

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION NO: 8990 of 2025

M/s. RKEC Projects Limited – YFC Projections pvt. Ltd., Rep. by its General Manager, Somanadh Namburu, Door No.10-12-1, 3rd Floor, Rednam Alcazar, Rednam Gardens, Opp. SBI Main branch, Visakhapatnam – 530 002.

... PETITIONER

Versus

The Union of India, Rep. by its Chairman and CEO Railway Board, Room No.256A, Rail Bhavan, Raisina Road, New Delhi, India and others.

... RESPONDENTS

DATE OF ORDER PRONOUNCED : **30.04.2025**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

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... RESPONDENTS

! Counsel for Petitioners : Sri Venkat Sailendra G
^ Counsel for Respondents : Sri Challa Dhananjai,
Assistant Solicitor General

< Gist:

> Head Note:

? Cases referred:

- 1) (1994) 6 SCC 651
- 2) (2016) 16 SCC 818
- 3) (2021) 16 SCC 808
- 4) (2007) 14 SCC 517
- 5) (2016) 8 SCC 622
- 6) (2020) 16 SCC 489
- 7) (2022) 6 SCC127
- 8) 2023 (4) Supreme 87
- 9) (2005) 1 SCC 679
- 10) (2000) 2 SCC 617

This Court made the following:

APHC010167642025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3331]

WEDNESDAY, THE THIRTIETH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 8990/2025

Between:

M/s. Rkec Projects Limited - Yfc Projects Pvt. Ltd

...PETITIONER

AND

The Union Of India and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.VENKAT SAILENDRA G

Counsel for the Respondent(S):

1.JUPUDI V K YAGNADUTT(CENTRAL GOVERNMENT COUNSEL)

The Court made the following:

::ORDER::

The above writ petition is filed to declare the action of respondent No.2 in disqualifying the technical bid of the petitioner vide online rejection dated 31.07.2024 in relation to the tender issued vide RFP No.CPMGSUWATEN GG20203012 dated 29.12.2023 as illegal and arbitrary.

2. The averments in the affidavit, in brief, are that RKEC Projects Limited – YFC Projects Pvt. Ltd., entered a joint venture to take part in a tender floated by respondent No.2 vide RPF No.CPMSUWATENGG2023012, dated 30.12.2023, inviting bids for the major upgradation of Visakhapatnam Railway

Station, Visakhapatnam, Andhra Pradesh, on EPC Mode. Both companies were incorporated under the Companies Act. The petitioner is a construction company with vast experience in executing marine structures, bridges, buildings, and electrical and firefighting projects. YFC Projects Private Limited is a private limited company that is a turnkey EPC Contractor, executing projects all over India in the line of Highway, Metro Rail, Indian Rail, buildings, etc. Eight bidders participated in the tender process. Respondent No.2 adopted a single two-packet system for the selection of a bidder for the awarding of the project. The first part is the technical bid, and the second part is the financial bid.

b) The petitioners submitted the bid vide I.D.No.16315770 dated 12.02.2024 and also executed the bank guarantee. The petitioner satisfied the eligibility criteria as per the tender notification issued by respondent No.2. On 29.07.2024, respondent No.2 notified through IREPS portal that the technical bid of the petitioner stands disqualified. In remarks column, it was mentioned that "data does not meet the test of responsiveness in terms of mandatory documents, hence rejected".

c) Thereafter, the petitioner addressed two letters, dated 31.07.2024 and 21.08.2024, seeking detailed reasons for rejection of the bid. Since no reply was received, the petitioner filed W.P.No.20105 of 2024 and later withdrew the same, on 01.04.2025. Respondent No.2 opened the financial bids on 31.07.2024. The petitioner came to know that respondent No.3 is L1 among the qualified bidders. Respondent No.2, to issue the tender in favour of respondent No.3, rejected the technical bid of the petitioner without any valid reason. The petitioner quoted the financial bid for Rs.453,07,22,889.55 paise wherein respondent No.3 quoted for an amount of Rs.484,50,55,338.82 paise. Respondent No.2 acted hand in glove with respondent No.3 and rejected the technical bid of the petitioner. With these averments, the above writ petition is filed.

