



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 8525 OF 2024

M/s. Surendra Infrastructure (P) Ltd.,  
Through its Authorized Signatory,  
Shri. Liyakhat Ahmed Shaikh,  
Age 48 years, Occ. Service,  
R/o. Office No. 502, Block No. III,  
Near Ambedkar Bhavan, LLYODS Chamber,  
Mangalwar Peth, Pune-411 011. ... **Petitioner**

**VERSUS**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Water Resources  
& Command Area Development,  
Mantralaya, Mumbai-32.
- 2) The Chief Engineer & Chief Administrator,  
Command Area Development Authority,  
(Water Conservation Department),  
Chh. Sambhajinagar.
- 3) The Superintending Engineer & Administrator,  
Command Area Development Authority,  
Chh. Sambhajinagar.
- 4) The Executive Engineer,  
Jayakwadi Irrigation Department,  
Nathnagar (North), Paithan,  
Dist. Chh. Sambhajinagar.
- 5) Mahalaxmi Infra,  
Through its Proprietor,  
Indiranagar, New Baijipura,  
Meerai Sadan,  
Chh. Sambhajinagar. ... **Respondents.**

...

Advocate for Petitioner : Mr. A.P. Bhandari h/f Mr. Chaitanya S. Deshmukh  
Addl. G.P. for Respondent No. 1 : Mr. A.R. Kale  
Advocate for Respondent No. 4 : Mr. S.G. Bhalerao  
Advocate for Respondent No. 5 : Mr. V.D. Salunke

**CORAM** : **MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**RESERVED ON** : **28.08.2024**  
**PRONOUNCED ON** : **06.09.2024**

**JUDGMENT : ( MANGESH S. PATIL, J.)**

Heard. Rule. Rule is made returnable forthwith. The learned A.G.P waives service for respondent no. 1. Respondent nos. 2 and 3 have been served but have not caused appearance. Learned advocate Mr. Bhalerao waives service for respondent no. 4 and the learned advocate Mr. Salunke waives service for respondent no. 5. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is challenging his disqualification at the technical evaluation of the offer submitted by him in respect of the E-tender notice no. 22/2023-24, floated by the respondent nos. 2 to 4 for the work 'Restoration of canal section and lining in 47 km to 48 km of Paithan Left Bank Canal'. It is also challenging qualification of respondent no. 5 at the technical evaluation. It is seeking writ of mandamus against respondent no. 4 directing him to qualify it and to open its financial bid.

3. Mr. Bhandari would submit that the petitioner was disqualified primarily for two reasons; (1) absence of digital signature, and (2) failure to submit proof of I.P. address of the device from which the tender is uploaded. He would submit that both these shortcomings were easily curable. He would submit that the technical bids were to be opened on 28.03.2024. The financial bids were to be opened on 30.07.2024. Even if there were some shortcomings and defects, those were to be notified and the period of around three months between the date of opening of the technical bid and the financial bid was supposed to be used for getting such curable defects rectified. He would also advert our attention to the government resolutions

dated 27.09.2018 and 17.09.2019, issued by the Public Works Department in this regard. According to him when it was a matter of public work, an opportunity ought to have been extended to the petitioner to cure both these defects. It is only for that purpose the period of 3 months intervening the date of opening of the technical bids and that of financial bids was kept. The approach of disqualifying the petitioner in a hurried manner, without giving him any intimation about it is clearly demonstrative of arbitrariness in the decision making process. The decision was taken objectively to eliminate it and to favour respondent no. 5.

4. Mr. Bhandari would submit that as per Clause 4.1, it was expected that after opening of the technical bid and after scrutiny of the documents of the bidders, a list of qualification/disqualification would be prepared and communicated to the bidders and also would be published on the web portal through which 'E' tender process was being undertaken. It expressly stipulated intimation to be given together with reasons to the bidders, who were held to be disqualified. Even there was a stipulation for providing an opportunity to the disqualified bidder to approach the authorities and expecting the authorities to extend an opportunity of personal hearing. However, these requirements were not followed by respondent nos.2 to 4 and demonstrates arbitrariness in undertaking the tender process.

