



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWP No. 1438 of 2020 along  
with CWP No. 2433 of 2020.**

**Reserved on : 16<sup>th</sup> September, 2020.**

**Decided on: 23<sup>rd</sup> September, 2020.**

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**1. CWP No.1438 of 2020**

Uttej Rathour

...Petitioner.

Versus

State of H.P & Others

...Respondents.

**2. CWP NO. 2433 of 2020**

Yashwant Singh Diwan

...Petitioner.

Versus

State of H.P. & Others

...Respondents.

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**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

**The Hon'ble Mr. Justice Chander Bhusan Barowalia,  
Judge.**

Whether approved for reporting? **Yes.**

**For the Petitioner:** Mr. B.C. Negi, Senior Advocate with Mr. Nitin Thakur, Advocate, in CWP No. 1438 of 2020 and Mr. Y.P. Sood, Advocate, in CWP No. 2433 of 2020.

**For the Respondents No.1 to 5:** Mr. Hemant Vaid, Additional Advocate General with Mr. Vikrant Chandel, Dy. A.G. in both petitions.

**For Respondent No.6:** Mr. Y.P. Sood, Advocate in CWP NO. 1438 OF 2020.  
Mr. B.C. Negi, Senior Advocate with Mr. Nitin Thakur, Advocate, in CWP No. 2433 of 2020.

**For Respondent No.7 in CWP No. 1438 of 2020:** Nemo.

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**Sureshwar Thakur, Judge**

Since, both, CWP No. 1438 of 2020, and, CWP No.2433 of 2020, arise from a common thereto bidding document, hence embodied in Annexure P-1, thereupon, both the afore writ petitions are amenable for a common verdict being rendered thereon.

2. Through Annexure P-1, the respondents concerned, invited bids for works relating to “Up-gradation and M/T on Sainj Khad Dimmi Trahan Kupvi Road Km. 0/0 21/0 (SH:-ROFD) i/c R/walls, cross drainage works, M/T works, Road side V-shape drain, essential parapets, solid cause way and sign boards and KM tone in Km. O/o to 21/0), under, NABARD RIDF-XXIV. The amount qua the afore works, as, encapsulated in Annexure P-1, is, in a sum of Rs.1235.13 lacs. Both, one Uttej Rathour (petitioner in CWP No. 1438 of 2020), and, one Yashwant Singh Diwan (petitioner in CWP No.2433 of 2020), participated in the tender process, and, after conclusion of the codal formalities, one Uttej Rathour was declared as L-1. However, the technical bid of Yashwant Singh Diwan became rejected. Moreover, through Annexure P-10, the

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respondents concerned, after rescinding, the earlier invitation(s) to make offers, as, elicited through Annexure P-1, from the bidders concerned, vis-a-vis, the works enumerated therein, hence, proceeded to seek, fresh bids from the bidders concerned, vis-a-vis, the work(s) borne in Annexure P-1. Consequently, both the afore writ petitioners, become respectively aggrieved, from, the issuance of Annexure P10, especially one Yashwant Singh Diwan become(s) aggrieved from rejection of his technical bid.

3. One Uttej Rathour, became declared, to be successful in both technical, and, financial bid(s), on anvil, of his, more especially, upon, his earlier work completion certificate borne in Annexure P-3, meteing absolute compliance, vis-a-vis, clause (28 (b), clause whereof becomes borne in the bidding document, inasmuch, as his earlier to offering his bid, vis-a-vis, the extant proposed works, his executing one similar work, not less than 40% of the estimated costs (without liquidated damage or compensation), for, the last five years, (i) however, one Yashwant Singh Diwan, had meted protests against the

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proposed ongoing contemplation(s), of, the respondents concerned to accept, both the technical, and, financial bid of one Uttej Rathour, (ii) complaint whereof, is, embodied in Annexure P-4, and, thereon the Executive Engineer, HPPWD, Chopal, after considering the echoings borne in Annexure P-3, and, also, upon, his making an interpretation thereon, of the afore clause, occurring in the bidding document, and, appertaining to similarity, of, earlier works done, hence made a decision, vis-a-vis, the compliant of one Yashwant Singh Diwan, not warranting any affirmative action thereon.

