

(2014) 2 ALD 402 : (2014) 1 ALT 318 : (2014) 3 BC 577

Andhra Pradesh High Court

Case No: Writ Petition No. 23822 of 2013

M/s. Suryodaya Infra
Projects (I) Pvt. Ltd.

APPELLANT

Vs

The National Mineral
Development
Corporation Limited, A
Government of India
Enterprise, Castle Hills,
Masab Tank, The
National Mineral
Development
Corporation Limited, A
Government of India
Enterprise, Donimalai,
Iron Ore Mine, P.O.
Donimalai Township,
Sandur Taluq, Ballari
District, Sri B. Srinivasa
Raju and M/s. N.A.P.C.
Limited

RESPONDENT

Date of Decision: Oct. 10, 2013

Citation: (2014) 2 ALD 402 : (2014) 1 ALT 318 : (2014) 3 BC 577

Hon'ble Judges: Ramesh Ranganathan, J

Bench: Single Bench

Advocate: G. Vijaya Babu, for the Appellant; K. Raghava Charyulu for Respondent Nos. 1 and 2 and Sri T. Muralidhar Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.

The proceedings under challenge in this writ petition is the order of the 2nd respondent dated 03.08.2013 rejecting the petitioner's bids for two works i.e. (1) construction of internal roads for 176 Units Type-III/B quarters in Donimalai Township, and (2) desilting of 2.00 lakh cum Iron Ore Slime from tailing Dam. The facts, to the extent relevant, are that the 2nd respondent issued notifications dated 13.10.2012 and 21.11.2012 inviting tenders from competent, experienced and financially sound civil contractors for execution of the aforesaid works. The tender documents consisted of two parts, Part-I was the techno-commercial bid, and Part-II the price bid. The petitioner, a civil contractor who claims to have executed various civil works for the 1st respondent at various project sites from the year 2006 onwards, submitted its bid pursuant to the aforesaid tender notifications. The tenders, relating to Part-I techno-commercial bids, were opened on 29.11.2012 and 31.12.2012 and the petitioner's Part-I techno-commercial tender was found eligible for execution of the subject works. While matters stood thus the 2nd respondent, vide letter dated 17.04.2013, informed the petitioner that, during scrutiny of their techno-commercial bids, it was observed that Prime Constructions (a partnership firm which had merged with the petitioner) had tampered with the certificate, issued in their name by the Bacheli Complex of the 1st respondent, while enclosing it with their tender submitted to Bhilai Steel Plant of Steel Authority of India Ltd. ("SAIL" for short); and it was also learnt that there was a case pending against Prime Constructions with SAIL, Bhilai in this regard. The petitioner was requested to explain the facts and to show cause why their bid, for the above mentioned works, should not be rejected in view of the alleged offence.

2. The petitioner submitted its explanation thereto, vide letter dated 21.04.2013, contending that neither the petitioner nor Prime Constructions had participated in the tender floated by Bhilai Steel Plant; Prime Constructions, Bhilai was a different firm from Prime Constructions, Hyderabad, and had no nexus with the erstwhile firm; there was no case pending against Prime Constructions with SAIL, Bhilai as stated by the 2nd respondent; they learnt, after enquiry, that the price bid for the tender in question was not opened, and even the EMD had been refunded. Thereafter the 2nd respondent, vide letter dated 03.08.2013, informed the petitioner that their explanation was not satisfactory; the charges, alleged in the show cause notice dated 17.04.2013, may be treated as part of the letter dated 03.08.2013 for the purpose of brevity; and, in view of the above, the competent authority had approved rejection of the petitioner's bid for the aforesaid two works.

