

(2019) 07 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 10276 Of 2019 (GM-TEN)

Voith Hydro Private Limited

APPELLANT

Vs

Karnataka Power Corporation Limited

RESPONDENT

Date of Decision : 30-07-2019

Acts Referred:

Karnataka Transparency Public Procurement Act, 1999 — Section 4(b), 4(c)
Constitution Of India, 1950 — Article 14, 226, 227

Citation : (2019) 07 KAR CK 0047

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Arun Kumar K, Sundararaman M V, Srinivasa Raghavan V, Ajay J Nandalike, S S Naganand, Sivaramakrishnan M S, Trishampathi Sen

Final Decision : Dismissed

Judgement

1. Mr.Arun Kumar K., learned Senior counsel for Mr.Sundaraman M.V., learned counsel for the petitioner.

Mr.Srinivasa Raghavan V., Learned Senior Counsel for Mr.Ajay J.Nandalike, learned counsel for respondent No.1.

Mr.S.S.Naganand, Learned Senior Counsel for Mr.Sivaramakirshnan M.S., learned counsel for respondent No.2.

2. In this petition under Articles 226 & 227 of the Constitution of India, the petitioner inter alia seeks a writ of certiorari for quashment of letter of award dated 28.11.2018 issued by respondent No.1-Company in favour of respondent No.2 as well as a writ of mandamus to respondent No.1 to award renovation and modernization of generating units of Shivasamudram Power House through open competitive tendering process in accordance with Karnataka Transparency Public Procurement Act, 1999 (hereinafter referred to as 'the Act' for short). In order to appreciate the petitioner's grievance, few relevant facts need mention, which are stated hereinafter.

3. The petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of design, manufacturing, supplying and erection and commissioning of new hydro power plants including refurbishment renovation and upgradation of old hydro power plants. The Karnataka Power Corporation Limited (hereinafter referred to as 'the Corporation' for short) in the year 2015, decided to explore the possibility of renovation and modernization of Shivasamudram Hydro Power Station. The aforesaid power station is run of the river project in Cauvery River Basin, having an installed capacity of 42 MW comprising of 6 units of 3 MW and 4 units of 6MW. The Power Station mainly consists of two parts viz., turbine and generator. The turbine rotates on account of force of water and the generator coupled to the turbine rotates resulting in the generation of electricity. The generators and turbines were installed in the Power Station between 1920-1938. The renovation and modernization of the said units was undertaken during 2000-2004.

4. The Corporation decided to undertake the renovation and modernization works based on deterioration of equipments due to long service and the problems faced in the operation and maintenance of units. The Corporation prepared a scope of renovation and modernization works on the equipments indicating the problems in the equipments to obtain budgetary offers for finalizing the scope of works and cost estimates. The Respondent therefore sent letters of request seeking budgetary proposals from M/s. Aruna Electricals (P) Limited, M/s. BHEL, Petitioner and respondent No.2, who are reputed turbine and generator manufacturers for Hydel Projects. M/s. Aruna Electricals Private Limited did not respond to the communications sent by the respondent No.1, whereas, M/s. BHEL informed the Corporation that since the units are of non BHEL make, it does not have any design data and drawings and therefore, is not in a position to furnish budgetary offer. The respondent No.2 vide email dated 01.12.2015 sought additional time for submission of budgetary proposal and vide email dated 28.12.2015 replied that its engineers will visit the site during the machines are in shut down condition and it will submit the budgetary offer. The Petitioner deputed its expert to the station for assessing the conditions if the unit had prepared a detailed report. Thereafter a budgetary proposal was submitted on behalf of the petitioner on 05.01.2016 i.e., nearly after a period of 15 months from the date of communication sent by the Corporation. In the detailed scope of work, the petitioner stated that it could carry out the reclamation work of runners, runner cone, draft tube etc., only on the basis of templates provided by Karnataka Power Corporation Limited. It was further submitted that so far as Labyrinths are concerned the Corporation should provide the spare labyrinths. The petitioner restricted its offer by stating that scope was based visual inspection and it did not have any internal drawings of the machines and the actual condition could be assessed through re-inspection after opening of the machine. It was also stated that if any other equipment in the power house such as automation, control and protection does not function properly the petitioner would not be responsible.

