

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**L.P.A. No.46 of 2022**  
**With**  
**I.A.No.1070 of 2022**  
**With**  
**I.A.No.1076 of 2022**

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Gujarat Life Sciences (P) Ltd., Vadodara, being represented through its authorized representative Sri Ashutosh Ranjan, Supervisor, (Bihar and Jharkhand), Aged about 33 years, Gender-Male, S/o Sri Amardeo Singh, Resident of Village-Savera, Post Office-Diha, Police Station-Guraru, District-Gaya, Bihar .... **Petitioner/Appellant**

**Versus**

1. The State of Jharkhand, through the Chief Secretary, Government of Jharkhand, having office at MDI Building, Dhurwa, P.O. & P.S. Dhurwa, District Ranchi (Jharkhand)
2. The Secretary, Department of Agriculture, Animal Husbandry & Co-operative, Government of Jharkhand, having its office at Nepal House, P.O. & P.S. Doranda, District-Ranchi (Jharkhand).
3. The Under Secretary, Department of Agriculture, Animal Husbandry & Co-operative, Government of Jharkhand, having its office at Nepal House, P.O. & P.S. Doranda, District-Ranchi (Jharkhand).
4. The Secretary, Department of Finance, Government of Jharkhand, MDI Building, Dhurwa, P.O. & P.S. Dhurwa, District Ranchi (Jharkhand).
5. The Chief Executing Officer, Organic Farming Authority of Jharkhand, Krishi Bhawan Campus, Kanke Road, P.O. & P.S.-Kanke, District-Ranchi (Jharkhand).
6. The Tender Committee, represented through its Chairman cum Chief Executive Officer, Organic Farming Authority of Jharkhand, Krishi Bhawan Campus, Kanke Road, P.O. & P.S.-Kanke, District-Ranchi (Jharkhand). .... **Respondents/Respondents**

**CORAM : HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

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For the Appellant : Mr. Ajit Kumar, Advocate  
For the State : Mr. Piyush Chitresh, A.C. to A.G.

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**ORAL JUDGMENT**  
**04/Dated: 22.03.2022**

The instant intra-court appeal preferred under Clause-10 of Letters Patent is directed against the order/judgment dated 28.01.2022 passed by the learned Single Judge of this Court in W.P.(C) No.1173 of 2021, whereby and whereunder, the writ petition has been dismissed by refusing to interfere with the order as contained in letter no.308 dated 17.02.2020, by which, the contract awarded to it was stayed, as also, the learned Single Judge has refused to interfere with the order as contained in letter no.479 dated 10.03.2021 issued by the Director, Horticulture, Jharkhand, Ranchi, by which, the contract awarded and concluded in favour of the writ petitioner-company, in pursuant to inviting applications through 'Expression of Interest' (in short 'Eoi') dated 12.10.2019 published in newspaper on 16.10.2019 for supply of Organic Farm Inputs was rescinded.

2. The brief facts of the case, as per the pleading made in the writ petition, required to be enumerated, are as hereunder:-

The writ petitioner, in pursuant to the 'Eoi' published by the Organic Farming Authority of Jharkhand (in short 'OFAJ') on 16.10.2019 in a daily newspaper "Prabhat Khabar" with reference to the government's sanction letter no.106 dated 23.09.2019, inviting applications for empanelment of manufacturers for supply of Organic Farm Inputs (Bio-Fertilizers/Bio-Pesticides/Soil Conditioner/Plant Growth Enhancers/Other approved Bio-Products (if any)). The writ petitioner-company participated and submitted the required technical and financial documents along with requisite fee as

well as earnest money of Rs.5,00,000/- within the stipulated time before the concerned authority as per the terms and conditions of the EoI. The Chief Executive Officer, OFAJ- respondent no.5 held a pre-bid meeting on 17<sup>th</sup> October, 2019, in which, all the bidders who had submitted their bids were called for discussion, wherein, the prospects of said scheme and the procedures for finalization of tender process were discussed apprising them the manner in which the tender proposals were to be submitted, moreover, the procedures of evaluation of technical bid proposal were also made known to them. It was also clarified that the technical bid would be scrutinized by an evaluation committee and those firms/agencies, who fulfilled the minimum eligibility conditions, would be evaluated on the basis of scoring criteria. In terms with the EoI, a meeting of the tender committee under the Chairmanship of the respondent no.5 was convened on 24.10.2019 for technical evaluation of the proposals received and thereafter, the tender committee notified the number of tender proposals (in total 08) received with the authority within the stipulated time and further, the reasons for rejection of proposal of one of the bidders, namely, Indore Biotech Input & Research Pvt. Ltd., Indore, due to non-submission of E.M.D. and tender fee at the threshold, was also assigned.