3. In the counter affidavit, filed on behalf of respondents 1 and 2, it is stated that the project Vigilance Department had informed that there was a case pending against Prime Constructions with SAIL Bhilai, for submitting a false and fabricated experience certificate of NMDC (a tampered work order and completion certificate issued by NMDC for the work executed at their Bacheli Complex); when Prime Constructions had merged with the petitioner on 01.04.2010 it was not known how they could have participated in the SAIL

tender on 09.02.2011; SAIL, Bhilai had requested the Bacheli Complex of NMDC to verify the NMDC work completion certificate submitted to them by Prime Constructions; the Bachili Complex of NMDC had verified the documents and had informed SAIL that the said documents were tampered, and not in line with the documents issued by them; the figure 2.5 lakh cubic meters in the work completion certificate was tampered to 5.00 lakh cubic meters; the work of "Development of Haul road from Dep.11B Mine to Dumper Platform" was awarded to Prime Constructions on 07.05.2010; as Prime Constructions had merged with the petitioner, and was dissolved on 01.04.2010, it was not clear how they had executed the work in the name of Prime Constructions, and had accepted the work order issued by the 1st respondent on 07.05.2010 even after merger; the work completion certificate, for execution of 19.49 lakh cum of earthwork, was issued on 22.02.2013; the petitioner did not have any work completion certificate, for 19.49 lakh cum of earthwork, when they submitted their tender to SAIL, Bhilai on 09.02.2011; execution of the work for "Development of Haul road from Dep.11B Mine to Dumper Platform" commenced on 22.05.2010, and the actual date of its completion was 25.07.2011, long after the tender was submitted by Prime Constructions to SAIL, Bhilai on 09.02.2011; Prime Constructions had neither completed these works by the time the bid was submitted by them to SAIL, Bhilai on 09.02.2011 nor were they issued the work completion certificate till 22.02.2013; the Vigilance Department of the 2nd respondent had raised certain issues including that Prime Constructions had submitted their tender to SAIL, Bhilai on 09.02.2011, along with the tampered NMDC completion certificate; on enquiry the 1st respondent learnt that SAIL, Bhilai had completed the investigation and had passed an order on 31.10.2011 banning business dealings with Prime Constructions for a period of two years with effect from 31.10.2011 which would expire by 31.10.2013; the petitioner was neither black-listed nor debarred by NMDC; the price bid of the petitioner has not been opened, and it is not known whether he is the lowest tenderer; the petitioner is guilty of corrupt practices, and their bid was rightly rejected by the Corporation; and it is also the practice that any bidder, who has resorted to fraudulent practices with any public sector company which is owned, managed and controlled by the Government of India, or Government companies within the meaning of Section 617 of the Companies Act, would suffer a ban being imposed on them by other sister companies.

4. In their reply affidavit the petitioner would state that, since they had executed excavation works for 19.40 lakh cubic metres, they had stated that there was no occasion for them to furnish an experience certificate tampering the figures therein from 2.5 lakh cubic metres to 5 lakh cubic metres; pursuant to the tender notice issued by the 2nd respondent, for the work of "Development of Haul road from Dep.11B Mine to Dumper Platform", they had submitted their tender for the said work on 29.12.2009; the said tender was finalized, and a work order was issued on 05.06.2010; and, despite the petitioner having requested the 2nd respondent to change the work order given in the name of the erstwhile firm to their name, several conditions were imposed by the 2nd respondent by which time the work itself was completed; the petitioner was issued a work order dated 27.07.2010 for earth work excavation of 19.40 cubic metres wherein the

name of the agency was shown as M/s. Ratna Infrastructure Projects Pvt. Ltd., and the sub-contractor as Prime Constructions, Hyderabad; and it was pursuant to their request, for the change of their name in the work order, was the certificate dated 22.02.2013 issued in their name.

I. Would Failure to Pass A Reasoned Order Vitiating The Decision Taken to Reject the Tender Submitted by The Petitioner?

5. While Sri G. Ramgopal, Learned Counsel appearing on behalf of the petitioner, would submit that the impugned order is bereft of reasons, Sri K. Raghavachari, Learned Counsel for the Respondent-Company, would contend that the respondents have assigned reasons for rejecting the petitioner's bid; an order rejecting a bid cannot be elevated to a judicial or a quasi judicial order requiring elaborate reasons to be furnished; the subject contract is not referable to any statute, and is a non-statutory contract; in view of Clause - 8 of the tender conditions, no obligation is cast on the respondents to assign reasons for rejecting a bid; the reasons for passing a non-statutory order can be supplemented by way of an affidavit; as long as the action of the respondents is informed by reason, the mere fact that they were not elaborated by way of a formal order is of no consequence; and the impugned order must be read with the tender conditions and the averments in the counter affidavit.