4. Furthermore, in Annexure P-8, echoings occur, vis-a-vis, one Yashwant Singh Diwan, not begetting any satiation, vis-a-vis, clause 6.10, as, becomes borne in the bidding document, clause whereof, after becoming amended through, a, corrigendum, borne in Annexure P-2, inasmuch, as, the hitherto phraseology borne therein, conveying rather "One work of similar nature should have been executed BC/BM work not less than 40% of the estimated cost" becoming substituted, to, "one work, of, similar nature, of, 40 %, of, amount put to tender should

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be executed with 20% thereof, should be bituminous work, as per the conditions of contract". Conspicuously, on application, of the afore amendment made, to, Clause 6.10, vis-a-vis, the earlier apposite work(s) enjoined to be performed, hence the technical bid, of, one Yashwant Singh Diwan, became rejected. For the reasons to be assigned hereinafter, dehors, the Executive Engineer, HPPWD, Chopal, rejecting the representation, of, one Yashwant Singh Diwan, as became addressed against Uttej Rathour, (i) representation whereof appertains to mis-awarding, of, works to the afore Uttej Rathour, hence happening, upon, purported mis-interpretation, of, earlier similar works, enjoined to be performed by the afore, hence, for his begetting imperative satiation, with, clause 28.2(b), of, the bidding document, (ii) and, also dehors the rejection of the technical bid, of, afore Yashwant Singh Diwan, hence on the afore parameters, this Court, is, to make an objective, and, independent analysis, of, the meritworthiness or otherwise of the afore, respective acceptance, and, rejections hence by the Executive Engineer, HPPWD, Chopal of both the financial and technical bid of Uttej Rathour, and, also

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reiteratedly, vis-a-vis, the rejection, of, the technical bid, of, one Yashwant Singh Diwan. Moreover, this Court is also enjoined to make a decision, vis-a-vis, this court being empowered, to, issue any mandamus, upon, the respondents concerned, that, given the afore Uttej Rathour, purportedly begetting satiation, vis-a-vis, the apposite clause, as, becomes borne in the bid documents, satiation whereto, hence, purportedly becomes bedrocked, upon, his previous work(s) done certificate, as, borne in Annexure P-3, and, thereupons theirs becoming precluded, to, on the principle of promissory estoppel, hence initiate the re-bidding process, (iii) besides is also enjoined to construe the permissible limits, of, the power of judicial review, vested in this Court, and, to determine, vis-a-vis, the respondents concerned, held any legal efficacy, to, order for re-advertisement of the works, as, were advertised earlier. In addition, reiteratedly this Court is also enjoined to mete an adjudication, whether any principle of promissory estoppel becomes attracted, vis-a-vis, Uttej Rathour, for his validly resting thereons, hence any firm legal anchor, for, begetting rescission, of, Annexure P-10,

from this Court, upon, its exercising, the power of judicial review thereof.

5. In the afore endeavour, this Court deems, it, of utmost, and, gravest importance, to, peruse Annexure P-3, whereon(s), at its end a signed certificate, of, the Executive Engineer concerned, is, appended, and, wherein in clause (2) thereof, three agreements, serialised as 76, 77, 79 of 2018-2019, are enumerated, and, gross amount, of, the afore completed works, is mentioned, to be borne, in a sum of Rs.3,77,77,708.00, (i) and, also to thereafter assess, vis-a-vis, the afore certificate, appertaining to purported compliance being meted, vis-a-vis, the apposite clause, of, the bidding documents, becoming hence a valid tool rather with the afore to beget success, in his endeavour. However, given three agreements becoming mentioned in the apposite certificate, whereas, the apposite clause of the bidding document(s), clause whereof stands extracted hereinafter:-

“Clause 6.10

*Minimum similar work done in last five years (without Liquidated Damage or compensation). One work of similar*

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*nature of 40% (forty percent) of amount put to tender should have been executed with 20% thereof should be bituminous work.*

hence appertaining to the similarity of the earlier done works, and, in the amount(s) mentioned therein, thereupon, with therein hence not becoming embodied, any, pluralized numbers, of, earlier works. Contrarily, with the apposite clause, casting a dire necessity, hence, of, earlier performance, of, singular similar works, or the imperativeness, of, singular earlier apposite works becoming performed, (a) connotation whereof, as, ascribable thereto, becomes engendered from encapsulation, in, the afore contractual clause, (b) and/ or from user therein, of the phrase, "one work", (c) thereupon, with the afore manifest unfoldments, borne in Annexure P-3, contrarily echoing qua it appertaining to three separate works, executed inter se the respondents concerned, and, Uttej Rahtour, (ii) thereupon, the afore therein occurring agreements, hence, appertaining, to, earlier three works, render them all to become amenable to plurality, of, numbers, of, earlier works, hence, performed, than, of contractual imperativeness, of, singularity, of, numbers, of,

earlier similar works, hence enjoining performance, (iii) and, hence, any purported reliance placed thereon, by the learned counsel appearing for Uttej Rathour, for his purportedly, making a further endeavour before this Court, to issue a mandamus, upon, the respondents, for rescinding Annexure P-10, and, his also depending, upon, the principle of promissory estoppel hence becoming attracted, vis-a-vis, Uttej Rathour, are both, misfounded, and, legally fallible hence espousals.