So far as the remaining seven tender proposals are concerned, the tender committee decided to evaluate and scrutinize the technical documents submitted by the concerned agencies. The tender committee, after scrutiny had rejected the proposals of four agencies for non-conformity with the terms as stipulated in the tender document. Accordingly, tentative/provisional list of agencies likely to be empanelled was uploaded on the website of OFAJ on 03.01.2020 inviting objections from the concerned agencies within seven days from the date of such

uploading. One of the agencies, namely, International Panacea Ltd. (I.P.L.) submitted its grievance/objection. The tender committee upon submission of said objection held a meeting on 17.01.2020 and took decision over the grievance of the aforesaid agency, discussing all the points so mentioned in the said objection and justified their decision attributable to non-conformity of clauses/terms by the said agency. The tender committee after deciding the objections so received by the aggrieved agency, finally drew proceedings for empanelment of three agencies including the petitioner-company and awarded contract to them for supply of organic farm inputs in Jharkhand vide memo no.53 dated 17.01.2020. The tender and purchase committee, while approving the financial proposals of these three agencies empanelled for supply of Bio-farm Inputs, notified the bio-products which the empanelled agencies were able to satisfy by meeting the guidelines and standards fixed by the Government and, accordingly, the list of products with their rate was also notified enabling the service providers to place their respective indents.

The writ petitioner-company has received a communication as contained in letter no.60 dated 18.01.2020 from the office of the OFAJ under the signature of the Chief Executive Officer, requiring it to appear physically with the requisite documents as stipulated in the aforesaid letter for signing the MoU in pursuance of earlier information given by the OFAJ vide memo no.53 dated 17.01.2020. The petitioner through one of its board member appeared before the authority for signing the MoU in the light of the letter no.60 dated 18.01.2020 and, accordingly, the MoU came to be signed between the authorities of OFAJ and the writ petitioner on 24.01.2020. The authority, while undertaking the process for empanelment of manufacturers for the supply of organic farm inputs, initiated the

process of empanelling the service providers/ agencies of repute for certification of Horticulture/ agricultural crops as per technical guidelines of National Standards for Organic Production (NSOP) and accredited by Agricultural and Processed Food Products Export Development Authority (APEDA) through the same process by publishing 'Eol' within same timeline in the daily newspaper "Prabhat Khabar" on 16.10.2019 itself.

After having completed the process of selection of service providers, the list of service providers was intimated by the respondent no.5 to the writ petitioner and other two agencies vide letter No.154 dated 29/01/2020 for coordinating and ensuring supply of the Bio-farm input to the service providers responsible for implementation of the Organic farming Project in the state of Jharkhand under NPOP/PGS certification Programme. The writ petitioner-company by coordinating with the service-providers, as mentioned/detailed in the said letter, initiated the process of supply by accepting the indent of organic farm inputs. The writ petitioner-company upon accepting the indent of said inputs placed by the service provider of Hazaribagh, namely, "Vedic Organic Certification Agency", initiated the process for supply of products as referred in the demand letter dated 07.02.2020, however, the Additional Secretary, Department of Agriculture, Animal Husbandry & Co-operative, Government of Jharkhand vide order as contained in memo no.308 dated 17.02.2020 stayed the operation of proceeding of empanelment, which was done by the respondent no.6 vide memo no.53 dated 17.01.2020 and in consequence thereof, the writ petitioner-company could not supply the organic farm inputs mentioned in the indent placed by the said service provider to the concerned farmers at their destination. Moreover, with passage of one year, the said products also lost efficacy and got destroyed putting loss to

the writ petitioner-company besides affecting the project and purpose of the scheme. The writ petitioner represented the respondent no.5 against the suspension/ stay, as directed by the respondent no.3 putting the proceedings of empanelment done for supply of Bio-Farm inputs by the empanelled agencies on hold without assigning any reason, whereas other agencies empanelled for providing services for certification of Agriculture/ Horticulture Crops, as per technical guidelines of National Standards for Organic production (N.S.O.P) and accredited by A.P.E.D.A. were allowed to discharge their duties without organic farm inputs necessary for organic farming. Consequence thereof, the actual work of farming is impeded or put on hold for want of supply of Bio-farm inputs. The respondent no.5 replied the said representation of the petitioner vide letter No.513, dated 18.05.2020, wherein, it was informed that the proceeding of empanelment earlier made vide memo no.53, dated 17.01.2020 was stayed and effected in terms with letter no.308 dated 17.02.2020 issued by the respondent no.3 and as soon as the information with respect to vacation of the said stay was received from the Department of Agriculture, Animal Husbandry and Co-operative, Government of Jharkhand (Agriculture Wing), the same would be informed to the writ petitioner-company for further action. However, no action was taken by the respondents which resulted in filing the present writ petition. However, during pendency of the writ petition, the writ petitioner-company received an e-mail with respect to the order as contained in letter no.479 dated 10.03.2021 issued under the signature of the Secretary, Department of Agriculture, Animal Husbandry & Cooperative, Government of Jharkhand, Ranchi- respondent no.2,