3. Respondent No.2 filed a counter-affidavit. It was contended, *inter alia*, that the tender was floated for the work of major upgradation of Visakhapatnam Railway Station, which is a national infrastructure project. The proposed work, to be undertaken under the subject tender, is :

- a. Construction of new Departure Air Concourse (142M X 108M)
- b. Construction of new station buildings
- c. Provision of 12m wide FOBs
- d. Passenger handling capacity of station 81,000 will increase to 1,50,000
- e. Improved Traffic and Parking Planning in and around the Station

4. The respondents followed the due procedure and rejected the petitioner's bid. The following are the reasons for rejecting five technical bids, including the petitioner's bid:

Name of the Bidder	Remarks
M/s. RKEC-YFC (JV)/Writ Petitioner	(1) Mandatory document at Sl.No.6 of Appendix-IA has been altered as 02 years in place of 03 years, (2) The petitioner has not fulfilled criteria for eligibility projects as per clause 2.2.2.1 of RFP, (3) JV member (M/s YFC Projects Ltd.) has not submitted the format, (4) The petitioner furnished two Power of Attorneys for signing of Bid, (5) The annual statements are not tallying with net accruals.
M/s. Sannverse-ALTIS (JV)	The firm M/s. ALIS Holding Corporation has failed to submit that

	Articles of Association which is required vide clause of 2.11.1 (h) of C of Section-2 as part of technical bid as prescribed. Therefore, the technical bid is considered incomplete and fails to meet the Test of responsiveness in terms of clause No.3.1.6.1 (h), section – 3. Hence the bid is rejected for being non-responsive in terms of clause 3.1.6.2, section-3.
M/s. H.G. Infra Engineering Limited	The bidder does not meet the qualification requirement with regard to technical capacity
M/s. KPC Projects Limited	The bidder does not meet commercial compliance criteria as they have not submitted mandatory documents at Sl.No.7 of Commercial compliance of NIT. As they have submitted incomplete documents in regard to Annexure-VII of Appendix-IA which is a mandatory document of Commercial compliance, this is contrary to the affidavit submitted with respect to point No.2 and 3 of Appendix-VI
M/s. Varindera Constructions Ltd.	The bidder has not submitted bid Security as per the format prescribed Appendix-V. Since Bid Security is improper, the bid is considered as the bid not accompanied by the Bid Security as per the clause No.2.20.2 and therefore fails to meet to the Test of responsiveness in terms of Clause 3.1.6.1 (C), Section -3 of Page 30 of RFP documents and rejected in terms of Clause 3.1.6.2, Section -3.

b) A three-member tender evaluation committee, consisting of Senior Administrative Grade Officers, was formed to scrutinise the bids, and the Divisional Railway Manager /WAT was the accepting authority. The

committee rejected the petitioner's bid after due deliberation and on cogent reasons. The respondents acted as per the terms of the tender document while rejecting the petitioner's bid, and no fundamental or constitutional or legal right of the petitioner has been infringed. Since the petitioner failed to submit the mandatory documents as required under the RFP/NIT, the tender authority rightly rejected the petitioner's technical bid vide order dated 29.07.2024.

5. In so far as the rejection of the technical bid of the petitioner the following discrepancies were pointed out in the counter at para 17.

- i) That the document in Appendix-1A that the petitioner has altered the certificate to two years instead of three years at paragraph 6 in Appendix-1A.
- ii) That the petitioner has not fulfilled the criteria of eligibility projects and further stated that all three works done by the petitioner JV do not come under the eligibility projects, the document related to Annexure-IV of Appendix – 1A.
- iii) The other member of the petitioner JV has not submitted documents related to Annexure-VII of Appendix-1A.
- iv) The petitioner has not properly submitted the power of attorney documents as per Appendix-2 of the tender document.
- v) The annual statements are not tallying with the net accruals.