6. Be that as it may, the afore made interpretation, become(s) also aptly borne in the reply, on affidavit submitted, by the contesting respondents. During the course of arguments being heard, upon, CWP No.1438 of 2020, Mr. Y. P. Sood, learned counsel appearing for respondent No.6, submitted that he does not intend to institute any reply, on behalf, of, the afore respondent, to the apposite CWP, rather would be accepting the reply furnished to the writ petition No.1438 of 2020, by, the contesting respondents. Dehors, the afore, made inference hence invalidating the afore contention made before this Court, by, Mr. B.C. Negi, Senior Advocate, it is also

important to gauge, the, import, of, the unrebutted, and, unchallenged existence, of, the apposite rescinding power, as, becomes borne in the bidding document. Since, (i) a reading of the afore clause, confer(s) an absolute power, upon, the respondents concerned, to, rescind the entire process, even if, it arrives, upto, the stage of culmination, (ii) and, when neither the afore clause, is, challenged to be stained with any vices of malafides, or, upon anvil, of, its breaching the constitutional mandate, of, non-discrimination or non-arbitrariness, (iii) thereupon, the power of rescission, as, exercised by the respondents concerned, on anvil thereof, becomes construable to be validly exercised. Consequently, the learned counsel appearing for the writ petitioner, is, estopped to challenge the afore hence on any legal parameter(s). Even though, the learned counsel appearing for the writ petitioner, in, CWP No. 1438 of 2020, had, through an application bearing CMP No. 8954 of 2020, hence strived to place on record certain documents, and, purportedly to anvil thereon, an argument qua the afore Annexure P-3, appertaining, to, occurrence, of, disclosure therein, in purported satiation, of,

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the apposite contractual covenant, rather becoming earlier accepted by the authorities concerned, (iv) thereupon, the latter becoming estopped to contend in their reply, on affidavit, that, the afore certificate, does not mete, any compliance, with the contractual parameters enshrined, in, clause 28.2 (b), of, the bidding document. For succoring the afore contentions, the learned counsel appearing for the petitioner had appended, certain documents, with, the afore CMP. However, even the afore endeavour is discardable, as, no pleadings in consonance therewith, are, borne in the writ petition, whereas, occurrence of pleadings, in, consonance therewith rather in the writ petition, are imperative, for this Court, to, either assess the merits thereof, or to assess the evidentiary merits, of, documents, as, become appended therewith, in support of Annexure P-3, hence, begetting apposite compliance(s). Furthermore, even if, an earlier bonafide mis-interpretation became meted, upon, the afore certificate, hence, the afore purported bonafide mis-interpretation, cannot either subsume or whittle down the afore valid interpretation, as, made by this Court, upon, Annexure P-3, insofar, as, its not

begetting apposite compliance, with the afore contractual clause, as, becomes borne in the bidding document.

7. In so far as, the rejection of the technical bid, of, one Yashwant Singh Diwan, is concerned, it happened, as evident, on, a reading of the reply, made by the respondents, to, CWP No.2433, on anchor of his, not begetting satiation, with, clause 6.10, and, with clause 28.2(b) of the standard bid document, clause(s) whereof stand extracted hereinafter:-

"Clause 6.10

*Minimum similar work done in last five years (without Liquidated Damage or compensation). One work of similar nature of 40% (forty percent) of amount put to tender should have been executed with 20% thereof should be bituminous work.*

Clause 28.2(b)

*Minimum Work Done Condition:- Minimum one similar work done amount not less than 40% (forty percent) of the estimated cost (without liquidated Damage or Compensation" in the last five years."*

(a) and thereons the Technical Committee, of, the respondents concerned, as, headed by the experts, had concluded, that the total work of petitioner Yashwant Singh

Diwan, was Rs.335.73 lacs, and, there was no item, of, bitumen concrete, and, further even if the earlier work is/are construed, on anchor of similarity, to, beget satiation with clause 6.10, and, with clause 28.2.(b) of the standard bidding documents, (b) thereupon, also the contemplated value, of, the earlier bitumen work is less than 20%, whereas, the afore evidently performed per centum, of, the earlier bitumen work alone merited valid consideration, for, hence the technical bid, of, one Yashwant Singh Diwan becoming accepted.