6. The emphasis on recording reasons is that, if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to exercise the power of judicial review in adjudging the validity of the decision. A right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or a quasi-judicial performance. [Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, State of West Bengal Vs. Atul Krishna Shaw and Another,](#)

7. Principles of natural justice are applicable to administrative orders having civil consequences. "Civil consequences" cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. ([State of Orissa Vs. Dr. \(Miss\) Binapani Dei and Others, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,](#) ; [Union of India and others Vs. E.G. Nambudiri,](#) The requirement of recording reasons by a quasi-judicial or an administrative authority entrusted with the task of passing an order adversely affecting an individual, and communication thereof to the affected person, is a recognised facet of the rules of natural justice, and violation thereof has the effect of vitiating the order passed by the authority concerned [G. Vallikumari Vs. Andhra Education Society and Others,](#) It is incumbent upon administrative authorities to pass a speaking

and a reasoned order. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. Except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, an administrative authority must record reasons for its decision. [Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,](#) ; [S.N. Mukherjee Vs. Union of India,](#)

8. Insistence on recording of reasons is meant to serve the wider principle that justice must not only be done, it must also appear to be done. Such a requirement operates as a valid restraint on arbitrary exercise of judicial, quasi-judicial or even administrative power. Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds disregarding extraneous considerations. Reasons are as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and administrative bodies. Reasons facilitate the process of judicial review by superior courts. Insistence on reason is a requirement for both judicial accountability and transparency. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process. Transparency in decision-making not only makes decision-makers less prone to error but also subjects them to broader scrutiny. The requirement of recording reasons emanates from the broad doctrine of fairness in the decision-making. ([Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others,](#) [ORYX Fisheries Private Limited Vs. Union of India \(UOI\) and Others,](#)

9. Reasons are the links between the material, the foundation for their erection and the actual conclusion. They also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. [Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,](#) ; [Krishna Swami Vs. Union of India and another,](#) The duty to give reasons for a decision must be distinguished from the fundamental principle of natural justice which imposes an obligation to provide information about the case which a party affected may want to answer. (R. v. Enfield L.B.C. exp. T.F. Union Ltd. (1989) C.O.D. 466 Cf. Cinnamond v. British Airports Authority (1980) 1 W.L.R. 582, 59; de Smith Woolf & Jowell - Judicial Review of Administrative Action -Fifth Edition).

10. There is a general duty to give reasons wherever the statutorily impregnated administrative process is infused with the concept of fair treatment to those potentially affected by administrative action. The general proposition is meaningful only in indicating that the mere fact that a decision-making process is held to be subject to the requirements of fairness, does not automatically or naturally lead to the further conclusion that reasons must be given. A decision maker, subject to the requirements of fairness, should consider carefully whether, in the particular circumstances of the case, reasons should be given. (de Smith Woolf & Jowell - Judicial Review of Administrative Action - Fifth Edition). In [The Haryana State Agricultural Marketing Board and Others Vs. Sadhu Ram,](#) , the Chief Administrator of the Board rejected the offers without assigning any reason as condition 10 of the guidelines provided that such rejection could be made

without assigning any reason. The Supreme Court held that it was not open to the High Court, in the exercise of its writ jurisdiction, to direct allotment of alternative plots only on the ground that the auction could not be cancelled without assigning any reasons.