5. The Contract Management Group of the Corporation held its meeting on 18.06.2016 and recommended to incorporate the cost benefit analysis of Research and Maintenance works in detailed project report and started the process of budgetary approval on the basis of the same. It was recommended to place the issue before the Technical Advisory Committee and the Technical Committee of the Corporation. The Technical Advisory Committee consisted of Mr.Rangarajan, retired Executive Director of KPCL and currently Technical Advisor of Karnataka Neeravari Nigam Ltd., and Krishna Bhagya Jala Nigam, Secretary Irrigation Department, Government of Karnataka, the Director Technical of KPCL, the Director General of Central Power Research Institute, which is an Autonomous Society functioning under the aegis of Ministry of Power, The Managing Director, Finance Director and Technical Director of the Corporation. The detailed project report was placed before the meeting of the Technical Advisory Committee held on 17.09.2016, in which it was noted that there were frequent problems in the units due to turbines and auxiliaries and several components such as breakers, governors and excitation system are required. The Committee after taking into account the relevant aspects, the detailed scope of work under repair and maintenance works, approved the feasibility of replacing turbines. Accordingly, a recommendation was made for repair and replacement of turbine and allied items as part of repair and maintenance of power house in a phased manner.

6. The Technical Committee also recommended exploring option of replacement of turbines and therefore, it was necessary to obtain fresh budgetary offers accordingly, communications dated 20.09.2016 were sent to petitioner, respondent No.2 and M/s.BHEL. The respondent No.2 being the Original Equipment Manufacturer submitted its bid on 23.09.2016. The Bharat Heavy Electronics Limited did not respond to the letter. The petitioner submitted its budgetary offer after a gap of more than 18 months, on 12.01.2018. After receipt of the budgetary offers, the contract management in its meeting held on 19.04.2017, deliberated on the issue in detail and noted that refurnishment of turbine will result in expanding the life of the power station only by 10-15 years, whereas, replacement of turbine will result in increase of life by 25-30 years. The Contract Management Group recommended approval to the detailed project report prepared by respondent No.2 and recommended replacement of all turbines. However, the Contract Management Group was of the opinion that it would be better to examine the efficiency of existing turbine and decided the matter to be placed before Technical Advisory Committee. Thereupon, communications were sent to IIT Roorkee, Fluid Control Research Institute, Central Water and Power Research Corporation calling for techno commercial offers to examine the efficiency of existing turbines and auxiliaries before complete replacement of the parts.

7. The Technical Advisory Committee in its meeting held on 14.03.2018 took into account the reports of IIT Roorkee and examined the entire scope of work and recommended that it was prudent to get the repair and maintenance work

executed by Original Equipment Manufacturer. The Corporation requested the respondent No.2 for an offer vide letter dated 07.09.2018, the respondent No.2 sent an offer of Rs.115,24,75,000/- only. The offer of respondent No.2 was along with the detailed project report and recommendations of the Contract Management Group, Technical Advisory Committee and Technical Committee were placed before the Board of the Corporation. The Board in its meeting held on 25.08.2018 decided to award the contract to respondent No.2 for sum of Rs.125 Crores excluding taxes and duties. Thereafter, the Corporation negotiated with respondent No.2 and got the price further reduced to Rs.114,75,15,000/- only, which is lesser than the amount quoted by the petitioner by about Rs.6 Crores. The respondent No.2 furnished the Bank Guarantee on 14.12.2018 and a contract was executed on 31.01.2019. Thereafter, this petition has been filed on 02.03.2019 by the petitioner seeking the reliefs as stated supra.