5. Mr. Bhandari would then submit that the offer of respondent no. 5 was suffering from several shortcomings and was not compatible with the terms and conditions of the tender notice. However, the authorities have conveniently ignored the shortcomings and it was allowed to clear the technical bid successfully. He would submit that as per clause 2.2.A (V) of the tender document, the bidder was expected to submit a list of machinery and plants for their use in the proposed work. It required documentary proof in respect of the machinery owned by the bidder in the form of R.T.O. registration, certificate of taxation, goods carriage permit in Form P-Gd (Rule 72 (i)(v) of the Motor Vehicles Rules and certificate of fitness in Form 38 as

per Rule 62(i)(7). He would submit that the respondent no. 5 had not furnished any certificate of fitness of the plant and machinery as per this stipulation.

6. Mr. Bhandari would also submit that as per the tender document, the bidder should have annual turnover in any one year during the last five years of not less than Rs. 154 lakhs, for the years 2018-2019 to 2022-2023. A specific certificate in the form provided for in Appendix 'N' regarding bid capacity duly signed by the Chartered Accountant with certificate to support turnover of civil engineering works was essential. Thus, both the conditions, regarding availability of machinery and certification regarding annual turnover were essential and integral part of the tender document. The offer of respondent no. 5 was deficient in both these respects and he could not have been treated as compliant with the terms and conditions.

7. Mr. Bhandari would submit that the certificate of the Chartered Accountant furnished by respondent no. 5, as was required by the tender document to demonstrate turnover, was not having any Unique Document Identification Number (UDIN). The documents, which were furnished by respondent no. 5 were having UDIN number on other documents but not the certificate of the Chartered Accountant (Page 271). He would refer to the division bench judgments of the Jammu & Kashmir and Ladakh High Court and that of Allahabad High Court:

**(1) M/s. Arth Enterprises and another Vs. State of U.P. and others (Writ Petition -Civil No. 41989/2023) decided on 16.01.2024, and;**

**(2) M/s. TRG Industries Private Limited Vs. U.T. of Jammu and Kashmir and others in Writ Petition (C) No. 2910/2022 dated 22.03.2024.**

8. He would submit that in similar set of facts, wherein requirement of furnishing a certificate of Chartered Accountant in respect of turnover for five financial years requiring UDIN number was held to be an essential condition of the tender documents and for want of which, the offer was held to be non responsive. He would submit that absence of UDIN number and even the fact that the certificate also was merely for four years and not five years, should have been enough for disqualifying respondent no. 5 at the technical evaluation. It has been conveniently ignored by respondent nos. 2 to 4 and demonstrates arbitrariness and *mala fides* in undertaking the tender process. He would cite the decision in the matter of **Ramana Dayaram Shetty Vs. The International Airport Authority of India and others; A.I.R. 1979 Supreme Court 1628**. He would thus submit that the decision in disqualifying the petitioner at the technical evaluation and allowing respondent no. 5 to get through it, in spite of serious defects, demonstrates the arbitrary manner in which the entire exercise was done and the respondent nos. 2 to 4 be directed to revive the tender process from the stage of technical evaluation.

9. The learned advocate Mr. Bhalerao for respondent no. 4, by referring to the affidavit in reply, would submit that both the stipulations regarding providing I.P address and the documents to be digitally signed were the essential conditions of the tender document. The petitioner is not disputing factually that both these defects were writ large in its offer. It cannot be allowed to question the disqualification. The very fact that the I.P address is required for avoiding cartel formation being the object, it should be left for respondent nos. 2 to 4 to decide essentiality of that condition as laid down in the matter of **N.G. Projects Limited Vs. Vinod Kumar Jain and others; (2022) 6 SCC 127**. He would submit that presence of digital signature on the documents is also an essential term and the petitioner having not complied with cannot be allowed to make any grievance regarding his disqualification.