11. The impugned order dated 03.08.2013, whereby the petitioner's tender was rejected, is cryptic and is bereft of reasons. Would rejection of the tender, which are matters in the contractual realm, necessitate a reasoned order being passed or would it suffice if the records produced, or the affidavit filed, before the Court show that the decision to reject the tender was informed by reason and neither the decision nor the decision making process suffered from the vice of arbitrariness or unreasonableness attracting Article 14 of the Constitution of India. Under Clause 8, of the NIT dated 15.10.2012, the respondent company reserved its right to cancel or reject any tender for the whole or any part of it or cancel/withdraw the tender without assigning any reason. As the tender was submitted only after they had fully understood the terms and conditions of the NIT, including clause 8 thereof, the petitioner cannot be heard to say that the respondent has arbitrarily and unreasonably rejected their tender without assigning reasons [Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others](#), When the terms and conditions of the NIT confer powers on the Respondent-company to reject a bid, without assigning reasons, failure to pass a reasoned order would not, perse, necessitate interference in judicial review proceedings as the decision itself would not be rendered unreasonable thereby. "Reasonableness" does not require reasons to be stated. However, if the facts point overwhelmingly to one conclusion, the decision-maker cannot complain if he is held to have had no rational reason for deciding differently and, in the absence of reasons, he is in danger of being held to have acted arbitrarily. (R. v. Secretary of State for Trade and Industry ex.pl. Lonrho P1c. (1989) 1 WLR 525; Administrative Law: HWR Wade & C.F. Forsyth - Tenth Edition).

12. Exercise of statutory authority, to determine the rights and liabilities of parties, cannot be equated with the discharge of contractual obligations. While reasons are required to be assigned where civil consequences may ensue, it may not be necessary to do so in contractual matters, save and except in limited circumstances. For instance when the highest offer is rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and, ordinarily, should be communicated to the concerned parties unless there be any specific justification not to do so. [Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others](#), [Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others](#),

13. Public orders, made in the exercise of statutory authority, cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. It must be construed objectively with reference to the language used in the order itself and cannot be supplemented by fresh reasons in the shape of affidavits or otherwise [Commissioner of Police, Bombay Vs. Gordhandas Bhanji](#), ; [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), . Decisions in the contractual realm are, however,

not subject to any such limitations. The distinction, between failure to pass a reasoned order and a decision uninformed by reason, must be borne in mind. Unlike statutory or public orders or even administrative orders which have civil consequences, an order rejecting a bid/tender need not, in every case, necessitate a reasoned order being passed. If an order, bereft of reasons, is challenged in judicial review proceedings, the reasons for the decision may be placed before the court. There is no legal obligation to record or communicate reasons for the decision, where the decision neither adversely affects vested rights nor does it have any civil consequences [Union of India and others Vs. E.G. Nambudiri](#), In cases where the tenderer is neither blacklisted nor is he visited with penal consequences, and the tender is merely treated as defective, there is no need to give an opportunity to the tenderer to show cause at that stage. While an opportunity can be granted to the tenderer to explain the position, failure to do so would not render the decision, to treat the tender as defective, illegal or arbitrary. [Jagdish Mandal Vs. State of Orissa and Others](#), . As absence of reasons and apparent non-application of mind would give the colour of arbitrariness to the State action, it would suffice if the action taken by the State is supported by valid reasons and reflects due application of mind which can be explained by way of affidavits filed before the Court. ([Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others](#),). When a challenge is mounted, to an order rejecting a bid/tender, it is always open to the employer/contractee to furnish reasons, for rejection of the bid, in the affidavit filed by them and satisfy the Court that their action is just and valid and is not so arbitrary, illegal, irrational or unreasonable as to violate Article 14 of the Constitution of India. The action of the respondents, in rejecting the petitioner's tender, does not necessitate interference on this ground.

II. Is The Impugned Order Rejecting Their Bid, in Effect. An Order Black Listing The Petitioner?

14. Sri G. Ramgopal, Learned Counsel for the petitioner, would submit that the impugned order, in effect, amounts to black listing the petitioner as the reasons which form the basis for rejection of these bids would enable the respondents to reject their bid in future also. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. [Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, Joseph Vilangandan Vs. The Executive Engineer, \(PwD\), Ernakulam and Others](#), Black-listing any person, in respect of business ventures, has civil consequences for the future business of the person concerned. Even if there is no requirement in the rules, of giving any prior notice before blacklisting any person, it is an implied principle of the rule of law that any order having civil consequences should be passed only in compliance with principles of natural justice. [Raghunath Thakur Vs. State of Bihar and Others](#),

15. While "blacklisting" has civil consequences, and necessitates an opportunity of being heard to be given to the contractor, a reasoned order being passed thereafter, and the said order being communicated to him, rejection of a tender cannot be equated thereto. Unlike in cases where a contractor is blacklisted, which would then disentitle him from participating in any subsequent tender for the stipulated duration, the Respondent-Company has, in the present case, merely rejected the petitioner's tender and has not blacklisted them. The submission that rejection of this bid would automatically result in their tenders for subsequent works also being rejected which, in effect, amounts to their being blacklisted, does not necessitate examination in these writ proceedings as it is always open to the petitioner, in case any tender submitted by them pursuant to a subsequent invitation to tender is rejected on this ground, to initiate appropriate legal proceedings.