8. Learned Senior Counsel for the petitioner submitted that in Karnataka Transparency in Public Procurements Act, 1999 is inter alia enacted to provide for transparency in public procurement of goods and services by streamlining for procedure procurements by entities owned and controlled by the Government. It is further submitted that Letter of Acceptance was issued by respondent No.1 in favour of respondent No.2 without inviting any tenders in violation of the provisions of the Act. It is also argued that the aforesaid action of respondent No.1 is arbitrary, whimsical, capricious and irrational. It is also argued that it is well settled in law that contracts by instrumentality of the State should be granted by open competitive tenders, failing which the action of respondent No.1 would constitute infraction of Article 14 of the Constitution of India. It is further submitted that respondent No.1 acted in a hasty and malafide manner in issuing Letter of Acceptance in favour of respondent No.2 and therefore, the contract awarded to respondent No.2 is liable to be quashed.

9. On the other hand, Learned Senior Counsel for respondent No.1 has invited the attention of this Court to Sections 4(b) and 4(c) of the Act and has submitted that the action taken by respondent No.1 is in consonance with the provisions of the Act. It is further submitted that decision has been taken on the basis of recommendations made by Contract Management Group and Technical Assessment Committee by the Board. No malafides has been attributed by the petitioner to respondent No.1. It is further submitted that it is not necessary for the State to float tenders in all cases and State may enter into direct negotiations with the party without inviting tenders. It is further submitted that while awarding the contract to respondent No.2, the respondent No.1 has acted in a fair manner and has awarded the contract in question to the Original Equipment Manufacturer. It is also argued that non floating of tenders cannot be deemed to be arbitrary exercise of powers and no interference in exercise of powers of judicial review is called for in the fact situation of the case as no element of public interest is involved.

10. It is further submitted that the action of respondent No.1 in awarding the

contract to respondent No.2 cannot be termed either as arbitrary or unreasonable. In support of aforesaid submissions, reliance has been placed on decision of the Supreme Court in 'RAMANA DAYARAM SHETTY VS. THE INTERNATIONAL AIRPORT AUTHORITY OF INDIA AND ORS.', AIR 1979 SC 1628, 'SACHIDANAND PANDEY & ANR. VS. STATE OF WEST BENGAL & ORS.', (1987) 2 SCC 295, 'G.D.ZALANI & ANR. VS. UNION OF INDIA & ORS. 1995 SUPP (2) SCC 512, 'M.P.OIL EXTRACTION AND ANR. VS. STATE OF M.P. & ORS. (1997) 7 SCC 592, 'VILLIANUR IYARKKAI PADUKAPPU MAIYAM VS. UNION OF INDIA & ORS.', (2009) 7 SCC 561, MUNICIPAL CORPORATION UJJAIN & ANR. VS. BVG INDIA LTD. & ORS.', (2018) 5 SCC 462, 'RAUNAQQ INTERNATIONAL LTD. VS. IVR CONSTRUCTION LTD. & ORS.', (1999) 1 SCC 492, 'RELIANCE TELECOM LTD. & ANR. VS. UNION OF INDIA & ANR.', (2017) 4 SCC 269, 'MONTECARLO LTD. VS. NATIONAL THERMAL POWER CORPORATION LTD.', (2016) 15 SCC 272, 'MICHIGAN RUBBER (INDIA) LTD. VS. STATE OF KARNATAKA & ORS.', (2012) 8 SCC 216, 'JAGDISH MANDAL VS. STATE OF ORISSA & ORS.', (2007) 14 SCC 517, 'ASIA FOUNDATION & COSNTRUCTION LTD. VS. TRAFALGAR HOUSE CONSTRUCTION (I) LTD.', (1997) 1 SCC 738, 'SPANCO TELESYSTEMS AND SOLUTIONS LTD. VS. STATE OF KARNATAKA & ORS.', 2008 (2) KCCR 788, 'AFCONS INFRASTRUCTURE LTD. VS. NAGPUR METRO RAIL CORPORATION LTD. & ANR.', (2016) 16 SCC 818, 'TEJAS CONSTRUCTIONS & INFRASTRUCTURE PVT. LTD. VS. MUNICIPAL COUNCIL SENDHWA & ANR.', (2012) 6 SCC 464. It is also urged that in the rejoinder no assertion is made by the petitioner that respondent No.2 is not the Original Equipment Manufacturer and the various difficulties pointed out in the statement of objections by not obtaining the equipments from the Original Equipment Manufacturer have not been controverted in the rejoinder. Attention of this Court has also been invited to averments made in paras 25 to 32 and it has been pointed out that the aforesaid averments have not been controverted by the petitioner.

