

(2017) 04 SHI CK 0088
High Court of Himachal Pradesh
Case No: 359 of 2017, 406 of 2017

ZENITH EVENT AND
SERVICE AND
ANOTHER

APPELLANT

Vs

STATE OF H P AND
OTHERS

RESPONDENT

Date of Decision: April 19, 2017

Acts Referred:

- Constitution of India, Article 14, Article 298 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions
- Power to carry on trade, etc

Hon'ble Judges: Mansoor Ahmad Mir, Sandeep Sharma

Bench: Division Bench

Advocate: R K Bawa, Jeevesh Sharma, C N Singh, Shrawan Dogra, Anup Rattan, Romesh Verma, J K Verma, Archana Dutt, Seema K Guleria

Final Decision: Dismissed

Judgement

1. Since common questions of law and facts are involved in these petitions, both were heard together and are being disposed of by this common judgment.

2. Petitioners, in CWP No. 359 of 2017, have sought following main reliefs:

"i) To set-aside the condition of having average annual financial turnover of the bidder during last three years, ending 31st March of previous financial year to be Rs. One crore for providing sanitation services to 251 and above bedded hospitals, as provided in the eligibility of bidders (essential condition) of tender form 2017 i.e. Annexure P- 13.

ii) To direct the respondents not to change the eligibility criteria/essential condition as contained in the tender document of the previous year i.e. 2016, which provides that the average annual financial turnover of the bidders for the last three years, ending 31st March of previous financial year to Rs.30 lac for providing sanitation services to 150 and above bedded hospitals.

iii) To direct the respondents to allow the petitioner-firm to participate in the tender process for providing sanitation services to 250 and above bedded hospitals in the State of H.P., for the year, 2017"

3. Similarly, petitioners, in CWP No. 406 of 2017, have sought following main relief:

"Issue a writ of Certiorari, mandamus or appropriate writ order or direction as this Hon"ble Court deems fit for quashing the tender Process as well as the Tender document 2017 (Annexure P-4), for all intents and purposes and direct the respondent to reframe the terms and conditions of Sanitation tender keeping in view the local, ground realities into consideration."

4. Facts, common to both the petitions, are that the respondent-State initiated tendering process for sanitation contract of health institutions for the year 2017-18 in accordance with the Revised Tender Document 2017. The Chief Medical Officers and Medical Superintendents of the hospitals all over the State were asked to float tenders in respect of health institutions of their Districts/Hospitals. The tendering process was to be completed by 15th March, 2017.

The tender document which was uploaded on the official website, provides following "eligibility conditions" for the prospective bidders:

"Eligibility of Bidders: (Essential Conditions)

1. Average annual financial turnover of the bidder during the last three years, ending 31st March of previous financial year should be as follows:

* Up to 50 bedded hospital - Rs.25-00 Lac (Rupees Twenty Lakh)

* 51 to 100 bedded hospital - Rs. 50-00 Lac (Rupees Fifty Lacs)

* 101 to 250 bedded hospital - Rs.75-00 Lac (Rupees Seventy Five Lacs)

* 251 to above bedded hospital -Rs.1.00 Crore (One Crore)

The financial statement showing the turnover should be authenticated by Chartered Accountant (CA) & should also be accompanied by an affidavit to that effect that the firm/contractor have never been blacklisted.

2. Minimum two years experience for providing sanitation services satisfactorily in Govt./Corporate sector Hospitals/ Medical colleges. (If the bidder is bidding up to 100 bedded hospital and is providing experience of private hospital, it should be minimum of 50 bedded hospital, similarly if for more than 100 bedded hospital the experience should have been at least from the hospital of more than 100 bedded private hospital)

3. The Service provider should be registered firm or company (proprietary/ Partnership /Company/ corporation/ legal entity/ Cooperative Society) Copy of registration certificate confirming Registration NO. of the firm must be enclosed. The company/Firm must be Registered with HP Govt. and office must be situated in Himachal Pradesh.

4. Copy of registration certificate confirming Registration NO. of the firm must be enclosed.

5. Licence No. Under Contract Labour Act. The service Provider will provide an appropriate labour licence issued by competent authorities for carrying out sanitation service/cleaning activity. (Proof of license issued by competent authority is to enclosed). Failure to provide the valid licence, the application for providing sanitation services and award thereof also will be cancelled. Previous valid licence should be attached til new license is issued.