6. A reply affidavit was filed by the petitioner, and it was contended that the above-mentioned reasons were not mentioned in the disqualification order dated 31.07.2024, except stating that the bidder does not meet the test of responsiveness in terms of mandatory documents. The petitioner submitted all the documents, and the same are filed along with the writ petition. Insofar as

the alteration about two years instead of three years is concerned, it is a clerical error. However, in Annexure-I, it was specified that for the last three years, the petitioner was neither expelled nor terminated, or court cases pending.

c) Insofar as the second reason is concerned, the lead member of JV has executed contracts for Jawaharlal Nehru Port Authority, Navy Mumbai, and Delhi Metro Rail Corporation Ltd. (DMRCL) and experience/completion certificates are submitted to that effect. DMRCL has given a certificate of financial progress for completing 98%. The petitioner JV specifically mentioned that their share was 74%. Therefore, the reason that the bidder received less than 75% of the financial progress is unsustainable.

d) The other member of the petitioner JV executed a work for National Building Corporation (NBCL), a government entity, whereby he received an amount of Rs.223.04 crores from the government entity.

e) The petitioner has satisfied the condition under clause 2.2.2.1, which speaks about the submission of two eligible projects. The petitioner has satisfied the technical capacity, and hence, the rejection of the technical bid of the petitioner JV without verifying the same is only to favour others. The third reason for rejection is that the other member has not submitted Annexure-VII of Appendix-1A, is not a valid ground for the reason that the lead member of the petitioner JV has taken power of attorney to submit any documents regarding the said project and signature of the lead member and submission of Annexure-VII of Appendix-1A suffices. Nowhere in the tender document was it mentioned that both the members of JV shall sign Annexure VII of Appendix -1A.

f) The petitioner JV submitted Appendix-II as per the proforma in the tender document, and the question of non-compliance of the requirement

under said appendix does not arise, and rejection of the technical bid for the fourth ground is unreasonable.

g) The fifth reason of rejection relating to Annexure-III of Appendix-1A that the annual statements are not tallying with the net accruals is false as a detailed statement of the lead member of the petitioner JV as per Annexure III, which is certified by the Chartered Accountant, is filed. The petitioner JV was disqualified only for the reason that he is the lowest bidder (L1) of the project whereby the petitioner quoted for Rs.453.07 crores whereas respondent No.3 quoted for an amount of Rs.484.50 crores.

The petitioner, JV, satisfied all the requirements regarding technical and financial capacity, and rejection of the petitioner's bid is illegal.

7. Heard Sri Gudapati Venkateswar Rao, learned counsel assisted by Sri Venkat Sailendra G, learned counsel for the petitioner and Sri Challa Dhananjai, learned Assistant Solicitor General, for the official respondents.

8. Learned Senior Counsel for the petitioner would contend that the rejection of the technical bid of the petitioner is arbitrary and irrational. The rejection was made to confer benefit on respondent No.3 and the authority acted with malice. Learned Senior Counsel would further contend that two years mentioned at para 6 of the format of Appendix-1A, is clerical. Insofar as the non-tallying of Annexure III of Appendix-1A, the annual statements, with the net accruals, he would contend that the lead member adopted the Indian Accounting Standards (IND AS) in the year, 2020-21 as it is mandatory requirement for the shares to be listed on Stock Exchange Main board and thus, there was change in the net accruals. However, the same was certified by Chartered Accountant. Learned Senior Counsel would further submit that despite the petitioner complied with all the requirements, the technical bid of the petitioner was rejected.

9. Learned Assistant Solicitor General, would contend that due to non-compliance of certain requirements, as pointed out at para 17 of the counter affidavit, the petitioner's technical bid was rejected. He would also contend that the portal, concerning the reasons, does not exceed 190 characters and hence, the rejection order was briefly mentioned. He would further submit that the official respondents acted neither arbitrarily nor hand in glove with respondent No.3.

10. Both the counsels argued the matter elaborately and cited a number of judgments regarding the scope of judicial review vis-à-vis the tender.

11. The points for consideration are:

1. Whether respondent No.2 exceeded its power and committed any error?
2. Whether respondent No.2 acted hand in glove with respondent No.3?

