
(2001) 05 CAL CK 0006
In the Calcutta High Court

Case No : A.P.O.T. No's. 41/77 of 2001 and W.P. No. 791 of 2000

West Bengal State Electricity Board

APPELLANT

Vs

Shanska International Civil Engineering AB.

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Citation : (2002) 1 ILR (Cal) 1

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Anindya Kr. Mitra, for W.B.S.E.B, for the Appellant; S.K. Kapoor, for Skanska International, S.N. Mukherjee and Ajoy Gupta, for Taisei Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, C.J.—Both these Appeals arise out of the same common judgment dated December 21, 2000 passed by a Learned Single Judge of this Court, therefore they are disposed of by this common order.

2. For convenient disposal of both these Appeals the facts given in the Appeal No. A.P.O.T. 41 of 2001, G.A. No. 259 of .2001 filed by the West Bengal State Electricity Board arising out of W.P. No. 791 of 2000 filed by Skanska International Civil Engineering AB and Ors. are taken into consideration.

3. The subject matter of this project has a cheque history and this is a second round of litigation arising out of the same project.

4. Brief facts which are necessary for disposal of this Appeal are: in order to meet the high demand of energy and power in the West Bengal as well as in the entire eastern region of the Country the West Bengal State Electricity Board (hereinafter referred to as the Board) formulated "Purulia Pumped Storage Project" (hereinafter referred to as the "Project") at the estimated cost of Rs. 3,188.09 crores with an installed capacity of 900 M.W. For the funding of this Project the Central Government entered into a loan agreement with the Overseas

Economic Co-operative Fund now Japan Bank of International Corporation (hereinafter referred to as the "Bank"). The Project was to be completed in six Lots and in the present controversy we are concerned with the Lot no, 4 which relates to main civil works. After necessary formalities of inviting the tenders and short listing the three prospective bidders were short-listed. These three Bidders: (1) Patel Engineering Company Limited, (2) M/s. Taisei Corporation and (3) Skanska International Civil Engineering AB. They submitted three bids along with the summary sheets. On September 8, 1999 the bids were opened in the presence of the representatives of the bidders and the same were read out. The bid of Patel Engineering Company was Rs. 647.90 crores, while the bids of Taisel Corporation and Skanska International Civil Engineering AB(Writ-Petitioner) were Rs. 691.22 crores and Rs. 726.50 crores respectively. So far as the bid of Patel Engineering Company Limited is concerned, it was found that there was "a repetitive systematic computer typographical transmission failure" and that was sought to be corrected by them. That was not accepted by the Board and their bid was rejected. Therefore, they filed a writ petition before this Court which came to be registered as M.A.T. No. 523 of 200(COT No. 522 of 2000). This was allowed by the Learned Single Judge and order of the Board was set aside; Aggrieved against that order an Appeal was preferred by the State Electricity Board which came to be registered as M.A.T. No. 398 of 2000 (CAN No. 1089 of 2000) and the cross-objection was filed, appear and cross-objection was dismissed on April 4, 2000 by the Division Bench of this Court. Aggrieved against that order the matter was taken up by the Board with the Apex Court and it came to be registered as Civil Appeal No. 4921 of 2000 and this was disposed of by the Hon"ble Supreme Court on January 15, 2001 reversing the order of the Division Bench of this Court. The matter came back to the Board and in the field only two bidders remained i.e. Taisel Corporation and Skanska International Civil Engineering AB. (It may also be relevant to mention that the Petitioner M/s. Skanska was also a party before the Apex Court in Patel Engineering Case). The matter was again taken up by the Board that whose bids should be accepted. While examining the bid of both these parties M/s. Skanska could sense that their bid is not likely to be accepted as per paper report, therefore, they filed a writ petition before the Court which came to be registered as W.P. No. 791 of 2000. It is alleged that on September 8, 1999 it was noticed by the writ Petitioner that for the Civil Work they are supposed to give their unit price in the schedule mentioned in the bid documents. They submitted two copies of the details regarding sub-schedule C-3 and a copy of the sub-schedule C-2-was inadvertently omitted. Though it was submitted that the sub-schedule C-2 was contained in the diskette, according to the Petitioner, the diskette contained entire Bill of Quantities including missed out sub-schedule C-2 and was complete in all respects. The Petitioner sought to supply the sub-schedule C-2 with the filled up their unit price on September 17, 1999 to the Board but no letter was received from the Board. Therefore, they wrote to the Board on December 23, 1999 requesting them to confirm their revised price bid which is in order or not, but no reply was received from Respondents. Then on January 15, 2000 they