10. Mr. Bhalerao would submit that the entire tender process was being undertaken through 'E' procurement system of the Government of Maharashtra. Every bidder could monitor the process online by the automated system generated mail/message. The petitioner was informed about his disqualification on 24.06.2024. Even the result was available online. The petitioner is not entitled to be heard on the ground of transparency. The tender process being undertaken by respondent nos. 2 to 4 is in accordance with the government policy set out in the government resolution dated 18.10.2023, issued by Water Resource Department, and it was expressly mentioned in the tender document itself. He would, therefore, submit that the petitioner cannot legally insist for intimation of disqualification to be given to him by referring to the government resolution dated 17.07.2019, which is basically a government resolution in respect of the works to be undertaken by the P.W.D.

11. Lastly, Mr. Bhalerao would submit that the petitioner, who has been disqualified, does not have any *locus standi* to obstruct the tender process by questioning eligibility of respondent no. 5. Even if respondent no. 5 is held to be disqualified, the petitioner is not going to get the contract and it would merely lead to delay in the project, which cannot be allowed to happen in exercise of the writ jurisdiction. Small aberrations here and there, may be ignored by the employer, cannot be a ground for invoking power of judicial review in tender matters. He would submit that already the work order has been issued to respondent no. 5, and no order stalling the work be passed. He would place reliance on following decisions:

- (1) **Jagdish Mandal v. State of Orissa and others;**  
**(2007) 14 SCC 517.**
- (2) **Tata Motors Ltd. Vs. The Brihan Mumbai Electric**  
**Supply & Transport Undertaking (BEST) and others; 2023**  
**SCC OnLine SC 671.**

12. The learned advocate Mr. Salunke for respondent no. 5 would equally place reliance on the decisions cited by Mr. Bhalerao. He would submit that mentioning of UDIN on the Chartered Accountant's certificate was not an essential condition. The account statements annexed thereto were having UDIN numbers. That was reasonable compliance and even if it is treated as not in strict compliance with the condition of the tender document, without there being anything to demonstrate and attribute *mala fides*, arbitrariness and unreasonableness on the part of the employer, the eligibility of respondent no.5 need not be interfered with.

13. Mr. Salunke would also endeavour to demonstrate that the fitness certificate contemplated in 2.2.A(V) was in respect of the vehicles, which were registered with the Road Transport Authorities. The self-same stipulation indicated that in case of a new machinery purchased, the vouchers would suffice. He would, therefore, pray to dismiss the petition.

14. We have considered the rival submissions and perused the papers.

15. As can be gathered, the petitioner is fighting the battle on two fronts. It is challenging its disqualification and is simultaneously challenging eligibility of respondent no. 5 as well. Obviously, both these things will have to be examined independently and there cannot be simultaneous consideration of both these grounds.

16. Starting with the disqualification of the petitioner, as is mentioned earlier, it has been disqualified essentially on two counts; (1) absence of digital signature on the documents and (2) failure to submit proof of I.P address of the device from which the tender is uploaded.

17. Taking up the first ground, there cannot be a dispute that there is an express stipulation in the tender document in clause No. 2.1.A mandating the bidders to upload all the documents with a digital signature. The stipulation reads as under:

*“The Bids required to be submitted online should be signed electronically with a Class II-Digital Signature Certificate to establish the identity of the Bidder bidding online. These Digital Certificates are issued by an approved Certifying Authority, authorized by the Controller of Certifying Authorities, and Government of India.”*

A bare reading of this stipulation indicates that its purpose is to establish identity of the bidder, who is bidding online. The very fact that it is a ‘E’ tender process undertaken online, in our considered view, it is indeed an essential condition to pin down the identity of the bidder. When the petitioner had, admittedly, failed to conform to it, no fault can be found in the decision to disqualify it.

18. Anticipating this, Mr. Bhandari tried to bank upon the fact that there was a period of three months between opening of the technical bid and the financial bid, which according to him, was designedly kept to enable the bidders in complying with the shortcomings, pointed out to them. He would also refer to the government resolutions in the Department of Public Works of the Government of Maharashtra of 27.09.2018 and 17.09.2019, which contemplate extending opportunity to the bidders to overcome the shortcomings and minor deficiencies.