8. However, at this stage, the learned counsel appearing for the afore petitioner, made a vehement contention, before this Court, that the occurrence, of, an amendment to clause 6.10 of the Standard Bidding Document, (a) wherethrough, the earlier occurring therein contemplation, inasmuch, as, one work of similar nature, of, 40% of amount put to tender, become substituted, to, 20% thereof should be bituminous work, (b) is, an invalidly made substitution, and, also is a forged substitution, nor hence thereon(s) any valid reliance(s), can come to be placed either by this court or by the contesting respondents.

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However, the afore ground, is, not supported, by any contra therewith signed recitals, borne, in any document, made by any valid authority other than the one, who, made the signed amendment, vis-a-vis, clause 6.10, hence through Annexure P-2, or the authority making the afore substitution become proven to lack the apposite empowerment. Even if, tentatively, accepting the afore contention, of, the learned counsel appearing for the petitioner, thereupon, also with this Court, rather rejecting the relief claimed in CWP No.1438 of 2020, hence, whereupon, there would be only one purported bidder, and, thereupon, this court would be benumbing, the, valid strivings, as, made by the respondents concerned, to, ensure emanation(s), of, healthy competition(s), and, also emanation(s) of better offers, from, the bidders, who participate, in, the re-bidding process.

9. Moreover, no material becomes placed on record, hence, suggestive that the authority hence making the afore amendment, held no valid authorization, to make it nor the afore amendment, is, challenged, on any permissible legal parameters. Omission(s), of, the afore,

render open a conclusion qua the afore amendment, vis-a-vis, clause 6.10, rather happening validly. Moreover the addition as made by the respondents, vis-a-vis, the apposite clauses, enables them, to, therethroughs make apt gaugings, vis-a-vis, the suitability, of, awarding, of tendered works, to, the bidder concerned, who in tandem therewith, holds all the requisite engineering experience, hence, for, effectively completing the awarded work, (i) thereupon, the afore made amendment is unamenable for interference, it being well founded, and, well conceived, upon scientific data emanating, from engineering experts, (ii) whereas, upon, this Court making interference(s) therewith, it would untenably assume, the, role, of, an expert, more so, when no expert evidence holding a pedestal higher than the one, whereon, the amendment is rested, becomes adduced. Since, the afore is amiss, hence, the afore addition holds validation.

10. Be that as it may, the grounds, for, exercising the power of juridical review, by the writ court, upon, a decision made, by the respondents concerned, to, re-advertise, the, hitherto advertised works, is/are, governed

by a decision, made by the Hon'ble Apex Court, upon, **Civil Appeal No.2197 of 2020, titled as The Bharat Coking Coal Ltd. & Ors. vs. Amar Dev Prabha**, and, also vis-a-vis, the afore facet, the Hon'ble Apex Court, has further made a decision, in a case titled as **State of Jharkhand and others vs. M/s Cwe-Soma Consortium, Civil Appeal No.6125 of 2016**, the relevant paragraph whereof stand extracted hereinafter:-

*" In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well-settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide Laxmikant and Ors v. Satyawani and Ors (1996) 4 SCC 208; Rajasthan Housing Board and Anr. v. G.S Investments and Anr. (2007) 1 SCC 477 and Uttar Pradesh Avas Evam Vikash Parishad and Ors. V. Om Prakash Sharma (2013)5 SCC182)".*

A combined reading of the afore principles, hence, governing the exercise of judicial review, vis-a-vis, the executive decision(s) making, especially a decision made, by the respondents concerned, to re-invite fresh quotations, qua the works hitherto advertised, unveils qua it becoming propounded therein, that, (a) courts ought not to sit in

appeal over decision(s) of executive authorities; (b) the power of judicial review vested in a writ court, becoming exercisable, only upon, palpable irrationality and procedural impropriety, hence, surging forth, in the apposite decision making processes, or there being gross impropriety or gross arbitrariness or capriciousness, in, the decision making processes hence embarked, upon by the executive. Further it has been expostulated therein that, if any recourse for rebidding, is, on account, of, or is grooved in a desire to get, a, better price, thereupon the involvement of Article 14 of the Constitution, would not be made out, whereupon hence (a) when the respondents contend, that, the exercising by them, of, a legitimate rescinding power, is, anvilled, upon, the afore unchallenged apposite contractual clause, vesting hence an absolute rescinding power, upon, the contesting respondents, (b) and, further when the afore exercise, has been evidently done, only for ensuring the emanations, of, a better price, or, for ensuring the emergence, of, a healthy competition (c) resultantly thereupon, a sequel becomes generated, vis-à-vis, the

impugned Annexures rather not suffering from any aura, of, any invalidity.