came across a news item published in the Economic Times that the Board had rejected the bid of the writ-Petitioner (SKANSKA) being non-responsive. Then another communication was sent on March 11, 2000 but without any result. Hence the Petitioner filed the present writ petition on March 21, 2000. Then on March 27, 2000 it was informed by the Board at the time of hearing in Court that the price bid of the Petitioner was found to be non-responsive, but the decision had not been formally communicated to the Petitioner. Justice Bhattacharya on March 27, 2000 (in connection with W.P. No. 791 of 2000) directed that the Board shall communicate the reasons for rejection of the bid to the Petitioner within one week and also directed the Petitioner to implead the other contending bidders party to the writ: petition. Accordingly the writ petition was amended and the parties were impleaded including M/s. Taisel Corporation. The Board on April 3, 2000 by their letter informed the reasons for rejection of M/s. Skanska bid being non-responsive, which is the subject matter of the writ petition which reads as under:

WEST BENGAL STATE ELECTRICITY BOARD OFFICE OF THE PROJECT MANAGER,
PURULIA PUMPED STORAGE PROJECT A-BLOCK, 5TH FLOOR, VIDYUT BHABAN,
SALT LAKE CITY, CALCUTTA-700 091.

PHONE NO- 91-33-359 1951 FAX NO-91-33-358 1533,

Reference No. ACE/PPSP/ICB/C8

Dated 03.04.2000

To M/s. Skanska International Civil Engineering AB yendevagen-89 S-182 25
Danderyd, Sweden.

Fax- 0046 8 753 8911/011 647 2667 Sub: Writ Petition No. 791/2000 Skanska International Civil Engineering AB VEERSUS W B S E BOARD and Ors. Dear Sirs, In view of the directions given by the Hon"ble High Court in the above matter on 27th March, 2000 we are communicating the reasons for holding that your bid is not responsive and is liable to rejection.

1. On 8th September, 1999 bids of all Bidders were opened. You submitted the bid, one original and four copies, ail in bound form. On scrutiny, it was found that your bid was incomplete. You had not submitted any bid/rates for Sub-schedule C-2, i.e. Lower Dam. In this connection please refer to the following bid conditions:

a) Clause 9-J of AITB and Clause 20.3 of ITB, which enjoin that bid shall contain on omission.

b) Clause 28.2 of ITB, which provides that Bid, which is incomplete or does not include the works covered by the specification, is a material deviation and therefore, is not substantially responsive.

Clause 28.2 provided that if a bid is not substantially responsive, it will be rejected by the Employer and the Bidder will not be allowed subsequently to

make the same responsive by correction. Further, it may be noted that under the said Clause 28-3 "any bid which is incomplete, obscure or irregular or only for a part of the Schedule, is liable to rejection".

a) Under Clause 31.3 of ITB, Bids shall be deemed to be under consideration immediately after opening of bid until the contract is signed. Bids were opened on 8th September, 1999. While the bids were under consideration, you started writing letters from 17th September, 1999, 23rd December, 1999 and 10th January, 2000, although under Clause 31-3 of ITB all the bidders have been advised to refrain from contracting by any means, any Employer's personnel and the Consultant on matter relating to the Bids under study. You were present at the time of opening of bids on 8th September, 1999 and you had written letters, subsequent to opening of the bids, addressed to Employer's personnel (Project Manager of WB.SEB), which were on matters relating to the bids under study. There has been violation of Clause 31.3 of ITB on your" part. Those subsequent letters written by you on your own without being asked by the Employer cannot be taken into consideration.

b) On 17th September, 1999 you submitted one set of print out of Sub-Schedule C-2, although not entitled to do so under Clause 31.3. of ITB. In any event, print out sent by you on 17th September, 1999 has been found not to be a Print out of the: diskette submitted by you along with the original Bid on 8th September, 1999. It is, therefore, not genuine or correct, print out of the original diskette.

c) Bid as submitted by you on 8th September, 1999 cannot be modified by you after opening of bids. Please refer to Clause 9N of AITB. By sending the print out on 17th September, you tried to modify the original bid as submitted and opened on 8th September, 1999 and this is in violation of Clause 9N of AITB.

d) The original bid do not contain the total price of all the items of work mentioned in Bill of quantities.

e) We also refer to Clause 16.1 of ITB which prohibits any amendment/ modification to all the bids on your own. Your attempt at modification/ amendment of the original bid, subsequent to opening of the bid, is in violation of the said clause.