19. So far as essentiality of the condition is concerned, Mr. Bhandari would not argue that the stipulation/condition of uploading the documents bearing digital signatures cannot be regarded as an essential condition. The whole thrust of his argument is on the fact that the petitioner ought to have been extended an opportunity to cure the shortcomings/defects.

20. As far as the period of three months between the opening of the technical bid and the financial bid, there is nothing on the record to demonstrate that the period of three months was meant to provide respondent nos. 2 to 4 an opportunity to point out the defects to the bidders and to get those complied with. Though the argument of Mr. Bhandari is

ingenuous, in the absence of any other corroborating material it is difficult to reach a conclusion that the period of three months was kept designedly to get the defects cured from the bidders.

21. So far as the government resolutions issued in the Public Works Department of the State of Maharashtra, Mr. Bhalerao, on our query could not expressly deny the fact that these government resolutions being in respect of the Public Works Department can be ignored by respondent nos. 2 to 4. However, he would emphasize that it is an independent authority and it has its own regulations in place. According to him, the government resolution dated 18.10.2023, issued by the Water Resource Department, will have to be resorted to and there is no such stipulation in that government resolution mandating respondent nos. 2 to 4 in seeking the defects in the offers of the bidders to be got rectified.

22. Taking up the second limb of the argument of Mr. Bhandari, adverting our attention to clause 4.1 of the tender document that it expressly stipulated that the list of disqualified bidders/disqualifications to be communicated to the bidders and to be published on the web portal, and the disqualification to be intimated to the individual contractor together with the reasons for their disqualification and expecting the authorities to resort to personal hearing and to revisit the result of disqualification and again to publish it on the website. Indeed, the tender document contains such a stipulation. However, as is being pointed out by Mr. Bhalerao, it is an E tender process, which was being undertaken online, and everything that was uploaded on the portal was available to be seen by the bidders. There is no denial about such a stand taken in the affidavit in reply filed by respondent no. 4. The petitioner has not filed any rejoinder. Meaning thereby, though there is a stipulation in the tender document requiring the employer (respondent nos. 2 to 4) to extend personal hearing to the disqualified bidder and attend his grievance, it was for the petitioner to have objectively demonstrated about having approached respondent nos. 2 to 4 no sooner his

disqualification was uploaded or he became aware about it. In the absence of which, the petitioner is not entitled to bank upon the stipulation in the tender document regarding the post disqualification steps to be taken by respondent nos. 2 to 4. Therefore, the petitioner is not entitled to derive any benefit from the stand it has been taking to question its disqualification.

23. This takes us to the second ground for disqualification of the petitioner, regarding non submission of proof of I.P. address of the device through which the tender is uploaded. The petitioner is not disputing this as a fact. It is not its stand about having furnished proof of the I.P. address from which he had submitted his bid.

24. As far as essentiality of this condition is concerned, this Court has inherent limitations in examining that aspect under Article 226 of the Constitution of India. If respondent nos. 2 to 4 have consciously treated this condition as an essential condition, we cannot substitute our views. It is in this context, paragraph no. 22 of **N.G. Projects (supra)** guides us. It reads as under:

*“22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e., not satisfying the tender conditions. The writ Petitioner was one of them. It is not the case of the writ Petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona-fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ Petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.”*

25. Bearing in mind this proposition, when respondent no. 4 in his affidavit in reply has expressly mentioned that the stipulation regarding providing proof of I.P.

address is resorted to, to avoid cartel formation, it will not be appropriate for us to question its stand. Since the petitioner failed to comply with and provide proof regarding the I.P. address of the device through which it had submitted its offer, no exception can be taken to the impugned decision holding it to be disqualified even on this count.