whereby, the contract awarded through 'Eol' published in the newspaper dated 16.10.2019, was rescinded/cancelled.

3. In the aforesaid backdrop, the writ petitioner-company has approached to this Court by invoking the jurisdiction conferred under Article 226 of the Constitution of India assailing the order of stay dated 17.02.2020 as contained in letter no.308 and the order of cancellation of contract dated 16.10.2019 by filing the writ petition being W.P.(C) No.1173 of 2021 taking the ground of commission of arbitrariness on the part of the respondent authorities in arriving at such conclusion of cancelling the 'Eol'.

Further, ground has been taken that OFAJ had floated three different tenders/Eol on 12.10.2019 for selection of three different stakeholders (service providers/ organic certification agencies/bio-input manufacturers) for implementation of ICS Projects, but stay was only imposed on Bio-inputs supply tender which was cancelled after more than one year. So far other two categories of stake-holders i.e., service providers for implementation of ICS projects & organic certification agencies, who are also empanelled through 'Eol' published in newspaper with reference to government sanction order vide letter no.106 dated 23.09.2019 are concerned, they are still working in Jharkhand since January, 2020 and are also getting payment by OFAJ at regular intervals after completion of their respective work under National Programme for Organic Production (NPOP).

Further, ground has been taken, so far as it pertains to Clause-9 of the sanction letter no.106 dated 23.09.2019 is concerned, the same could have been done immediately after the award of contract without keeping the matter pending and stalling the National Programme for Organic

Production (NPOP) for more than a year without Bio-farm inputs affecting the public interest.

4. While on the other hand, the State respondent has taken the plea that since the entire tender has been floated in terms of the direction issued by the Government of Jharkhand, as contained in letter no.106 dated 23.09.2019, wherein, as per Clause-9 thereof, the selection of the executing agency/certification agency/organic farm inputs supplier were to be made through open tender, however, the OFAJ issued 'EoI' dated 12.10.2019 which was contrary to the specific direction issued by the Department of Agriculture, Animal Husbandry & Co-operative (Agriculture wing) Government of Jharkhand.

5. The learned Single Judge, after considering the rival submissions advanced on behalf of the parties, has dismissed the writ petition by refusing to interfere with the impugned order, which is the subject matter of the present intra-court appeal.

6. Mr. Ajit Kumar, learned counsel appearing for the appellant-writ petitioner has submitted that the learned Single Judge has not considered the thing in right perspective and merely gone into the condition stipulated under Clause-9 of the letter of the State Government dated 23.09.2019, whereby and whereunder, the direction to allot the work is on the basis of the open tender but even accepting that there is no open tender but the process which was to be followed in a case of open tender, has already been followed even when the applications have been invited through 'EoI'.

According to the learned counsel, the learned Single Judge has failed to appreciate this aspect of the matter and therefore, the order impugned is not sustainable in the eye of law.

Further, submission has been made on behalf of the learned counsel for the appellant writ petitioner that the process of opening of financial bid has also been followed and therefore, it is incorrect on the part of the State authority to say that the final allotment of the work was based upon the technical evaluation of one or the other applicants.

**7.** While on the other hand, Mr. Piyush Chitresh, learned A.C. to A.G. appearing for the State of Jharkhand has submitted by defending the impugned order by taking the plea that when the State Government has come out with the decision to allot the work on the basis of the open tender, it was not proper on the part of the authority to allot the work on the basis of publication of 'Expression of Interest' and after taking into consideration this aspect of the matter, initially, the competent authority has stayed the entire process and subsequently, the contract awarded in favour of the appellant writ petitioner has been rescinded and therefore, the action of the State Government cannot be said to suffer from illegality.

