the list of approved suppliers /contractors of suspension or banning of business dealings will be dealt may be referred on our web site as part of the tender documents.

29. Banned / suspended firm / suppliers and contractor etc. are not eligible for submission of quotation / offers against any type of tender during the period for which they have been suspended / banned for business dealings and if submitted, those quotations/ offers will be treated as unsolicited and will not be considered."

 

SECTION-B

ID DATA SHEET

Eligibility/ Qualification requirements for Bidders ITB 1.1, ITB 8.3 (b) & (c), ITB 22.5

The Bidder should fulfil the following eligibility criteria:-

A. Technical Eligibility Requirements:

The bidder having credentials of complying with the minimum eligibility as stipulated herein below in totality would be considered technically eligible.

The bidder may be opting to bid as a sole bidder, or a consortium constituted to maximum 3 (three) firms or companies through a Consortium Agreement. Experience of having completed similar work during last 10 (Ten) years ending last day of the month previous to the one in which NIT is invited and the same should be in operation for a minimum period of one year during last 10 (ten) years ending last day of the month previous to the one in which NIT is invited in the following manner:

(i) One (01) similar completed work with minimum installed RO plant capacity of 300 m3/hr and having feed flow rate to

individual RO steam not less

than 100 m3/hr.

(ii) Two (02) similar completed work with minimum installed RO plant capacity of 200 m3/hr and having feed flow rate to individual RO steam not less

than 100 m3/hr

Undertakings for Compliance with Company Law ITB 38

The Bidder must give declaration on the following:

a) 'Whether the proprietor / partner / Director of the firm/ company has any relationship within the meaning of Section 6 of the Companies Act 2013 with any of the employee working in the plants / units concerned or Director of SAIL, including its subsidiaries'.

b) 'Whether the person or team representing the firm is also representing any other firm participating against the tender'.

c) 'Whether Bidder is currently serving any banning orders issued by SAIL debarring them from carrying on business dealings with SAIL'.

The Bidder must also submit a "Non-collusive Tendering Certificate" against Cartelization as per Annexure-8 of ITB of SBD-2020 of this tender document.

• Non-disclosure! Incorrect disclosure of the above details factually by a firm either on its own while submitting its offer or upon enquiry at the option of SAIL during the scrutiny of its offer may invite penal action

against the firm, which may include rejection of the offer, suspension of business

dealings or both.

SECTION-D

CHECK LIST FOR SUBMISSION OF BID

14

A declaration stating that the firm is not black listed/ banned from business dealing by any organisation.

INTEGRITY PACT

"11.4. If business dealing with any Agency have been banned by the Central or State Government or any other Public Sector Enterprise, SAIL may on receipt of such information, without any further enquiry or investigation, issue an order banning business dealings with the Agency and its inter-connected Agencies. In event of receipt of information the procedure for banning in SAIL will still have to be followed though no investigation will be called for, and the banning period proposed should be co-terminus with the period of banning in the organisation which has issued the banning order but limited to the maximum period of banning as per the extant banning guidelines of SAIL. On completion of the banning period as per SAIL banning order, the Agency will be eligible for participating in any tenders in SAIL irrespective of banning status in the other organization."

7. It is not in dispute that the petitioner participated in the process of tender and was qualified both in technical and financial bid. Though he was declared as L1 but no LOA was issued in its favour. In addition to the Technical and Financial requirements/eligibility conditions contained in the IFB, ITB and Bid Data Sheet of the tender document, the bidders were required to make an undertaking/ declaration for compliance in accordance with Company Law. As per the Bid Data Sheet under Section-B, the bidder was required to give a declaration as to whether the proprietor / partner /Director of the firm/ company has any relationship within the meaning of Section 6 of the Companies Act, 2013 with any of the employee working in the plants / units concerned or Director of SAIL, including its subsidiaries. As per Clause-c, a declaration was to be given by the

 

bidder as to whether it is currently serving any banning orders issued by SAIL debarring it from carrying on business dealings with SAIL. As per the check list under Annexure-A of Section-D, at Sl. No. 14, the bidder has to give declaration stating that the firm is not blacklisted/ banned from business dealing by any organisation. As per Clause-29 of IFB, the banned suspended firm / suppliers and contractor etc. are not eligible for submission of quotation / offers against any type of tender during the period for which they have been suspended / banned for business dealings and if submitted, those quotations/ offers will be treated as unsolicited and will not be considered.

8. As per Sl. No. 14 of the check list under Annexure-A of Section-D, the bidder has to give declaration stating that the firm is not blacklisted/ banned from business dealing by "any" organisation.