26. The submission of Mr. Bhandari that no such proof of I.P. address is necessary since the I.P. address would be visible to the recipient in such electronic communication through internet cannot be countenanced. To repeat, it is not for the Court to examine the propriety or otherwise of any stipulation/condition of a tender document. The Court cannot question the employer and call upon him to justify a term or a condition of a tender document. It is left to the wisdom of the employer since it is a commercial transaction albeit undertaken by a public authority like respondent nos. 2 to 4.

27. The upshot, we find no merit in the petitioner's stand to the extent it is questioning the decision of respondent no. 4 to disqualify it in the technical bid.

28. Before we proceed to examine the other relief being claimed by the petitioner questioning eligibility and qualification of respondent no. 5, we need to emphasize that once having found that there was no error or illegality in disqualifying the petitioner, it would be a matter wherein the situation would be like a bidder, who has been disqualified is questioning the qualification of the other bidders, who could get through the technical evaluation. It is in this context, following observations in paragraph no. 27 of the decision in the matter of ***Raunaq International Ltd. vs. I.V.R. Construction Ltd. and others; (1999) 1 SCC 492***, particularly the portion emphasized by the Supreme Court in the matter of **Tata Motors (supra)** is important. Para No. 27, with the emphasis supplied in **Tata Motors (supra)** reads as under:

*"27. In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s. Raunaq International Ltd. is on valid principles looking to the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. What is more relevant, M/s I.V.R.*

Construction Ltd. who have challenged this award of tender themselves do not fulfil the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced. Even if the criteria can be relaxed both for M/s Raunaq International Ltd. and M/s I.V.R. Construction Ltd., it is clear that the offer of M/s Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s Raunaq International Ltd. We fail to see how the award of tender can be stayed at the instance of a party which does not fulfil the requisite criteria itself and whose offer is higher than the offer which has been accepted. It is also obvious that by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units, each of 210 MW, is held up on account of this dispute. Shortages of power have become notorious. They also seriously affect industrial development and the resulting job opportunities for a large number of people. In the present case, there is no overwhelming public interest in stopping the project. There is no allegation whatsoever of any mala fides or collateral reasons for granting the contract to M/s. Raunaq International Ltd. (Emphasis supplied)”

These observations more particularly emphasized in **Tata Motors Limited (supra)**, would demonstrate that since the petitioner’s disqualification is being upheld by us, it would not be appropriate to undertake any scrutiny regarding challenge to the eligibility and qualification of respondent no. 5 at its instance. Therefore, even though the petition has been filed challenging petitioner’s disqualification and simultaneously disputing qualification of respondent no. 5, the judicial enquiry into the latter would be contingent upon grant of relief to the petitioner in the former. Therefore, it would not be necessary for us to undertake any scrutiny on merits in respect of the part of the petition putting up a challenge to the disqualification of respondent no. 5.

29. There is one more appendage. With the disqualification of the petitioner, respondent no. 5 and the other bidders would be in the fray.

With whatever demerit of respondent no. 5, the tender process has progressed and even a work order has been issued in its favour. The challenge to the qualification of respondent no. 5 is being put up by the petitioner only. The other bidders are not before us and are not putting up any challenge to the qualification of respondent no. 5. Therefore, this would be an additional reason for not to undertake any objective scrutiny of the merits of the petition to the extent of challenge to the qualification of respondent no. 5.

30. Be that as it may, in order to make the judgment complete we still feel it appropriate to examine the aspect of qualification of respondent no. 5 on merit as well.

31. The petitioner is challenging qualification of respondent no.5 by pointing out that contrary to the stipulation in Clause no. 2.2.A(V) of the tender document it had not furnished certificate of fitness. The clause reads as under:

*“2.2.A(V)- List of machinery and plants immediately available with the tenderer for use on this work and list of machinery proposed to be utilized on this work but not immediately available and the manner in which it is proposed to be procured. (Proforma in Section VII of this tender form)*

*The Contractor shall have to produce the documentary proof in respect of machinery owned by him as below.*