The learned Single Judge after taking into consideration this aspect of the matter, since has refused to interfere with the impugned order, as such, the same cannot be said to suffer from infirmity and therefore, the instant appeal lacks merit and the same is fit to be dismissed.

**8.** We have heard the learned counsel for the parties, perused the documents available on record as also considered the finding recorded by the learned Single Judge in the impugned order.

**9.** This Court before scrutinizing the legality and propriety of the impugned order, deems it fit and proper to refer certain undisputed facts as per the material available on record.

**10.** The 'Expression of Interest' was published on 16.10.2019 inviting applications from one or the other applicants for allotment of work

pertaining to EoI/proposals from the interested service providers/agencies of repute for empanelment for certification of horticulture/agriculture crops as per technical guidelines of National Standards for Organic Production (NSOP) and accredited by APEDA.

**11.** The sole question which requires to be answered in this case as to whether the action of the State authority in inviting application through 'Expression of Interest' can be considered to be right approach taking into consideration the condition stipulated under Clause-9 of the Government order dated 23.09.2019 as contained in letter no.106, wherein, the decision has been taken to allot the work only through open tender.

**12.** It is not in dispute, as has been gathered from the material available on record more particularly the notice of 'Expression of Interest' as contained under Annexure-11 to the writ petition, wherein, the Organic Farming Authority of Jharkhand has come out with 'Expression of Interest' with reference to Government sanction order through letter no.106 dated 23.09.2019 inviting application from the interested service providers/agencies of repute for empanelment for certification of horticulture/agriculture crops as per technical guidelines of National Standards for Organic Production (NSOP) and accredited by APEDA.

Further, as per Annexure-19, one another 'Expression of Interest' was published on the same day i.e., on 16.10.2019 with reference to Government sanction letter no.106 dated 23.09.2019, by which, applications have been invited for empanelment of manufacturers for supply of organic farm inputs (Bio-fertilizers/Bio-pesticides/Soil conditioner/Plant growth enhancers/Other approved Bio-products (if any) in Jharkhand.

It is evident from both the notice inviting tender applications by way of 'Expression of Interest' which have been issued with reference to the Government sanction letter no.106 dated 23.09.2019, therefore, it requires to consider the decision of the State Government as has been taken and contained in letter no.106 dated 23.09.2019, in order to answer the issue, as to whether in the facts of the given case the 'Expression of Interest' will be said to be sufficient compliance of the aforesaid Government order or not?

The letter no.106 dated 23.09.2019 appended as Annexure-1 to the writ petition which has been issued under the seal and signature of the Secretary, Department of Agriculture, Animal Husbandry & Cooperative, Government of Jharkhand, Ranchi addressed to the Accountant General, Jharkhand, Ranchi for sanctioning the amount to be spent in three years biological farming for the financial year 2019-20, 2020-21 or 2021-22, wherein, specific decision has been communicated about sanction of the amount in the aforesaid scheme for execution of the work only on the basis of the open tender, for ready reference, Clause-9 of the aforesaid Government order as contained in letter no.106 dated 23.09.2019 is being reproduced hereinbelow:-

**“9.** इस योजना हेतु कार्यकारी संस्था/प्रमाणीकरण संस्था/उपादान आपूर्तिकर्ता का चयन खुली निविदा के माध्यम से किया जायेगा।”

It is evident that under the sanction letter dated 23.09.2019 issued by the order of the State Government, the work order was issued only on the basis of the open tender.

**13.** The admitted fact herein is that applications have been invited by way of 'Expression of Interest', wherein, the condition has been stipulated that the bidders will be selected only on the basis of the technical bid.

**14.** Therefore, according to the considered view of this Court, the expression of notice having the condition of allotment of work only on the basis of scrutinization of the technical bid is quite different to that of the process which is to be followed in the allotment of work under the open tender process. Since, under the open tender process, the settled procedure for allotment of work is on the basis of the opening of the technical bid and the bidders who have found to be eligible in the technical bid, their price bids will be opened and after making comparative assessment of rate quoted by one or the other technically qualified bidders, the decision is supposed to be taken by the Tender/Purchase Committee on the basis of the comparative assessment of the rate by consideration of rate of one or the other bidders.

But so far as the 'Expression of Interest' is concerned as would be evident from the expression of notice annexed as Annexure-11 and 19 to the amended writ petition, wherein, the process of tender is to be finalized only on the basis of opening of technical bid of one or the other bidders.