III. Does the Decision of the Respondent - Company, to Reject the Petitioner's Tender, Violate Article 14 of the Constitution of India?

16. Sri G. Ramgopal, Learned Counsel appearing on behalf of the petitioner, would submit that judicial review is permissible not only where the order is vitiated by malafides or bias, but also to prevent irrationality, arbitrariness and unreasonableness; the respondents did not reach a conclusion on the petitioner's eligibility and qualification for participation in the tender process; the grounds on which the petitioner's bids were rejected is wholly extraneous to the tender conditions and is based on unproved material; the petitioner's involvement in the alleged fraud has not been established; no bid can be rejected on mere suspicion; the petitioner company and the erstwhile dissolved partnership firm i.e., Prima Constructions had been executing civil works ever since the year 2006; they had, admittedly, executed civil works with a maximum quantity of 19.40 lakh cubic meters of earth work; there was no need for them, therefore, to produce an experience certificate tampering the quantity therein from 2.5 lakh cubic meters to 5.00 lakh cubic meters; the petitioner cannot be held responsible if some unscrupulous person had impersonated the dissolved firm and had submitted a tampered certificate, actually issued in the name of their erstwhile partnership firm-Prime Constructions; the respondents had acted illegally in passing the impugned order without satisfying themselves whether or not the allegations, in the show cause notice, were correct; and rejection of a bid for violation of the tender conditions is distinct from the rejection of a bid for reasons extraneous thereto.

17. On the other hand Sri K. Raghavachari, Learned Counsel appearing on behalf of the respondent-company, would submit that this Court would neither sit in judgment nor substitute its views for that of the respondents in rejecting the bid; this Court would refrain from exercising its powers of judicial review except where the action of the respondents is vitiated by malice or bias; there is no allegation, in the affidavit filed in support of the writ petition, that the action of the respondents suffers from any such infirmity; and, while this Court would have the power to interfere to prevent arbitrariness, the extent of arbitrariness must be of such magnitude as to shock the conscience of this Court.

18. Every action of the State must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes not difference whether the exercise of the power involves affection of some right or denial of some privilege. [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), . An action which is unfair or unreasonable cannot be sustained. Objective satisfaction must be the basis for an executive action. The State is required to act bona fide and not arbitrarily when its action is like to prejudicially affect the rights of others. [Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others](#),). An act, uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whim or caprice. [Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others](#), ; [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others](#), . Article 14 of the Constitution prohibits the State or its instrumentality from arbitrarily choosing a contractor at its will and pleasure. In awarding contracts, it has to act reasonably, fairly and in public interest. At the same time, no person can claim a fundamental right to carry on business with the government or its instrumentalities. All that he can claim is that, in competing for the contract, he should not be unfairly treated and discriminated to the detriment of public interest. [Association of Registration Plates Vs. Union of India \(UOI\) and Others](#), . The court can interfere if the decision making process is vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. [Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others](#), . The basic requirement of Article 14 is fairness in action by the State and non-arbitrariness, in essence and substance, is the heartbeat of fair play. Their actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. In the matter of formulating conditions of a tender document, and in awarding a contract, greater latitude is required to be conceded to the State authorities. Unless the action of the tendering authority is found to be malicious, interference by Courts is not warranted. If the State or its instrumentalities act reasonably, fairly and in public interest in awarding the contract, interference by the Court is limited. (M/s. Michigan Rubber (I) Ltd. v. State of Karnataka Judgment of the Supreme Court in Civil Appeal No. 5898 of 2012 dated 17.08.2012).