*i) R.T.O. Registration*

*ii) Certificate of Taxation*

*iii) Goods Carriage Permit in Form P- Gd [see Rule 72(i) v]*

*iv) Certificate of fitness in form 38 [see Rule 62(i)7]*

*In the case of Non- RTO machinery, if the machinery is new the manufacturer's sale certificate shall be produced. In case of second hand machinery, the purchase document with proof of payment and Balance sheet certificate by the Chartered Accountant shall be produced. In lieu of the certificate of the Chartered Accountant, a certificate from a Scheduled Bank/ Nationalized Bank of having financed the machinery will be acceptable.*

It is the stand of respondent no. 4 in the affidavit in reply, in this context that so far as this clause regarding fitness certificate of the machinery is

concerned, will have to be read in conjunction with the machinery that was required to be made available with the bidder as notified in clause no. 2.2.A(V) of the tender document. It is the stand of respondent nos. 4 and 5 that the clause is divided in two parts. It is only in respect of the vehicles which are required to be registered with Road Transport Authorities that the first portion is applicable *inter alia* requiring certificate of fitness in Form 38. The latter portion of the same clause mentions that in case of non R.T.O. machinery, the manufacturer's sale certificate was required to be produced and if it was a case of secondhand ownership of the machinery, the purchase document with proof of payment and balance-sheet certificate was required. Since the four machineries, which were notified as essential and required for undertaking the work were not the vehicles and were not registered with the R.T.O., respondent no. 5 having produced manufacturer's sale certificates/ vouchers, was sufficient compliance made by respondent no. 5. Consequently, this ground being raised by the petitioner would not be sustainable.

32. As far as post qualification criteria requiring submission of Chartered Account's certificate in respect of annual turnover for a period of five years from 2018-2019 to 2022-2023 and of having at least one year turnover of not less than Rs. 154 lakhs and precisely requiring UDIN, one need not overemphasize the fact that mentioning of UDIN on the Chartered Accountant's certificates was apparently a mandatory condition and respondent no. 5 had not furnished such a certificate, albeit some profit and loss account statements were having UDIN. Again, even whatever certificate respondent no. 5 had produced was merely of a period of four years as against the requirement of five years. However, admittedly, it is a matter of post qualification criteria to be applied. Once having found that the petitioner stands disqualified, and legally, no enquiry into such eligibility of respondent no. 5 applying the post qualification criteria can be undertaken.

33. Besides, as has been laid down in **Jagdish Mandal (supra)**, as also the

**N.G. Projects (supra)**, it is not a matter to be gone into in exercise of the jurisdiction under Article 226 of the Constitution of India. Suffice for the purpose to refer to paragraph no. 22 from **Jagdish Mandal** and paragraph no. 23 from **N.G. Projects**:

Paragraph no. 22 from **Jagdish Mandal (supra)**:

*“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succor to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :*

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

OR

*Whether the process adopted or decision made is so arbitrary and irrational that the court can say : ‘the decision is such that no responsible authority acting reasonably and in accordance*

*with relevant law could have reached.'*

*ii) Whether public interest is affected.*

*If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."*

Paragraph no. 23 from **N.G. Projects (Supra)**:

*"23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work."*

These observations would certainly circumscribe the powers of this Court to be exercised under Article 226 of the Constitution of India. Even if the Courts find that there is arbitrariness and even *mala fides*, the courts should refrain from interfering in the grant of tender and instead relegate the parties to seek damages.

34. This being the law culled down by the Supreme Court over a period of time, when respondent nos. 2 to 4 in their wisdom have chosen to ignore

the fact that respondent no. 5 had failed to furnish a certificate of Chartered Accountant in respect of the turnover for five years bearing UDIN, and even if the petition contains allegation about the exercise has been undertaken to favour respondent no. 5, this Court cannot interfere in the tender process being undertaken by respondent no. 4, which has now reached to a stage where a work order has already been issued to respondent no. 5 and more so when no other bidder is objecting to the qualification of respondent no. 5.

35. There is no merit in the petition.

36. The Writ Petition is dismissed.

( SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-