3. Not only your bid is non-responsive but you have also acted in violation of various conditions of bid as enumerated above which make your bid liable to rejection.

The stage for communication of the decision regarding acceptance or rejection has not yet been reached. We are, however, communicating the above reasons as per direction of the Hon"ble High Court.

Yours faithfully, Sd/ Rajeev Dube SECRETARY

Sd/- SECRETARY, WBSEB

3/4/2000

1. The Chairman, WBSEB, Bidyut Bhavan
2. The Member (Hydro), WBSEB, Bidyut Bhavan
3. The Member (Finance), WBSEB, Bidyut Bhavan
4. The Legal Adviser, WBSEB, Bidyut Bhavan

5. The main contention of the Petitioner before the Learned Single Judge was that sub-schedule C-2 relating to civil works could not be given by the Petitioner but that was contained in the diskette, therefore, the omission of such sub-schedule C-2 could not be treated to be fatal to treat the Petitioner's bid as non-responsive. It was contended that the sub-schedule C-2 was part of the diskette and the diskette was also a bidding document, therefore, omission to give a print out of the sub-schedule is not a material omission. It was further contended that if this was an omission it could have been either clarified by the Board or the Board could have taken the print of the sub-schedule C-2 when it was submitted to them on September 17, 1999 before the evaluation of the bid. This writ petition was opposed by the Board as well as by M/s. Taisei Corporation. Learned Single Judge after considering the matter came to the conclusion that the omission to supply of sub-schedule C-2 was a bona fide error and the rejection of the bid by the Board on that count to be non-responsive is not correct. The Learned Single Judge concluded as under:

Therefore, I hold that this is absolutely an inadvertent omission in complying one of the terms. So relying on the aforesaid Supreme Court decisions reported in 1991 (3) SCC 272 as well as Tata Cellular Case and also the judgment of Bombay High Court and Kerala High Court as quoted above I hold that the Respondents should have ignored this avoidable lapses.

6. Learned Single Judge set aside the decision of the Board and directed the Respondents to consider and evaluate the Petitioner's price bid along with the other eligible candidates. Aggrieved against this order passed by the Learned Single Judge dated December 21, 2000 the present Appeal has been filed by the Board as well as by M/s. Taisel Corporation.

7. In order to appreciate the controversy involved in the matter, it may be useful to refer a few more facts relating to this matter.

8. The bids were invited and necessary instructions were given to the Bidders that is contained in Chapter 1 of the Instructions to the Bidders (I.T.B. for short). Detailed procedure has been laid down for the convenience of the Bidders how to apply for this Contract.

9. Chapter 1A deals with the general aspects about the bid. Clause B contains bidding documents. Clause 9 says the contents of the bidding documents. Since

it is necessary for appreciating the contention raised by the parties, therefore it is useful to reproduce that what are the contents of the bidding documents.

10. Clause 13 deals with the documents comprising the bid.

11. Clause 13.1 says that the bid submitted by the bidder shall comprise the following:

i) Form of Tender;

ii) Appendix to Tender;

iii) Bid Security ;

iv) Priced Bill of Quantities ;

vi) any other materials required to be completed and submitted by Bidders in accordance with these Instructions to Bidders.

12. As per Clause 13.1 as reproduced above, it is the duty of the bidder to check the format of the bill of quantities (B.O.Q for short) included in the diskette is, the same as that of respective B.O.Q in a bound document. If any discrepancy is found the Bidder shall advise the employer's authorised representative.

13. It further mentions that if there is any discrepancy between the information on the diskette/printouts, and on the documents, original document shall prevail in respect of the unit price. Therefore, it was clear that in case of discrepancy between the diskette and the print out so far as Unit Price is concerned, what is given in the print out shall prevail.