**15.** It is the admitted position herein that the writ petitioner has been found to be successful on the basis of the opening of technical bid, however, the appellant writ petitioner claims that he has also quoted the price bid and subsequent to its success in the technical bid, the financial bid was also opened, therefore, the condition which is required to be followed in the process of allotment of work under the open tender process, has also followed in the process where the applications have been invited on the basis of 'Expression of Interest'.

**16.** But, we are not impressed with such argument, reason being that the purpose of allotment of work through open tender is to make it known to all the eligible bidders to participate by quoting the price as also in order

to make the process more competitive and further, if the process has been decided to be followed on the basis of open tender process, being the decision of the State Government, it cannot be expected from the department concerned or the functionaries of the department concerned to flout the government order and ignoring the decision of the State Government to go for the open tender and replacing it to the 'Expression of Interest' for finalization of work to be allotted in favour of one or the other successful bidders.

**17.** There is no dispute about the position of law that once the government takes decision, meaning thereby, the same has got its approval from the Cabinet and therefore, there is binding upon the functionaries of the concerned department.

But, it appears from the material available on record that instead of allotting the work on the basis of the open tender, the concerned department has gone into the process of inviting application of 'Expression of Interest' and therefore, has allotted the work in favour of the appellant writ petitioner.

The concerned department, subsequent to the allotment of work in favour of the appellant writ petitioner has found the infirmity in the process of allocation of work being contrary to the order of the State Government as contained in letter no.106 dated 23.09.2019 and therefore, initially passed the order of ad-interim stay of restraint in executing the work further.

**18.** This Court, therefore, is of the view that when the State Government takes a decision to settle the work/allot the work through open tender as would appear from letter no.106 dated 23.09.2019, if any contrary decision has been taken by the concerned department by inviting

application through 'Expression of Interest', the same according to the considered view, cannot be said to be proper.

19. The learned Single Judge after taking into consideration the stipulation made under Clause-9 of letter no.106 dated 23.09.2019, since has refused to interfere with the same, which according to the considered view of this Court, cannot be said to suffer from infirmity, reason being that the decision taken by the State Government as under letter no.106 dated 23.09.2019 will prevail upon the department and if any decision contrary to the decision of the State Government has been taken by the concerned department, the same will be said to be improper.

20. The contention has been raised by the learned counsel for the appellant writ petitioner that once the contract has been executed, the decision of the State authority by rescinding the contract cannot be said to be proper, but, we are not impressed with such argument, reason being that if any illegality has been committed in its inception, the same cannot be allowed to be rectified due to subsequent development, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in **Ritesh Tewari and Another v. State of Uttar Pradesh and Others [(2010) 10 SCC 677]**, wherein, at paragraph-32, the Hon'ble Apex Court has held as under :-

*“32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits.”*

In another judgment rendered in ***State of Orissa and Another v. Mamata Mohanty [(2011) 3 SCC 436]***, similar view has been taken by the Hon'ble Apex Court at paragraph 37 which is being quoted hereunder :-

*“37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.”*

**21.** This Court, therefore, is of the view that merely because the contract has been executed, the illegality committed in its inception cannot be allowed to be rectified.

**22.** Further, this Court is well aware about the settled position of law that the High Court should be loath in interfering in the contract matter but certainly, the High Court, sitting under Article 226 of the Constitution of India can well interfere in the contract matter if there is error in the decision making process and not in the decision, otherwise, the High Court will deem to have acted as an appellate authority over the decision of the State, as has been settled by the Hon'ble Apex Court in the case of ***Tata Cellular Vrs. Union of India, (1994) 6 SCC 651***, wherein at paragraph-70, it has been held that the principle of judicial review would

apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism, the relevant passage as contained under paragraph-70, 77 and 94 reads as under:-

*“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.*

*77. The duty of the court is to confine itself to the question of legality. Its concern should be:*

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

*Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an*

*administrative action is subject to control by judicial review can be classified as under:*

*(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*

*(ii) Irrationality, namely, Wednesbury unreasonableness.*

*(iii) Procedural impropriety.*

*The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.*

**94.** *The principles deducible from the above are:*

*(1) The modern trend points to judicial restraint in administrative action.*

*(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

*(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

*(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

*(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an*

*administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

*(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*

Further, in the case of **Central Coalfields Limited and Anr. Vrs. SLL-SML (Joint Venture Consortium) & Ors., (2016) 8 SCC 622**, wherein, it was held that it was now for the Court to substitute its opinion in respect of acceptance of bank guarantee, relevant passage as contained under paragraph-32, 37, 47 and 49 reads as under:-