6. The tenderer should be duly registered with the ESI & EPF department having its jurisdiction for the HP (Proof or copy of registration with these departments and copy of account number allotted by these must be attached.)

7. Service provider must be income Tax assessee and should have submitted IT returns for the last three financial years. PAN No. and copy of Income tax Return of

last three financial year must be attached.

8. Audited Balance sheet of last three financial years with details of annual turnover, profit & Loss account.

9. Copy of service tax registration issued by competent authority must be attached.

10. Preferably the Firm should be ISO certified (certified/proof attached)

11. Service provider will have to produce a certificate his firm is not black listed."

5. Petitioners, in both the petitions, are mainly aggrieved by the eligibility condition No.1, whereby for health institutions of various bed strengths, requirement of having annual financial turnover of Rs. 25.00 Lakh, Rs. 50.00 Lakh, Rs. 75.00 Lakh and Rs. 1.00 Crore has been set out as essential condition, inter alia. As per petitioners, the annual turnover required from the prospective bidders is on higher side and is arbitrary and malafide.

6. Mr. R.K. Bawa, learned Senior Advocate duly assisted by Mr. Jeevesh Sharma, Advocate, representing the petitioners in CWP No. 359 of 2017 and Mr. C.N. Singh, Advocate, representing the petitioners in CWP No. 406 of 2017, vehemently argued that the eligibility criteria/ essential conditions contained in the tender document 2017, are highly imaginary and contrary to the factual and local conditions of Himachal Pradesh and colourable in nature to create monopoly in favour of certain providers to the detriment of the persons/service providers already working in the field for so many years. While referring to the conditions imposed in the tender document, Mr. C.N. Singh, Advocate further contended that the conditions with regard to annual financial turnover are totally impractical because concerned authorities have failed to take into account local aspects of the State of Himachal Pradesh, while prescribing aforesaid conditions. He further contended that requirement of annual financial turnover is on higher side and totally impractical because respondents, while fixing criteria of annual financial turnover, as referred to above, failed to take note of past practice and working conditions prevalent in the State of Himachal Pradesh.

Mr. C.N. Singh, Advocate, while concluding his arguments vehemently argued that in the State of Himachal Pradesh, there are mostly 50 bed hospitals in adequate number, more particularly in Kangra District, where certain conditions as sought to

be imposed in the tender document, may not be necessary for the proper/smooth functioning of the work sought to be awarded by way of tender in question. Mr. C.N. Singh further contended that entire exercise has been done by the respondents to debar petitioners and other similarly situate persons so that the influential persons, who may not be having sufficient experience in the field, are awarded contract in question.

7. Mr. R.K. Bawa, learned Senior Advocate, forcefully contended that the decision of the respondents to impose condition of annual financial turnover of Rs. 1.00 Crore for the hospitals with 251 beds or above, is totally unjustified and same has been imposed arbitrarily, without any nexus sought to be achieved. Mr. Bawa further contended that sanitation work of RH Kullu is being done by the petitioner firm at present for the year 2016-17 at the rate of Rs. 1,74,500 per month and as such condition of annual financial turnover of Rs. 1.00 Crore as set out in the tender document is totally arbitrary and without any basis. Mr. Bawa further contended that while imposing conditions, as referred to hereinabove, authorities concerned have not taken into consideration relevant factors and as such same deserve to be set aside.

While concluding his arguments, Mr. Bawa forcefully contended that petitioners have every reason to believe that aforesaid conditions have been inserted merely to favour certain firms/ companies and to debar other persons including petitioners from participating in tendering process. Mr. Bawa also argued that even the Central Vigilance Commission has repeatedly advised that stringent conditions should not be laid down, which debar competitive bidding.