The use of word "any" has its own meaning. Thereby, it requires according to the circumstances, it may mean "all", "each", "every", "some", "or one or more out of several". In other words, it can be construed that the firm is not blacklisted/ banned from business dealing by other organisations also.

If the meaning of "any" will be taken into consideration, then the word "any" is defined in judicial Dictionary of Words and Phrases (Fifth Edition by John S. James) as a word which excludes limitation or qualification.

As has been extracted from Black's Law Dictionary Fifth Edition and referred to in the case of Shri Balagansan Metals v. M.N. Shanmugam Chetty, AIR 1987 SC 1668, the word 'any' has the following meaning-

"Some, one out of many' an infinite number, one indiscriminately of whatever kind or quantity; or may be employed to indicate 'all or 'every' as well as 'some' or 'all'".

In Lucknow Development Authority v. M.K. Gupta, AIR 1994 SC 787, the apex Court observed that the use of word 'any' in the context it has been used in clause (a) indicates that it has been used in wider sense extending from one to all.

In Rane Narang v. Rama Narang, AIR, 2006 SC 1883, the apex Court observed that the word 'any' in Section 2 (b) of the Act indicates wide nature of the power under the Act.

In Associated Indian Mechanical P. Ltd v. W.B. Small Industries Development Corporation Ltd, (2007) 3 SCC 607 : AIR 2007 SC 788, the apex Court observed that the word 'any' used in the opening part of the Section 2 (c) of the Act is a word of very wide meaning and prima facie the use of it excludes limitation.

9. If these meaning will be taken into consideration, then if the petitioner has been blacklisted by any other organisation, it incurs a disqualification. However, as per Clause-c of the Bid Data Sheet, the petitioner had to declare whether it is currently serving any banning orders issued by SAIL debarring it from carrying

 

on business dealings with SAIL. Admittedly, no such debarment order has been passed by SAIL against the petitioner. Therefore, this clause has no effect for the purpose of consideration of debarring the petitioner from participating in the bid.

10. Clause-29 makes it very clear that banned/suspended firm/suppliers and contractor etc. are not eligible for submission of quotation/offers against any type of tender during the period for which they have been suspended/banned for business dealings and if submitted, those quotations/ offers will be treated as unsolicited and will not be considered.

10.1 There is no dispute before us that the petitioner has been debarred by the Delhi Jal Board for a period of three years from participating in any bid of the very same Board. It has also been clarified that it will not affect the petitioner to participate in any other organisation. The ban order issued by Delhi Jal Board dated 15.10.2020 under Anenxure-18 was in respect of work: 45 MGD Sewage Treatment Plant and other related associated/ allied appurtenant works on design, Build & Operated basis at Kondli, Delhi. A detailed reasoned order has been passed debarring the petitioner to participate directly or indirectly in any work/ tender/bid connected with Delhi Jal Board, which has been indicated at Clause-16 of the order. The contention was raised that even though such ban order has been issued, so far as Delhi Jal Board is concerned, but it has got its wide ramification in view of Clause-29 of IFB, which enlarges the scope that the petitioner is not eligible for submission of quotation/offers against any type of tender during the period for which they have been suspended/banned for business dealings.

10.2 More so, the ban order issued by the Delhi Jal Board had been challenged before the High Court of Delhi in W.P.(C) No. 8342 of 2020 and CM APPL No. 27045/2020, whereby an interim order was passed on 02.12.2021 protecting the interest of the petitioner. But subsequently such interim order has merged with the final order with the disposal of the writ petition vide judgment dated 22.12.2022, upholding the debarment order. However, the said judgment of the learned Single Judge has been challenged in LPA No. 8 of 2023 before the Division Bench of the High Court of Delhi.

11. A contention was raised on behalf of the petitioner that while passing the order impugned under Annexure-16 dated 10.06.2023, principle of natural justice was not complied with. Such contention is not correct, in view of the fact that, on receipt of certain information regarding debarment/ blacklisting of the petitioner by Delhi Jal Board, the petitioner was called upon, vide letter dated 29.12.2022 under Annexure-9, to clarify the position on return mail. In response to the same, the petitioner submitted a detailed reply on 06.01.2023 under Annexure-10, where reference was made to the office memorandum dated 02.11.2021 of the Department of Expenditure, Ministry of Finance, Government of India on debarment of firms from bidding. The petitioner had also given further reply on 30.03.2023 under Annexure-12 and on considering the same the order impugned having been passed, it cannot be stated that there was non-

 

compliance of the principle of natural justice.