CONSIDERATION

12. Before proceeding further, let this Court examine the scope of judicial review vis-à-vis, the tenders. The scope of judicial review of administrative action has been well crystallized by a Three-Bench Judge of the Hon'ble Apex Court in **Tata Cellular v. Union of India**¹. Subsequently, the said decision has been followed in several judgments. The Hon'ble Apex Court at paras 70,77 and 94 observed 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*

¹ (1994) 6 SCC 651

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.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

13. It is a settled principle that the owner or employer of the Project, having authored the tender document, is the best person to understand and appreciate its requirements and interpret its documents. The Hon’ble Apex Court in **Afcons Infrastrucutre Limited v. Nagpur Metro Rail Corporation Limited & Anr.**², at paras 13 and 15 observed thus:

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.

14. In **Galaxy Transport Agencies v. New J.K. Roadways**³. The Hon’ble Apex Court reiterated the above principle and further considered the aspect of equity and natural justice vis-à-vis tenders.

² (2016) 16 SCC 818

³ (2021) 16 SCC 808

15. In **Jagdish Mandal v. State of Orissa**⁴, the Hon'ble Apex Court again considered the judicial review vis-à-vis administrative action and interference in matter relating to tenders observes at para No.22 as follows:

“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 succour to thousands and millions and may increase the project cost manifold. ...”

16. The Hon'ble Apex Court in **Central Coalfields Limited & Anr. V. SLL-SML (Joint Venture Consortium) & Ors**⁵, observed that it is not for the Court to substitute its opinion in respect of acceptance of a bank guarantee, when a particular format of bank guarantee is prescribed. The bidder is required to

⁴ (2007) 14 SCC 517

⁵ (2016) 8 SCC 622

stick to that particular format alone with the caveat that the State reserves the right to deviate from the terms of the bid document within the acceptable parameters. The Hon'ble Apex Court, at paras 32, 37, 47 and 49, observed as follows:

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.”

17. The Hon’ble Apex Court in **Silppi Constructions Contractors v. Union of India and Ors**⁶, considered the interference of the courts by exercising judicial review in commercial matters and contracts involving technical issues and held that the Courts should be more reluctant because most of the Judges’ robes do not have the necessary expertise to adjudicate upon the technical issues. The courts should not use a magnifying glass while scanning the tender and make every small mistake appear like a big blunder. The Court must give “fair play in the joints” to the government and public sector undertakings in matters of contract. The Hon’ble Apex Court cautioned

⁶ (2020) 16 SCC 489

that the interference would cause unnecessary loss to the public etc. At paras 19 and 20, it was observed as under :

19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit

like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.

18. In **M/s. N.G. Projects Limited versus M/s. Vinod Kumar Jain & Ors**⁷ the Hon'ble Apex Court while considering scope of judicial review in tender matters at para No.27 observed that the multiple layers of exercise of jurisdiction delay the final adjudication, challenging the grant of tender and therefore, it would be open to the High Courts or the Hon'ble the Chief Justice to entrust these petitions to a Division Bench of the High Court, which would avoid at least hearing by one of the forums.

19. In **Tata Motors Limited v. The Brihan Mumbai Electric Supply & Transport Undertaking (Best) and Others**⁸, the Hon'ble Apex Court observed at para No.52:

52. Ordinarily, a 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 unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that

⁷ (2022) 6 SCC 127

⁸ 2023 (4) Supreme 87

the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evidence from a three-Judge Bench decision of this court in *Association of Registration Plates v. Union of India and others*⁹

20. In **Air India Ltd. V. Cochin International Airport Ltd.**¹⁰, the Hon'ble Apex Court held as under:

7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] , *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India* [(1981) 1 SCC 568] , *CCE v. Dunlop India Ltd.* [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , *Tata Cellular v. Union of India* [(1994) 6 SCC 651] , *Ramnihal N. Bhutta v. State of Maharashtra* [(1997) 1 SCC 134] and *Raunaq International Ltd. v. I.V.R. Construction Ltd.* [(1999) 1 SCC 492] The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms,

⁹ (2005) 1 SCC 679.