8. Mr. Shrawan Dogra, learned Advocate General duly assisted by Mr. Anup Rattan, learned Additional Advocate General, while refuting aforesaid contentions having been raised by the learned counsel representing the petitioners, vehemently argued that the process for awarding sanitation work in health institutions is a contractual matter and unless there is infringement of fundamental rights, arbitrariness, malafide, illegality or irregularity or unconstitutionality on the part of officer/authority concerned, petitioners have no right to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and petitions at hand deserve to be dismissed. Mr. Dogra further contended that no injustice, whatsoever, has been caused to the petitioners. Mr. Dogra, further contended that there is no document worth the name led on record by the petitioners suggestive of the fact that injustice has been caused to them as such present petitions are not maintainable. While refuting averments made by the learned counsel representing the petitioners, Mr. Dogra vehemently argued that the respondent-State is well within its right to revise or amend any of the conditions of the tender document as

per need and requirement at times keeping in view relevant factors and aspects including Minimum Wages Act, increased requirement of manpower from time to time etc. While supporting decision of the Government to revise eligibility criteria as set out in the tender document, Mr. Dogra strenuously argued that conditions with regard to revised turnover, minimum experience in government hospitals/ medical colleges for participating in tender process for providing sanitation services in public health institutions in the State of Himachal Pradesh have been revised in just and proper manner so as to ensure best qualitative services in the larger interest of the public. Mr. Dogra strenuously refuted the contentions of the learned counsel representing the petitioners that with the insertion of the revised conditions with regard to turnover they have been virtually debarred, and further stated that it is wrong to suggest that petitioners have been made ineligible to participate in the tender process, on the basis of their turnover, because, they are eligible to participate in the tender process in various health institutions in the State of Himachal Pradesh, for the hospitals with different bed strengths i.e. 250, 100 and 50 also, on the basis of their turnover. While concluding his arguments, Mr. Dogra contended that turnover slabs have been increased as compared to old slabs with the intention to have good and qualitative competition in the field as firms having less than 10 years experience may not be able to cope up in the absence of monthly payment and clearance of bills, if any, for justified reasons such as completion of codal formalities and delay in budgetary provisions for reasons beyond the control of the authorities concerned. In the aforesaid background, Mr. Dogra, prayed that the petitions at hand be dismissed.

9. We have heard the learned counsel representing the parties and also gone through the record.

10. Perusal of revised tender document 2017, suggests that respondents have prescribed and laid down revised turnovers for health institutions with different bed capacities, in different slabs in the following manner:

1. Up to 50 bedded hospital - Rs.25-00 Lac (Rupees Twenty Five Lakh)

2. 51 to 100 bedded hospital - Rs. 50-00 Lac (Rupees Fifty Lacs)

3. 101 to 250 bedded hospital- Rs.75-00 Lac (Rupees Seventy Five Lacs)

4. 251 to above bedded hospital -Rs.1-00 Crore (One Crore)

11. Perusal of data as reproduced above clearly suggests that the petitioners as well

as other similarly situate persons or companies have the option to participate in the tender process to be carried out as per revised turnover on the basis of their eligibility for Government health institutions having different bed strengths. Perusal of reply having been filed by the respondent-State further suggests that aforesaid revised turnover slabs and other conditions are not applicable only to the petitioners but same are applicable to all participating firms for providing sanitation services in the government health institutions in the State of Himachal Pradesh in equal manner. If, reply having been filed by respondents No.1 to 3, is examined, it certainly reveals that decision to revise the turnover slabs as well as other conditions of tender has been taken to ensure best possible qualitative service in the larger interest of the patients and the public. Respondents have specifically stated in their reply that they are well within their right to revise any of the conditions in the tender document as per their requirement, keeping in view relevant aspects and factors including Minimum Wages Act, increased requirement of manpower from time to time etc. This Court was unable to find any averment contained in the writ petitions as well as submissions having been made by the learned counsel representing the petitioners suggestive of the fact that aforesaid decision as has been taken by the respondents, is unreasonable, arbitrary and discriminatory and more particularly, as alleged in the petitions, has been taken to help some influential people ignoring the interests of the petitioners as well as other similarly situate persons. Though the petitioners have alleged mala fides in the action of the respondents in revising financial turnover slabs but these are totally vague and without there being any basis. On being asked by this Court, learned counsel representing the petitioners stated that no specific allegations as such have been leveled against the officers of the respondent-State, rather only legal malafides have been alleged against the respondents, who have taken this decision to revise financial turnover slabs. In nutshell, if the petitions are perused, the case of the petitioners is that with the imposition of new conditions i.e. annual financial turnover slabs, they have been virtually debarred from participating in tender process.