11. Learned Senior Counsel for respondent No.2 has pointed out that there is no pleading in the writ petition with regard to violation of provisions of Sections 4(b) and 4(c) of the Act and that the contract has been awarded in great haste. It is further submitted that a decision has been taken by the Technical Advisory Committee and the Technical Committee in a systematic and orderly manner and the aforesaid committees have enough data to make an informed decision. It is further submitted that the respondent No.2 has already commenced the work in the month of January and a period of seven months have already expired. It is also pointed out that as against the time limit stipulated by the petitioner of 40 months, the respondent No.2 has undertaken to complete the work within eight months and substantial progress has been made. It is further submitted that the requirement contained in the proviso to Section 4(b) of the Act is required to be complied with when the goods and services are available on a single source and not otherwise. It is also submitted that even requirement contained in the proviso to Section 4(b) of the Act has been complied with in the instant case though it was not necessary to do so. It is submitted that there is enough

material on record to show that respondent No.2 is the Original Equipment Manufacturer and the petitioners rate in any case are higher than that of respondent No.2. It is further submitted that in NSOFT supra, in para 17 it was observed that requirement contained in proviso to Section 4(b) were not complied with as the Committee was not a Committee of experts. Therefore, the aforesaid decision is distinguishable and is not applicable in the obtaining factual matrix of the case. It is further submitted that the submission that the proviso only applies where goods or services are available from a single source has not been noticed in NSOFT supra. It is also argued that in the rejoinder, there is no assertion that respondent No.2 is an Original Equipment Manufacturer. It is also urged that mere non reference to a provision would not invalidate an action if the power to do the act exists in the statutory provision.

12. By way of rejoinder reply, learned Senior Counsel for the petitioner submitted that for replacement of generators, the tenders were invited by respondent No.1. It is further submitted that on the basis of the recommendations made by Technical Advisory Committee and Technical Committee, decision was taken to replace the turbines. It is also pointed out that the Technical Advisory Committee in its meeting held on 17.09.2016 had pointed out that the turbines are available on competitive basis. It is also submitted that as soon as decision was taken for replacement of turbine within a period of three days the respondent No.2 submitted its second budgetary proposal i.e., on 23.09.2016. It is also urged that even though the petitioner may not have submitted its budgetary proposal, yet the petitioner cannot be deprived from contending that the respondent No.1 ought to have invited tenders and the contract has been awarded to respondent No.2 without inviting tenders. It is also submitted that no material was placed by respondent No.2 to show that it has acquired intellectual rights in respect of M/s Boving i.e., the Original Equipment Manufacturers. It is also urged that in the fact situation of the case, since, a decision was taken to replace the turbine, therefore, the question of procurement of the same from the Original Equipment Manufacturer does not arise.

13. It is also urged that validity of the order has to be adjudged on the grounds, on which it is passed and when the statute provides a mode of doing a particular thing in a particular way, that thing has to be done in that way alone and all other modes of performance in any other manner are prohibited. It is also argued that in the decisions taken by the Technical Advisory Committee as well as Technical Committee, there is no reference to either Section 4(b) or Section 4(c) of the Act. It is also pointed out that no cogent reasons have been recorded by the Board for procurement of the material from Original Equipment Manufacturer. In support of aforesaid submissions, reliance has been placed on decisions of Supreme Court in 'T.P.SENKUMAR VS. UNION OF INDIA', (2017) 6 SCC 801, 'STATE OF JHARKHAND & ORS. VS. AMBAY CEMENTS & ANR.', (2005) 1 SCC 368 and 'NSOFT (INDIA) SERVICE PRIVATE LIMITED VS. BESCOM LTD. & ORS.', MANU/KA/0272/2008.