¹⁰ (2000) 2 SCC 617

standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

21. Thus, a conspectus of the above expressions of the Hon'ble Apex court, while exercising judicial review under Article 226 of the Constitution of India, the Court normally will not sit as an appellate authority. It will only review the decision-making process. The interference of the Court is limited to arbitrary actions or in cases of malice. The courts should not use a magnifying glass while scanning the tender and make every small mistake appear like a big blunder. The authority that floated the contract or tender and authored the tender documents is the best judge as to how the documents have to be interpreted.

22. Testing the facts of the case at hand on the touchstone of the law declared by the Apex Court above, one of the reasons for rejection is that in Sl.No.6 of Appendix-IA, the petitioner has altered two years in the place of three years. As per the contention of learned counsel for the petitioner, it is a clerical error. A perusal of para 6 in Ex.P7, Appendix -1A - it indicates that the petitioner must mention that for the last three years, the petitioner neither

failed to perform for the works of railways, as evidence by imposition of a penalty by any authority nor expelled or terminated by the Ministry of Railway, etc. However, in the document filed by the petitioner at page No.107 (Ex.P5), it was mentioned as two years. Of course, in Appendix 1A on page 115, it was mentioned as three years. According to the tenderer/evaluation committee, the petitioner altered the certificate to two years instead of three years as stipulated, and hence, it is disqualification.

23. As noted supra, the tenderer is the best person to understand and appreciate the requirements. This Court cannot act as an appellate authority and substitute its decision. Whether the mistake is clerical or intentional, according to the tenderer, the petitioner was disqualified, and the petitioner's bid was rejected on that ground, among other grounds.

24. As many as five grounds were mentioned in the counter affidavit regarding petitioner's disqualification in technical bid. According to the tenderer, the petitioner's annual statements do not tally with the net accruals. In the information furnished in the format under Annexure-III, the net accrual for the financial year 2019-20 is shown as 32.07 crores, whereas the statement of actual gross for the financial years 2019-2020 depicts that the net accrual is 34 crores.

25. In reply, the petitioner explained that the lead member of the petitioner JV is a public limited company, and it adopted Indian Accounting Standards, a mandatory requirement for the shares to be listed on the Stock Exchange Main Board and hence, a change in net accrual was occurred and in fact, the Chartered Accountant certified the same.

26. Thus, even as per the petitioner's explanation, in para 10 of the reply affidavit, the net annual statement was not tallied with the net accrual. The tenderer/evaluation committee found that the petitioner is not qualified on that

count also. As discussed supra, this Court will not act as an appellate authority.

27. The statement of principles of equity and natural justice, while evaluating the tender, stays at a distance. In the case at hand, the tender was called for major upgradation of Visakhapatnam Railway Station, Visakhapatnam, Andhra Pradesh, on EPC Mode, which is a public utility contract. The interference of this Court, while exercising judicial review, given the pronouncements of the Hon'ble Apex Court, coupled with the reasons assigned, is unwarranted.

28. The petitioner attributed malafides in awarding the tender in favour of respondent No.3. However, except for making a self-serving statement, nothing is placed before this Court. No authority was impleaded as 'eomine' respondent, to refute the malice, if any. Unless the petitioner arrays the authority in individual capacity, the contention in that regard is no merit consideration.

29. This Court is not going into the other reasons assigned by the authority for the petitioner's disqualification i.e. regarding the petitioner's failure to fulfil eligibility criteria as per clause 2.2.2.1; non-submission of formats as prescribed under Annexure VII of Appendix -1A and Appendix-V, given the reasons mentioned supra.

30. Finally, this court is reminded of the words of the Hon'ble Apex Court in **Jagdish Mandal's** case, that the judicial review on administrative action is to check whether a chance or decision is made lawfully and not to check whether the chance or the decision is sound.

31. Given the facts and circumstances of the case and the scope of judicial review vis-à-vis tender, this Court does not find any arbitrary or irrational action on the part of the official respondents, as also any malafides while

rejecting the technical bid of the petitioner and awarding the contract to respondent No.3. There are no merits in the writ petition and the writ petition is liable to be dismissed.

32. In the result, this writ petition is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUBBA REDDY SATTI, J

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THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 8990 of 2025

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