12. However, emphasis was laid by the learned counsel for the petitioner on the interim order passed by High Court of Delhi, where the order of banning by Delhi Jal Board was challenged. The banning order dated 15.10.2020 of Delhi Jal Board made it clear the petitioner cannot participate in any bidding process in respect to the projects directly or indirectly connected with Delhi Jal Board. Therefore, the said prohibition cannot be extended to the projects where Delhi Jal Board does not concern. In view of the office memorandum dated 02.11.2021 issued by the Central Government, wherein it has been envisaged that every blacklisting order cannot be made the basis of debarring a farm across all Ministries/ Departments. Rather, it envisages a multi tied approach for debarring a farm across various departments. The office memorandum also provides that if an action of debarment across Ministries /Departments is to be taken, then the Ministry of Finance, Department of Expenditure, Government of India has to apply its mind as to whether such an action is justified or not by considering all the relevant papers and documents. This shows that debarment across all Ministries is not automatic and has to be done on a case-to-case basis and only by the said Ministry. Therefore, in absence of any such decision by the Ministry of Finance in terms of office memorandum dated 02.11.2021, the petitioner cannot be prevented from participating in the tenders invited by any other Government organizations except Delhi Jal Board.

13. Apart from the above, the bid was submitted by the petitioner prior to the final order passed by the High Court of Delhi in W.P.(C) No. 8342 of 2020. Therefore, it is well within its right as the bid was validly submitted by the petitioner and such bid cannot be refused to be looked into by the concerned agency, merely on the ground that Delhi Jal Board has debarred, as the same is not covered under the office memorandum dated 02.11.2021.

14. Mr. B.S. Das, learned counsel appearing on behalf of the opposite parties laid emphasis on Clause-29 of the IFB, but under the peculiar facts and circumstances, as discussed above, the petitioner should not have been debarred to participate in the bid as the present bid is no way connected with the tender floated by Delhi Jal Board. Even if there is a ban order passed by the Delhi Jal Board for a different nature of work, that cannot be equated or taken into consideration while considering the bid of the petitioner in the present case. Thereby, the decision making process, by which the petitioner has been debarred, cannot be sustained in the eye of law.

15. In Food Corporation of India (supra), the apex Court at paragraph-7 of the said judgment held as follows:-

“7. In contractual sphere as in all other State actions, the State and its instrumentalities have to conform to Art. 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority has possesses power only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action.' Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the state and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.”

16. In Tata Cellular (supra), the apex Court at paragraph-70 of the said judgment held as follows:-

“it cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government Bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to kept in view while accepting or refusing a tender.........”

17. In Master Marine Services (supra), the apex Court at paragraph-12 of the said judgment held that

“After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

18. Keeping in view the above mentioned judgments, it is made clear that transparency, being the sine qua non of restraint on abuse of powers vested on

 

the competent authorities, without assigning any reason in support of the findings rendered, it affects the doctrine of fairness in the decision making process.

19. Franz Schubert said-

“Reason is nothing but analysis of belief.” In Black’s Law Dictionary, reason has been defined as a-

“faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions.”

20. It means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe.

Therefore, reasons being a necessary concomitant to passing an order allowing the authority to discharge its duty in a meaningful manner either furnishing the same expressly or by necessary reference.

21. “Nihil quod est contra rationem est licitum” means as follows:

“nothing is permitted which is contrary to reason. It is the life of the law. Law is nothing but experience developed by reason and applied continually to further experience. What is inconsistent with and contrary to reason is not permitted in law and reason alone can make the laws obligatory and lasting.”

Therefore, recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is pertinent to note that a decision is apt to be better if the reasons for it are set out in writing because the reasons are then more likely to have been properly thought out. It is vital for the purpose of showing a person that he is receiving justice.

In Re: Racal Communications Ltd. (1980)2 All ER 634 (HL), it has been held that the giving of reasons facilitates the detection of errors of law by the court.

In Padfield v. Minister of Agriculture, Fisheries and Food (1968) 1 All E.R. 694, it has been held that a failure to give reasons may permit the Court to infer that the decision was reached by the reasons of an error in law.

22. In Union of India v. Mohan Lal Capoor, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and 12 conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned

 

applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken in Uma Charan v. State of Madhya Pradesh, AIR 1981 SC 1915.

23. In Travancore Rayons Ltd. v. The Union of India, AIR 1971 SC 862 it is observed by the apex Court that the necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, the Supreme Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, 13 uninfluenced by extraneous considerations of policy or expediency. The court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

24. In view of the aforesaid facts and circumstances, the order impugned dated 10.06.2023 under Annexure-16 cannot be sustained and accordingly the same is liable to be quashed and is hereby quashed. As a consequence thereof, the opposite parties are directed to take into consideration the bid submitted by the petitioner for award of work in question in its favour.

25. In the result, therefore, the writ petition stands allowed. But, however, in the circumstances of the case, there shall be no order as to costs.

………………………..

 