14. Before proceeding further, few well settled legal principles may be noticed. It is well settled in law that while distributing a State largesse; the normal method is auction or calling for tenders. However, non floating of tenders or not holding public auction would not in all cases be deemed to be result of exercise of executive power in an arbitrary manner. Holding of public auction or inviting tenders is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule. The departure from the rule must be shown to be rational and not suggestive of discrimination. It is equally well settled legal proposition that in the matter of policy decision and economy test, the scope of judicial review is very limited. Unless the decision is shown to be contrary to any provision of the constitution, the court would not interfere with an economic decision taken by the State. The Government is entitled to take pragmatic decisions and policy decisions, which may be necessary or called for under privileged peculiar circumstances. The wisdom and advisability of a decision is not ordinarily to enable judicial review and in the matters relating to economic issues, the Government has while taking a decision, right to trial and error as long as trial and error are bonafide and within the limits of the authority. Normally, there is a presumption that Government action is reasonable and is in public interest and it is for the party alleging its validity to show that it is wanting in reasonableness or is not informed with public interest. The said burden is a heavy one and has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or against public interest. [SEE: 'NETAI BAGH VS STATE OF W.B', (2000) 8 SCC 262, 'VILLIANUR IYARKKAI PADUKAPPU MAIYAM VS. UNION OF INDIA', (2009) 7 SCC 561 and 'PATHAN MOHAMMED SULAIMAN REHMAT KHAN VS. STATE OF GUJARAT AND ORS.', (2014) 4 SCC 156].

15. The Hon'ble Supreme Court in 'MICHIGAN RUBBER (INDIA) LIMITED', supra, after taking note of decisions of the Hon'ble Supreme Court and in 'ASSOCIATION OF REGISTRATION PLATES Vs. UNION OF INDIA', (2005) 1 SCC 679, culled out the legal principles and held that basic requirement of Article 14 is fairness in action by the State and non-arbitrariness in essence and substance is the heart beat of fairplay and these actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. It was further held that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authorities is found to be malicious and a misuse of statutory powers, interference by the Courts is not warranted. It is also held that if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, interference by Court is very restrictive, since no person can claim a fundamental right to carry on the business.

16. In the celebrated decision of RAUNAQ INTERNATIONAL LTD., VS. I.V.R. CONSTRUCTION LTD., (1999) 1 SCC 492, it has been held as follows:

"the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount importance are commercial considerations. These would be : (1) The price at which the other side is willing to do the work;

(2) Whether the goods or services offered are of the requisite specifications; (3) Whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfill the requirements of the job is also important; (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality; (5) past experience of the tenderer, and whether he has successfully completed similar work earlier; (6) time which will be taken to deliver the goods or services; and often (7) the ability of the tenderer to take follow up action, rectify defects or to give post contract services. Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

What are these elements of public interest ? (1) Public money would be expended for the purposes of the contract; (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work - thus involving larger outlays or public money and delaying the availability of services, facilities or goods. e.g., A delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

When a writ petition is filed in the High court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating

the cost far more than any saving which the court Would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest or the transaction is entered into mala fide. The court should not intervene under Article 226 in disputes between two rival tenderers."

Similar view has been taken in 'MASTER MARINE SERVICES P LTD., VS. METCALFE AND HODGKINSON (P) LTD.,', (2005) 6 SCC 138 and 'MEERUT DEVELOPMENT AUTHORITY VS. ASSN. OF MANAGEMENT STUDIES', (2009) 6 SCC 171.