*“32. The core issue in these appeals is not of judicial review of the administrative action of CCL in adhering to the terms of NIT and the GTC prescribed by it while dealing with bids furnished by participants in the bidding process. The core issue is whether CCL acted perversely enough in rejecting the bank guarantee of JVC on the ground that it was not in the prescribed format, thereby calling for judicial review by a constitutional court and interfering with CCL's decision.*

*37. For JVC to say that its bank guarantee was in terms stricter than the prescribed format is neither here nor there. It is not for the employer or this Court to scrutinise every bank guarantee to determine whether it is stricter than the prescribed format or less rigorous. The fact is that a format was prescribed and there was no reason not to adhere to it. The goalposts cannot be rearranged or asked to be rearranged during the bidding process to affect the right of some or deny a privilege to some.*

*47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the*

*unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216] .*

**49.** *Again, looked at from the point of view of the employer if the courts take over the decision-making function of the employer and make a distinction between essential and non-essential terms contrary to the intention of the employer and thereby rewrite the arrangement, it could lead to all sorts of problems including the one that we are grappling with. For example, the GTC that we are concerned with specifically states in Clause 15.2 that “Any bid not accompanied by an acceptable Bid Security/EMD shall be rejected by the employer as non-responsive”. Surely, CCL ex facie intended this term to be mandatory, yet the High Court held that the bank guarantee in a format not prescribed by it ought to be accepted since that requirement was a non-essential term of the GTC. From the point of view of CCL, the GTC has been impermissibly rewritten by the High Court.”*

In **Afcons Infrastructure Ltd. Vrs. Nagpur Metro Rail Corporation Ltd. & Anr., (2016) 16 SCC 818**, the Hon'ble Apex Court

has held that the owner of the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents, wherein, at paragraph-13 and 15, it has been held as under:-

*“13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.*

*15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”*

So far as the power of judicial review in the decision making process is concerned, the judgment rendered by the Hon'ble Apex Court in ***Syed TA Naqshbandi and Ors. vs. State of J&K and Ors., [(2003) 9SCC 592]***, wherein, the Hon'ble Supreme Court has observed as under:-

*“Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor*

*conducive to the interests of either the officers concerned or the system and institutions.....”*

Likewise, in ***Raunaq International Ltd. Vrs. I.V.R. Construction Ltd. & Ors. (1999)1 SCC 492*** the scope of judicial review has been laid down by holding therein that the decision making process suffers from bias of arbitrariness, the same will be scrutinized under the power of judicial review.

In the case of ***Jagdish Mandal Vrs. State of Orissa &Ors. reported in (2007) 14 SCC 517***, it has been laid down that the power of judicial review in the contractual matters is permissible only if (i) Whether the process adopted or decision made is mala fide or intended to favour someone or the same is so arbitrary and irrational that the court can say: the decision is such that no responsible authority acting reasonably and in accordance with law could have reached. (ii) Whether public interest is affected.

**23.** This Court on the basis of the aforesaid position of Law to the effect that if there is error in the decision making process can well exercise the power of judicial review sitting under Article 226 of the Constitution of India.

**24.** This Court, on the basis of the facts of the given case is of the considered view that when the State Government has come out with an order for allotment of work on the basis of open tender, it is none of the business of the concerned department to sit over upon the decision of the State Government for allotment of work by deviating from the order of the State Government and without going for open tender has allotted the work by way of ‘Expression of Interest’.

25. This Court has considered, on the basis of the judgments, as referred hereinabove that there is patent illegality in the decision making process since the decision for allotment of work which ought to have been taken on the basis of open tender in pursuant to Clause-9 of the Government order dated 23.09.2019 as contained in letter no.106 but the State authority has allotted the work on the basis of 'Expression of Interest', as such, the same is nothing but patent illegality has been committed in allotment of work by taking wrong decision.

26. This Court, therefore, after going into the finding recorded by the learned Single Judge is of the considered view that if the learned Single Judge has come to the conclusive finding by holding about deviation from the State Government decision as contained under Clause-9 of the Government order dated 23.09.2019, which according to our considered view, cannot be said to suffer from an error.

27. In view of the discussions made hereinabove as also the ratio laid by the Hon'ble Apex Court in the judgments as referred above, we are of the considered view that the order passed by the learned Single Judge suffers from no infirmity.

28. In the result, the instant appeal fails and is dismissed.

29. In consequent to dismissal of this appeal, Interlocutory Applications being I.A. Nos.1070 of 2022 and 1076 of 2022 stand disposed of.

**(Dr. Ravi Ranjan, C.J.)**

**(Sujit Narayan Prasad, J.)**