14. Clause 20 deals with the Format and signing of bid.

15. Clause 20.1 deals with how bidders shall submit the documents. It reads as under:

The Bidder shall prepare and submit bid documents, duly filled in, one original and 4 copies (including diskettes for Bill of Quantities) of the documents comprising the bids as described in Clause 13 of I.T.B., bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL" and "COPY" as appropriate. In the event of discrepancy between them, the original shall prevail.

According to this Clause the bidder shall submit it's documents duly filled in, one original and 4 copies (including diskette for bill of quantities) as described in cl.,1.3 of the I.T.B. bound with the volume containing the form of bid and marked as "ORIGINAL" AND "COPY". It further lays down that in the event of discrepancy between them, the original shall prevail.

16. Clause 20.2 says that the original and all copies of the bid shall be typed or written in indelible ink and shall be signed in hand writing by the person or persons duly authorised on behalf of them bidder and if there is any amendment that should also be signed by the authorised signatory.

17. Clause 20.3 says that no alteration or omission shall be signed by the person or persons signing the bid.

18. Clause 21 deals with the Sealing and Marking of bids.

19. Clause 21.1 says that bid shall be in two parts: one in Techno-Commercial Part of a bid and the second is Price Part of bid Schedule. We are concerned with the second, i.e. Price Part of bid schedule and it shall contain the following things:

? Chapter 5 B.O.Q Vol-IA ;

? Printout of Price Schedule in bounded form ; 1 Original - Related Amendment if any to the Plus 4 copies Price Part of the Bid ;

? Supporting document to supplement the Price part of the Bid ;

? 3 & 1/2" diskette (Ms Windows 95, version Excel-7).

20. Part II which mentions the price part of the bid Schedule are essential documents, as the whole evaluation has to be done on that basis only.

Clause 9.1 reads as under:

9.1 The bidding documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Clause 11 of I.T.B.

Volume I Information and Instruction to Bidders;

General Conditions & Contract.

? Invitation for Bids:

Chapter 1 Instructions to Bidders ;

2 General Conditions of Contract-Part I;

3 Conditions of Particular Application-Part II;

4 Forms of Tender, Appendix to Tender, and Bid Security ;

5 Bill of Quantities (plus one diskette for price schedule data) -Volume-1A-I;

6 Sample Forms of Agreement;

7 Sample Forms of Securities ;

8 Information.

VOLUME II GENERAL REQUIREMENTS VOLUME III TECHNICAL SPECIFICATIONS

Chapter 1 General Technical Specifications ;

2 Special Technical Specifications. VOLUME IV DRAWINGS Part I General Information ; Part II Main Civil Works ;

Part III Architectural Drawings.

21. Clause 27 deals with the clarification of Bids which is relevant for our purpose reads as under:

27.1 To assist in the examination, evaluation and comparison of bids, the Employer's authorised representative may, at his discretion, ask any or all Bidders for clarification of his/their Bids, including breakdowns of unit rates, technical information, documents and materials after opening of the Bid. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the Bid after opening the Price Bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer's authorised representative in the evaluation of the bids in accordance with Clause 29 of I.T.B.

22. It permits certain clarification by the Employer's authorised representative in evaluation of the bids. It says that a request for clarification can be made, but no change in price or substance of the bid after opening price bid will be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer's authorised representative in the evaluation of the bids as required in Clause 29 of I.T.B.

23. Clause 28 deals with the examination of bids and determination of responsiveness and for which the detail guideline has been given in Clause 28.1 which reads as under:

28.1 Prior to the detailed evaluation of bids, the Employer's authorised representative will, determine whether each bid (i) meets the required eligibility criteria; (ii) has been properly signed ; (iii) is accompanied by the required securities; (iv) is substantially responsive to the requirements of the bidding documents; and (v) provides any clarification and/or substantiation that the Employer's authorised representative may require pursuant to Sub-Clause 15.3 of I.T.B.

24. Therefore in order to assess the responsiveness of the bid about five criterion has been mentioned that the bids should be properly signed, accompanied by required securities and should be substantially responsive to the requirements of bidding documents and provide certain clarification as sought by Employer's authorised representative. Therefore what is required to be noted in cl.28 is that the bidding should be substantially responsive to the requirements of bidding documents.