Aforesaid contentions appear to be totally ill-founded and without any basis. At the cost of repetition, it may be observed that in the revised tender document, four different slabs have been prescribed by the authorities concerned and, any firm, company or person interested in taking part in the tender process may apply against any of the categories as prescribed above, subject to its eligibility. Hence, there is no force in the arguments having been made by the learned counsel representing the petitioners that if aforesaid conditions are allowed to be incorporated in the tender document, it would cause great prejudice to them. Similarly, we see no force in the arguments of the learned counsel representing the petitioners that entire exercise has been done to help influential persons that too with a view to oust small persons like the petitioners because, there is no evidence

led on record in support of aforesaid contentions and as such same can not be accepted.

12. It is well settled by now that the Courts would normally not interfere in the tender/contractual matters while exercising powers of judicial review. Power of judicial review can only be exercised by constitutional courts if it is proved on record that process adopted or decision so made by the authorities is intended to favour someone or the authority has acted with malafide or decision made is so arbitrary and irrational that no responsible authority acting reasonably could have reached. Needless to say that Court can also exercise power of judicial review in case it is shown that public interest is affected. In this regard, reliance is placed upon judgment rendered by Hon"ble Apex Court in Tata Cellular versus Union of India, 1994 6 SCC 651.

13. Hon"ble Apex Court in Air India Ltd. versus Cochin International Airport Ltd., 2000 2 SCC 617 held that 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.

14. Hon"ble Apex Court, in Michigan Rubber (India) Limited versus State of Karnataka and others, 2012 8 SCC 216, while discussing power of an authority in setting up terms and conditions of a tender, has specifically held that the Government undertakings should have a free hand while framing terms and conditions and Courts should only interfere in case there is material on record to demonstrate that same are arbitrary, discriminatory, malafide or actuated by bias. The Hon"ble Apex Court has held as under:

"35 .As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical ."

15. Recently, Hon"ble Apex Court in Reliance Telecom Ltd. & Anr. v Union of India & Anr, 2017 SCC Online 36 has specifically held that the condition to put a cap and make a classification not allowing certain entities to bid is not an arbitrary one as it

is based on the acceptable rationale of serving the cause of public interest. Hon"ble Apex Court has further held that aforesaid exercise allows new entrants and enabled the existing entities to increase their cap to make the service more efficient. Moreover, the Court cannot get and dwell as an appellate authority into complex economic issues on the foundation of competitors advancing the contention that they were not allowed to bid in certain spheres. Hon"ble Apex Court, in the aforesaid case has further approved the action of the authorities concerned, who put stringent conditions to ensure competition in the market by preventing large/big operators from acquiring large amount of spectrum.

The Hon"ble Apex Court held as under:

"33. The objective behind Spectrum capping is to ensure competition in the market by preventing large/big operators from acquiring large amount of spectrum, which they may not require but only hoard to prevent the small operators from effectively competing in the market, and that is why, TRAI has recommended on 02.07.2015 that the basic objective of prescribing a spectrum cap is to prevent a TSP from acquiring large holdings of spectrum through auction, M&A or trading, as it may lead to non-level playing field thereby disturbing the competition in the market. It cannot be left to the market forces alone to decide the maximum spectrum holding as a TSP and, hence, the provision of cap should continue on the spectrum holding that a TSP may acquire or otherwise. The argument that the respondent should have notionally included the spectrum surrendered by BSNL/MTNL would result in creating a situation where though the spectrum put to auction remains the same (i.e., limited), yet a large/big player will be able to bid for the entire spectrum (which it otherwise could not have done due to Clause 5.3.1.) thereby effectively giving a tool to the large/big operators to deprive/starve small operators, who quite avowedly, cannot match the buying power of larger operators of spectrum.