17. In MICHEGAN RUBBER supra, the Hon'ble Supreme Court formulated the following two questions, which the Court should pose itself before invoking the power of judicial review, namely:

(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"? and

(ii) Whether the public interest is affected?

It was accordingly held that if answers to the above questions are in the negative, then there should be no interference under Article 226 of the Constitution of India.

18. In the backdrop of aforesaid well settled legal position, facts of the case in hand may be examined. Initially the Corporation had invited budgetary proposals on 31.10.2015 for renovation and modernization of the equipments and sent requests to various manufacturers including the petitioner. The petitioner submitted the budgetary proposal on 05.01.2016. Thereafter, the matter was considered by the Contract Management Group in its meeting held on 18.06.2016 and the matter was recommended to be placed before the Technical Advisory Committee. On 17.09.2016, the Technical Advisory Committee held its meeting and observed that it is desirable to explore the feasibility of replacing the turbine on one to one basis as repairs at this stage may not be cost effective. However, it was further noted that turbines are available on competitive price basis and may ensure longer life to the plant. Accordingly, a recommendation was made to place the matter before the Technical Committee. The Technical Committee recommended that the detailed project report with regard to repair and replacement of turbines and allied items as part of renovation and modernization of power house in a phased manner suitably modified and submitted to KARC for its approval. Thereafter, the Corporation sent requests on 20.09.2016 to send budgetary proposals for replacement of turbines with latest designs, high efficient turbines and complete governing and excitation system. The respondent No.2 within three days submitted its proposal on 23.09.2016, whereas, the petitioner did not respond. Thus, from the above narration of facts,

it is evident that the Corporation had invited budgetary proposals for replacement of turbines and therefore, the question of obtaining the same from the Original Equipment Manufacturer pales into insignificance. However, the respondent No.1 has acted bonafide on the basis of the opinion given by the Technical Advisory Committee as well as the Technical Committee and has awarded the contract to respondent No.2 for a sum of Rs.114,75,15,000/-, which is lesser than by an amount of Rs.6 Crores than the offer of the petitioner, in respect of the renovation and modernization of Shivasamudram project, which was set up a century ago. Thus, the aforesaid decision has been taken for procurement of turbines with latest designs, high efficient turbines and complete governing and excitation system in public interest and in a bonafide manner, which does not call for any interference in the fact situation of the case on the ground that respondent No.1 could have invited the tenders, that too at the instance of the petitioner who had participated in the process and had quoted a higher price than respondent No.2 approximately to the tune of Rs.6 Crores. Therefore, the respondent No.1 in view of the opinion given by the Technical Advisory Committee ought to have invited the tenders for procurement and replacement of turbines with latest designs, high efficient turbines and complete governing and excitation system.

19. It is pertinent to mention here that the respondent No.2 has asserted that it is the Original Equipment Manufacturer. The aforesaid fact has not been denied by the petitioner in the rejoinder. The respondent No.2 has produced the material before the Technical Advisory Committee as well as the Technical Committee in support of his stand that it is the Original Equipment Manufacturer and on the basis of the aforesaid material, the Technical Committee has formed an opinion that respondent No.2 is the Original Equipment Manufacturer. This Court in exercise of powers under Article 226 of the Constitution of India cannot sit in appeal over the decision taken by the committee of experts and substitute its decision.

Therefore, it cannot be said that respondent No.2 is not the Original Equipment Manufacturer.