11. Moreover, since the writ court, ought not to sit in appeal over decisions of executive authorities, and, when this Court would assume valid empowerment(s), to, exercise judicial review, vis-a-vis, the impugned annexures, only, upon, palpable irrationality, and, procedural impropriety, hence, surging forth, in the, apposite decision making processes or there being gross impropriety or gross arbitrariness or capriciousness, in the decision making processes hence embarked, upon, by the executive, (a) whereas, when the entire, anvil of the afore submissions, made before this Court, on behalf of the petitioners, is completely astray or off the mark, from, the relevant contractual norms, nor when the earlier work performance certificate(s), are within the ambit, of the apposite norms, as, embodied in the afore alluded respective contractual clause(s), (b) thereupon, the power of re-bidding, as, exercised by the respondents concerned, cannot be construed, to be bereft of any element of constitutional creditworthiness, nor it can be concluded to be unsound in

law. Even otherwise, this Court refrain(s) from exercising its power of judicial review, as, it becomes prohibited to invoke, the, afore power, merely, for protecting prior contractual disputes, which otherwise, can be settled through claim for damages rather becoming reared before the Civil Court concerned.

12. The effect of the counsel for the petitioner, not casting any valid challenge, vis-a-vis, the apposite rescinding clause, as, borne in the bidding document, rescinding clause whereof, confers an absolute discretion, in the respondents concerned, to, on or before the allotment, of, the relevant works, for theirs being executed by the bidder concerned, hence, rescind it/them, and, to obviously also seek fresh quotations, (I) thereupon, the hereinafter inference(s) arise inasmuch as the afore want(s) of any challenge, being thrown thereagainst, render the impugned annexures, to fall, within the ambit, of, the apposite rescinding powers, vested hence, therethrough(s) upon, the respondents concerned. Moreover, the effect of the afore want of any valid challenge becoming thrown, to, the apposite rescinding clause, as, borne in the bidding

document, is qua, (a) merely for the writ petitioner(s) becoming qualified, for thereafter the relevant works, becoming awarded to them, it/they ipso facto, rather not also acquiring any further legitimate expectation, for, the tendered works', being assuredly awarded to it/them, (b) nor, they hold any valid ground, for, making any espousal before this Court, vis-a-vis, the principle of promissory estoppel, standing attracted, vis-a-vis, it/him, and, against the respondents, (c) besides, also the petitioner, cannot make any espousal before this Court, that, the impugned Annexures rather suffer from any vice, of, any illegality or impropriety, conspicuously given theirs' becoming well founded thereon(s), i.e. the clause supra. Significantly hereat, in, the afore background, hence the principle of promissory estoppel becomes subsumed rather therewithin(s).

13. Consequently, with this Court, rejecting the afore advanced espousal made by the counsel, for, the writ petitioner hence avvilled, upon, his purported qualification, acquired through Annexure P-3, thereupon, any purported right, of, one Uttej Rathour, to seek a mandamus against

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the respondents, hence, against there undertaking, the, re-bidding process(s), argument(s) whereof becomes, for, the afore reasons, rather misfounded, on, the principle of promissory estoppel, becomes also a mispropounded right, (I) thereupon, also no promissory estoppel, concomitantly becomes validly aroused, vis-a-vis, the afore petitioner, nor it can mete any succor to the writ petitioner. Cumulatively, with the afore drawn inference, qua the strivings made by him, and, as become rested, upon, Annexure P-3, becoming construed to be legally frail, rather also render all the afore, being gross mis-strivings, and, also to hold no sustenance either on principle(s), of, contract or on principle(s) of logic.

14. For the foregoing reasons, there is no merit in both the petitions, hence, both the afore petitions are dismissed. All pending applications also stand disposed of.

**( Sureshwar Thakur ),  
Judge.**

**23<sup>rd</sup> September, 2020. ( Chander Bhusan Barowalia)  
(jai) Judge**