25. The expression "substantially responsive" has been further clarified in Clause 28.2 which reads as under:

A substantially responsive bid is one which conforms to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (i) which affects in: any substantial way the scope, quality or performance of the Works ; (ii) which limits in any substantial way, inconsistent with the bidding documents, the Employer's

right or the Bidder's obligations under the Contract; (iii) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive bids, (iv) which is incomplete or does not include all the Works covered by the Specification.

26. Clause 28.2 specifically lays down that all the bidding documents should conform to all terms and conditions and specifications of bidding documents without material deviation. It further lays down that material deviation would mean a document which is incomplete or does not include all the works covered by the specification. Therefore, all bidding documents has to be complete in all respects and if there is any material deviation then such bidding documents would be incomplete.

27. Clause 28.3 says that if the bid is not substantially responsive it will be rejected by the Employer as incomplete, obscure or irregular or only a part of the schedule is liable to rejection.

Clause 28.3 reads as under:

If a Bid is not substantially responsive, it will be rejected by the Employer, and the bidder will not be allowed subsequently to make the same responsive by correction or withdrawal of the non-conforming deviation or reservation. Any Bid which is incomplete, obscure or irregular or only for a part of the Schedule, is liable to rejection

28. A conjoint reading of the else. 28.1, 28.2 and 28.3 makes it clear that the bidding documents should substantially conform to all terms and conditions and specifications of the bidding documents. Any material deviation from that will amount to rejection outright.

29. Now we shall examine the factual error in this present bid in the light to the terms and conditions of the bid.

30. In the present case the admitted fact is that bill of quantities (B.O.Q) contains number of schedules and under the Heading Civil Works various Civil Works has been given in the schedules. We are concerned with sub-schedule C-2 which deals with the Civil Work for Lower Dam. In the present case Petitioner was to give his unit price for the Civil Works in the sub-schedule C-2 i.e. Lower Dam. This schedule runs into 9 sheets and there are various items mentioned in that like reservoir cleaning; Clearing, grubbing and stripping, common excavation, rock excavation, gallery excavation, like that there are 41 items, the quantities are given and their price unit has to be filled up by bidder, this sub-schedule C-2 could not be given by the Petitioner in one original and 4 copies, instead of that they gave the copies of sub-schedule C-3 i.e. for "Spillway".

31. Therefore, there was no unit price given by the Petitioner in the documents for Lower Dam in sub-schedule C-2 but it contained on a diskette which was also required to be given as part of the bidding document. The question is, what is the effect of this omission. There is no dispute on facts that sub-schedule C-2

was not given by the Petitioner but sub-schedule C-2 was incorporated in the diskette. Therefore the question is as to whether non supply of this sub-schedule C-2 document can be said to be fatal or not, and, if the Authorities has come to the conclusion that the non supply of this bidding document is fatal, then the rejection of the bid by the Board is justified or not.

32. Mr. Mitra, Learned Counsel for the Board and Mr. Saktinath Mukherjee, Learned Counsel for Taisel Corporation and Mr. S.K. Kapoor for the writ-Petitioners Respondents were heard at length. Mr. Mitra and Mr. Mukherjee have strenuously urged before us with reference to the clauses of the bidding instructions to the Bidders (ITB) that the rejection of the bid of the writ-Petitioners by the board was fully justified and admittedly sub-schedule C-2 was omitted by the writ-Petitioners in documents. The bidding documents supplied by the writ Petitioners to the Board was substantially non-responsive and therefore, the Board was justified in its rejection. Mr. Kapoor submitted that this was a bona fide omission and the sub-schedule C-2 was already available on the diskette. Therefore, this omission is not substantial so as to reject the bid of the Petitioner. In this connection various decisions of the Apex Court and High Courts were referred which we shall refer at the appropriate stage, but the fate of this case depends more on a decision given by the Apex Court in a matter arising from this very project in the case of M/s. Patel Engineering Company Limited to which the Petitioners M/s. Skanska International Civil Engineering AB and Ors. was also a party. Before we advert to that, we may examine this omission with reference to I.T.B. in the clause reproduced above. Clause 20.1 as reproduced above says that the bidder shall prepare and submit a bidding document duly filled in, one original and 4 copies (including diskette for bill of quantities) meaning thereby that the original is one which is given as a hard copy along with the four copies and one diskette. The original has to be marked as "Original" and the rest 4 copies has to be marked as "Copies", and it further lays down that in the event of the discrepancy between the original and copy original shall prevail. Clause 20.3 says that there should be no omission. Clause 21 deals with the examination of bids and determination and responsiveness. After all these bidding documents are filed then at the time of evaluation of the bids the authorities have an obligation to examine the bids and to determine their responsiveness. Clauses 28.1, 28.2 & 28.3 lays down that authorities has to decide whether, the bidding documents are substantially response or not. This is a stage prior to the evaluation of the bids of the respective parties. If all the documents which are required to be submitted are not substantially responsive then such bidding documents are liable to be rejected, Clause 28.2 says that a bid which is incomplete or does not include all the works covered by the specification then it also cannot be said to be a substantially responsive bidding document. Then what is the effect of such non-responsiveness has been amply mentioned in Clause 28.3 which reads as under:

Any Bid which is incomplete, obscure or irregular or only a part of the Schedule is liable to rejection.

33. It is admitted fact that sub-schedule C-2 is a part of the price bid and is a very essential part and if one of the sub-schedules C-2 pertaining to the Civil Works for the construction of the Lower Dam is totally missing from the original document as well as copies then in that case the board has no option but to reject such bid being not substantially responsive to the bidding documents. If it was not done, then the Board would have committed a serious illegality in accepting a bid when the bidding documents were not substantially responsive. By this omission to give unit price for a civil work contained in sub-schedule C-2 would certainly have a serious repercussion. As per Clause 28.3 it clearly says that if any bid which is incomplete, obscure or irregular or only for a part of the schedule, then the same is liable to be rejected. In the present case, it is the admitted fact that sub-schedule C-2 was not given by the Respondents which is a material document, the omission of which is certainly fatal and the Board has rightly rejected the same.

34. It was submitted by Mr. Kapoor, Learned Counsel for the writ-Petitioner Respondent that as per Clause 27 when there was a discrepancy the Employer could have asked or sought a clarification about the discrepancy of the Petitioner. Clause 27 only talks about certain clarification with regard to technical information or certain arithmetic errors, but no change in the price or substance of the bid after opening of the price bid can be sought, offered or permitted except as required to confirm the correction of arithmetic errors. Therefore, Clause 27 in case of the Petitioner can not come to its rescue. The Petitioners' case is squarely covered under Clause 28 of the I.T.B. and it is the admitted fact that non-supply of sub-schedule C-2 was an omission. Therefore, the documents supplied by the Petitioners were not substantially responsive.

35. Now in the same project with regard to the earlier dispute raised by M/s. Patel Engineering Company Ltd. there was a "repetitive systematic computer typographic transmission failure" which was found to be fatal by the Apex Court. In the case of M/s. Patel Engineering Company. Their Lordships have discussed all the relevant clauses of the necessary provisions of the I.T.B. and after considering all the clauses of the I.T.B. especially Clause 27.1. Their Lordships observed as under:

It is important to note that the said Clause prohibits seeking, offering or permitting any change in the price or substance of the bid after-opening of the price bid.

36. Their Lordships after considering Sub-clause (b) of ci.29.1 with reference to the facts of that case observed:

A plain reading of the Sub-clause (b) of Clause 29.1, referred to above, leaves no room for doubt that once the unit rate and line item total are filled in by the bidder, both the quoted unit rate and item total are treated as unalterable at the instance of the bidder though arithmetic errors in arriving at line item total by multiplication are permitted to be corrected by the Appellant's authorised

representative.

37. Their Lordships discussed earlier decision of the Apex Court in the case of Tata Cellular Vs. Union of India, .

38. Though Mr. Kapoor, Learned Counsel for the writ-Petitioners tried to distinguish this case that there was not only a typographical transmission error but their Lordships found something, more than that i.e. if correction of such error had been permitted then it would have resulted in re-writing of the unit rates for 37 items. Therefore, Mr. Kapoor wanted to distinguish this case on the factual aspect. But the question is, what is the effect of the mistakes or error. Their Lordships while discussing about mistakes and errors have observed as follows:

The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of Computer termed as "repetitive systematic computer typographical transmission failure. It is difficult to accept this contention. A mistake" may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of Respondent Nos. 1 to 4 to correct the same before submission of the bid. Had they been vigil in checking the bid documents before their submission, the mistakes would have been avoided. Further, correction of such mistakes after one and a half month of opening of the bids will also be violative of Clauses 24.1, 24.3 and 29.1 of ITB.