78. We have already discussed that the condition to put a cap and make a classification not allowing certain entities to bid is not an arbitrary one as it is based on the acceptable rationale of serving the cause of public interest. It allowed new entrants and enabled the existing entities to increase their cap to make the service more efficient. The Court cannot get and dwell as an appellate authority into complex economic issues on the foundation of competitors advancing the contention that they were not allowed to bid in certain spheres. As the stipulation in the tender was reasonable and not based on any extraneous considerations, the Court cannot interfere in the NIA in exercise of the power of judicial review. The contention is that the State cannot hoard the spectrum as per the 2G case. We are disposed to think that in the case at hand, it cannot be said that there has been hoarding. The directions given in the 2G case had been complied with and the

auctions have been held thereafter from the year to year. The feasibility of communication, generation of revenue and its maximization and subserving of public interest are to be kept in view. The explanation given by the Union of India for not putting the entire spectrum to auction is a reasonable one and it is put forth that an endeavour would be made to put it to auction when it becomes available in sufficient quantum. The Court cannot interfere with the tender conditions only on the ground that certain amount of spectrum has not been put to auction. The submission is that whatever has been put to auction and is available should have been notionally added so that the entities which have certain quantum of spectrum in praesenti could have participated in the auction and put forth their bids for a higher quantum.

This argument may look attractive on a first blush but pales into insignificance on a studied scrutiny. As is evincible, one of the petitioners had earlier more than 65 MHz in a band and because of the limited auction and non-addition of available spectrum on notional basis, it has obtained less quantum. With this submission, the contention of legitimate expectation has been associated. We have already repelled the submission pertaining to legitimate expectation. If there has been a reduction for a particular entity because of the terms and conditions of the tender, it has to accept it, for he cannot agitate a grievance that he could have obtained more had everything been added notionally. Notionally adding up or not adding up, we think, is a matter of policy and that too a commercial policy and in a commercial transaction, a decision has to be taken as prudence would command.

In this regard, reference to the decision in *Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd.* would be apt. In the said case, the Court referred to the authority in *Tata Cellular* and thereafter opined that though the principle of judicial review cannot be denied so far as exercise of contractual powers of government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the court that in the matter of award of a contract power has been exercised for any collateral purpose. In the instant case, we are unable to perceive any arbitrariness or favouritism or exercise of power for any collateral purpose in the NIA. In the absence of the same, to exercise the power of judicial review is not warranted. In the case at hand, we think, it is a prudent decision once there is increase of revenue and expansion of the range of service."

16. In the instant case, neither there is any document suggestive of the fact that decision to revise financial turnover slabs has been taken in an arbitrary manner or to favour somebody, nor the learned counsel representing the petitioners were able to convince and satisfy this Court that the terms and conditions as set out in the

tender document, 2017, are arbitrary, discriminatory, malafide or actuated by bias, and, as such, this Court sees no reason to interfere in the decision of the authority concerned, which otherwise appears to be in the larger public interest.

17. The Apex Court in *State of Jharkhand v. M/s. CWESOMA Consortium*, 2016 AIR(SCW) 3366, has held that the State derives its power to enter into a contract under Article 298 of the Constitution of India and has the right to decide whether to enter into a contract with a person or not subject only to the requirement of reasonableness under Article 14 of the Constitution of India. Apex Court held as under:

13. The appellant-state was well within its rights to reject the bid without assigning any reason thereof. This is apparent from clause 24 of NIT and clause 32.1 of SBD which reads as under:-

"Clause 24 of NIT: "Authority reserves the right to reject any or all of the tender(s) received without assigning any reason thereof." Clause 32.1 of SBD:

" the Employer reserves the right to accept or reject any Bid to cancel the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer"s action." In terms of the above clause 24 of NIT and clause 32.1 of SBD, though Government has the right to cancel the tender without assigning any reason, appellantstate did assign a cogent and acceptable reason of lack of adequate competition to cancel the tender and invite a fresh tender. The High Court, in our view, did not keep in view the above clauses and right of the government to cancel the tender.

14. The State derives its power to enter into a contract under Article 298 of the Constitution of India and has the right to decide whether to enter into a contract with a person or not subject only to the requirement of reasonableness under Article 14 of the Constitution of India. In the case in hand, in view of lack of real competition, the state found it advisable not to proceed with the tender with only one responsive bid available before it. When there was only one tenderer, in order to make the tender more competitive, the tender committee decided to cancel the tender and invited a fresh tender and the decision of the appellant did not suffer from any arbitrariness or unreasonableness.

18. In the instant case, as clearly emerges from the record, State deemed it fit to revise financial turnover slabs to make it more competitive and as such, no fault, if

any, can be found with the decision of the authority concerned, more particularly when there is nothing to show any arbitrariness or unreasonableness.