20. So far as the submission made by learned counsel for the petitioner with regard to violation of Sections 4(b) and 4(c) of the Act is concerned, the relevant provision is extracted below:

"4. Exceptions to applicability- The provisions of Chapter II shall not apply to Procurement of goods and services-

(a) xxxxxxxx

(b) Where the goods or services are available from a single source or where a particular supplier or contractor has exclusive rights in respect of the goods or services or construction work and no reasonable alternatives or substitutes exist. Provided that for the purpose of this clause there shall be a committee of three experts consisting of one technical representative of the procuring entity one

technical representative of the Government organization dealing with similar procurement and one representative from a reputed Academic or Research Institution or Non-Commercial Institution having expertise in such line to examine and declare that the goods or services are available from a single source;

(c) Where the procuring entity having procured goods, services or technology from a supplier or contractor determines that additional supplies must be procured from the same supplier or contractor for reasons of standardization and compatibility with the existing goods service or technology;"

21. From careful scrutiny of Section 4(b) of the Act, it is evident that the requirement contained in the proviso is required to be fulfilled when the goods and services are available from a single source. Therefore, in the instant case, it is not necessary to comply with requirement contained in the proviso. Even assuming that the aforesaid requirement is required to be complied with, then also from the constitution of the Technical Advisory Committee, it is evident that the aforesaid requirement has been complied with, which is evident from the constitution of the Technical Advisory Committee. In the absence of any factual foundation laid in the pleading and in the absence of the facts to establish the fact as to in which manner the provisions of Sections 4(b) and 4(c) of the Act have been violated, it is not necessary to examine the contention by the petitioner that while awarding the contract in question, the respondent No.1 has violated the provisions of Section 4(b) and 4(c) of the Act. For this reason also it is not necessary for this court to examine the aforesaid issue. It is trite law that this Court will not interfere in exercise of powers of judicial review merely on making out of some legal point or irregularity in the process in the absence of element of public interest involved in the matter.

22. However, at the cost of repetition, it may be reiterated that this Court in exercise of powers of judicial review under Article 226 of the Constitution of India would not interfere with the decision of the Authority even if a procedural aberration or error is made out and on making out of a legal point. It is equally well settled legal proposition that the power of judicial review will not be invoked to protect private interest at the cost of public interest. In the peculiar facts of the case, for the following reasons/grounds, no relief can be granted to the petitioner:

(1) The petitioner was associated with the process of grant of contract without inviting tenders and had knowledge about the same since, 2016, yet the petitioner waited till the contract was awarded to respondent No.2 on 31.01.2019 and a work order was issued to it on 04.02.2019. The instant writ petition has been filed before this Court on 02.03.2019.

(2) No allegations of malafides either against the officers of respondent No.1 or members of Technical Advisory Committee or technical committee have been made.

(3) If the offer of the petitioner is accepted, it would take eight years to complete the contract, whereas respondent No.2 has undertaken to complete the work in three years and four months.

(4) The contract has been awarded to respondent No.2 for a sum of Rs.114,75,15,000/- whereas, the petitioner's offer is higher i.e., Rs.121,43,15,556/-. In other words the petitioners offer is higher by Rs.6 Crores than the offer of respondent No.2, which would be a loss to public exchequer.

(5) The respondent No.2 has already commenced the contract and nearly six months have passed. The respondent No.2 is under an obligation to complete the work within a period of three years and four months and if at this stage, interference is made, the public interest would suffer.

(6) The respondent No.1 has pleaded various problems in obtaining renovation and maintenance works and has stated that design of the turbine is proprietary intellectual right of the turbine manufacturers and since the machine drawings are not available, the actual work of design of parts can only start after power station is shut down and turbines are opened, which results in loss of generation of power. The aforesaid problems have not been controverted by the petitioner by filing a rejoinder. The offer of the petitioner was conditional and contingent.

23. Thus, the respondent No.1 while taking a decision to award the contract has taken into account the fact that goods or services offered are of requisite specifications and the person tendering has the ability to deliver the goods and services as per specifications, as well as the time which will be taken to deliver the goods and services. The respondent No.1 has also taken into account the public interest viz., timely fulfillment of the contract so that the services become available to the public expeditiously. The dispute in the instant case appears to be between the rival tenderers and therefore, in absence of public interest involved in the litigation, this court is not inclined to exercise the powers of judicial review and to interfere with the matter.

In view of preceding analysis, I do not find merit in this writ petition. The same fails and is hereby dismissed.