There Lordships further observed:

We have, therefore, no hesitation in concluding that adherence to ITB of Rules is the best principle to be followed, which is also in the best public interest.

39. In this view of the matter the law laid down by the Apex court in a matter arising from the same project and the same clauses of the I.T.B., their Lordships have categorically laid down that the mistakes, errors may be unintentional, but it would be in the public interest to adhere to the Instructions to the Bidders.

40. Mr. Mukherjee and Mr. Mitra, Learned Counsel have referred to various decisions of the Apex Court i.e. M/s. G. J. Fernandez Vs. State of Karnataka and others, ; Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, , Tata Cellular v. Union of India (Supra), Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others, ; West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others, . We need not to deal all these cases and over burden the judgment when we have direct decision of Apex Court of M/s. Patel Engineering Company Ltd. on the subject involving the same project and interpreting the same terms of this I.T.B. Therefore, no useful purpose will be served by referring to other decisions on the subject.

41. Similarly our attention was also invited to by Mr. Kapoor to various decisions of Apex Court and High Court i.e. M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, ; B.D. Yadav and M.R. Meshram Engineers and

Contractors Vs. Administrator of the City of Nagpur and Another, ; T.V. Subhadra Amma Vs. Kerala Board of Revenue and Others, ; Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; N. Sri Rama Reddy, etc. Vs. V.V. Giri, ; Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Others, ,; State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, ; West Bengal State Electricity Board v. Patel Engineering Company Ltd.,; Gurbachan Singh v. Satpal Singh 1990 S.C. 209 and second schedule of the Information Technology Act, 2000 amending the Indian Evidence Act, 1872. No useful purpose will be served in dealing in detail all these cases in view of ratio laid down by the apex court in Patel Engineering Company Ltd." case {Supra} discussed above.

42. Apart from this aspect it was also contended by Mr. Kapoor that the authorities have abdicated its power in favour of the opinion given by legal remembrance, Government of West Bengal and he also submitted that some dissenting notes were recorded by some of the officers at the time of evaluation of the bid. We called the file from the department and we found that there was dissenting observation by one of the officers of the board that this omission may be ignored as it is not material. Simply by expressing some of the opinion by the functionaries in the note sheet is not decisive of the matter. At the time of examining the matter various observations are made in the note sheets and the files but that cannot be said to be taken to be the decision, in the process of taking the decision different views were taken into consideration for and against, simply because one of the functionaries have expressed one opinion in favour of the party, but that cannot be taken to be a decision of the body and the decision is required to be taken by a body by deliberations and ultimately after taking into consideration various shades of the opinion finally the decisions are taken. Therefore, the expression of opinion by one person has no bearing whatsoever. Similarly it was also argued by the Learned Counsel for the writ-Petitioner Mr. Kapoor that opinion of the legal remembrance was taken and the board followed that legal opinion and abdicated its function. We regret that the submission of the Learned Counsel is not correct. It may be relevant to mention here that the legal remembrance is a part of the Administration and as and when the intricate legal problems arise then such opinions are taken from the legal department, and thereafter, the factual controversies are decided by the competent body. In a situation like the present one as we have discussed above, it was not a simple matter for the Board and therefore if the Board has sought a legal opinion from the Legal Department of the State, then it cannot be said that the Board has abdicated its function. The Board is a Public Undertaking, and therefore the Public Undertaking has sought legal opinion from the Legal Department of the State and thereafter took its own decision in the light of the factual controversy as well as keeping in view the opinion given by the L.R. In that case it cannot be said that the Board has abdicated its power. Therefore this contention of the Learned Counsel, Mr. Kapoor, is also of no merit.

43. Hence, as a result of the above discussion, we are of the opinion that the view taken by the learned Single Judge is not correct and we allow both these appeals and set aside the order passed by the learned Single Judge and dismiss the writ petition.

44. No order as to costs.

45. The prayer for stay of operation of the judgment is rejected.

46. Let Xerox certified copy of the judgment be supplied to the parties expeditiously on the usual undertakings.

Girish Chandra Gupta, J.

47. I agree.

Appeals disposed of.