19. The Apex Court in *Central Coalfields Limited v. SLLSML (Joint Venture Consortium)*, 2016 AIR(SCW) 3814, has further held that Court can go into the question of mala fides raised by a litigant, but in order to succeed, much more than a mere allegation is required. Bald and unfounded allegations of mala fides are not sustainable and that mala fides must be specifically pleaded and proved.

Hon"ble Apex Court has held as under:

44. On asking these questions in the present appeals, it is more than apparent that the decision taken by CCL to adhere to the terms and conditions of the NIT and the GTC was certainly not irrational in any manner whatsoever or intended to favour anyone. The decision was lawful and not unsound.

55. On the basis of the available case law, we are of the view that since CCL had not relaxed or deviated from the requirement of furnishing a bank guarantee in the prescribed format, in so far as the present appeals are concerned every bidder was obliged to adhere to the prescribed format of the bank guarantee. Consequently, the failure of JVC to furnish the bank guarantee in the prescribed format was sufficient reason for CCL to reject its bid.

56. There is nothing to indicate that the process by which the decision was taken by CCL that the bank guarantee furnished by JVC ought to be rejected was flawed in any manner whatsoever. Similarly, there is nothing to indicate that the decision taken by CCL to reject the bank guarantee furnished by JVC and to adhere to the requirements of the NIT and the GTC was arbitrary or unreasonable or perverse in any manner whatsoever."

20. By now it is settled law that burden of proving malafides is on the person making allegations and burden is very heavy as has been held by the Hon"ble Apex Court in *E.P. Royappa v. State of Tamil Nadu*, 1974 4 SCC 3.

21. In *Gulam Mustafa Vs. State of Maharashtra*, 1976 1 SCC 800 Hon"ble Apex Court has held, "It (mala fides) is the last refuge of a losing litigant."

22. In the judgments referred herein above, Hon"ble Apex Court has held that there is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of

mala fides are often more easily made than proved and proof of high degree is required to prove the same.

23. In the instant case, it would be profitable to have a look at judgment passed by Hon"ble Apex Court in case Union of India v. Ashok Kumar, 2005 8 SCC 760, wherein it has been held that seriousness of allegations of mala fides demands proof of high order of credibility and the Courts should be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office having high responsibility. It was held:

"21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill- will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man"s mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts.

(S. Pratap Singh v. State of Punjab, 1964 AIR(SC) 72). It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in E. P. Royappa v. State of Tamil Nadu and Another, 1974 AIR(SC) 555, Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Railway Construction Co. Ltd. v. Ajay Kumar, 2003 4 SCC 579)."

24. Careful perusal of expositions of law, as discussed herein above, certainly suggests that Courts should normally not interfere in the contractual matters in exercise of powers of judicial review and it can only be exercised in case it is satisfied that process adopted was malafide or made to favour someone or process adopted or decision made is so arbitrary that no man of ordinary prudence could have reached.

25. In the instant case, petitioners have not been able to point out that process adopted or decision making process was by the authorities while reframing terms and conditions of tender document 2017, as applicable to the case of the petitioners, is wrong and illegal and is totally arbitrary or has been made to favour somebody, rather this Court after carefully examining reply filed by the State and submissions having been made by the learned Advocate General has reasons to believe that terms and conditions in tender document 2017 are by and large in the public interest as such it is not a fit case to exercise power of judicial review because there is no violation of provisions of law.

26. This Court, while placing reliance upon aforesaid judgments having been passed by Hon"ble Apex Court, has repeatedly held in CWP No. 9337 of 2013 titled Ashok Thakur v. State of Himachal Pradesh and others decided on 6.5.2014, CWP No. 765 of 2014 titled Namit Gupta v. State of H.P. and others decided on 27.3.2014 and CWP No. 2544 of 2016 titled M/s Quality Industries Corporation v. State of Himachal Pradesh and another decided on 7.12.2016, that in cases involving award of contracts/tenders, courts should not exercise judicial review where decision appears to be bonafide without any perceptible injury to the public interest.

27. Applying the aforesaid test to the instant writ petitions, same deserve to be dismissed and are accordingly dismissed. Pending applications, if any, are also disposed of.