IV. Judicial Review of A Decision Taken to Reject A Tender: Its Scope:

19. While exercising its powers of judicial review, the Court must bear in mind the distinction between performance of a statutory or a public duty and the action of the State in relation to its commercial activities. While contractual matters are not beyond the realm of judicial review, its application is limited [Noble Resources Ltd. Vs. State of Orissa and Another](#), [Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others](#), and [Life Insurance Corporation of India Vs. Escorts Ltd. and Others](#), primarily to the infirmity in the decision making process, and whether it is reasonable and rational or arbitrary and in violation of Article 14 of the Constitution of India [Sterling Computers Limited and Others Vs. M and N Publications Limited and Others](#), . The Court does not sit as a court of

appeal, but merely reviews the manner in which the decision was made. Although the terms of the invitation to tender is not open to judicial scrutiny as it is in the contractual realm, Courts can examine the award of contract, by the Government or its agencies, to prevent arbitrariness or favouritism. [Noble Resources Ltd. Vs. State of Orissa and Another, Binny Ltd. and Another Vs. V. Sadasivan and Others, G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, 5 Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others,](#) There are inherent limitations in the exercise of judicial review of contractual powers as the Government must have the freedom of contract and a free-play in the joints. The duty to act fairly will vary in extent, depending upon the nature of cases to which the said principle is sought to be applied. The State has the right to refuse the lowest or any other tender, provided it tries to get the best person or the best quotation, and the power to choose has not been exercised for collateral purposes or in infringement of Article 14 [Tata Cellular Vs. Union of India,](#)

20. 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. The limited scope of judicial review by the High Court envisages examination of the question whether there is any material irregularity in the decision making process or whether the decision to reject the tender is irrational, unreasonable or arbitrary. If the decision relating to the award of contract is bonafide and in public interest, Courts will not 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 invoked to protect private interest at the cost of public interest or to decide contractual disputes. The tenderer or a contractor with a grievance can always seek damages in a civil court. [Jagdish Mandal Vs. State of Orissa and Others, Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, Tata Cellular Vs. Union of India, Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, ; Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, Association of Registration Plates Vs. Union of India \(UOI\) and Others, ;and B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others,](#)

21. While examining and scrutinising the decision-making process, the facts of a given case may be needed to be appreciated as, otherwise, the decision cannot be tested on grounds of illegality, irrationality or procedural impropriety. To the limited extent, of scrutinising the decision-making process, it is open to the court to review the facts evaluated by the decision-maker. [State of U.P. and Another Vs. Johri Mal, Noble Resources Ltd. Vs. State of Orissa and Another, .](#) The documents placed before this Court, along with the counter-affidavit of respondents 1 and 2, show that Bhilai Steel Plant of SAIL had, by their letter dated 03.06.2011, informed the Bacheli Complex of the Respondent-Company that, in response to the notice inviting tenders by SAIL dated 09.02.2011, Prime Constructions had, along with their tender, submitted a copy of the work order and completion certificate issued by NMDC, Bacheli Complex dated

25.07.2009; and SAIL apprehended the correctness of these documents, and were deputing their Executive to personally visit the office of the respondents for verification of the authenticity of the said work completion certificate. The Respondent-Company was requested to get the said completion certificate compared with their office copy and offer their comments on its originality. A copy of the work completion certificate, allegedly issued by the Respondent-Company on 25.07.2009 certifying that Prime Constructions had completed excavation and transportation of 5 Lakh cubic meters, was enclosed to the said letter. After verification the Bacheli Complex of the Respondent-Company, vide their letter dated 05.06.2011, informed SAIL, Bhilai that the work order issued to Prime Constructions was for de-silting 2.5 Lakh cubic meters slime at Tailing Dam No. 1, Bacheli and not 5 lakhs cubic metres; and there were certain deviations, in terms of the quantity and value, between the original work order and the work order submitted by Prime Constructions to SAIL, Bhilai.

22. By their notice dated 20.08.2011, SAIL, Bhilai informed Prime Constructions that the work order submitted by them, with reference to their experience against fulfillment of the eligibility criteria of the tender i.e., the work order and work completion certificate issued by NMDC Ltd., Bacheli dated 25.07.2009 was tampered with; even during the techno-commercial scrutiny of their tender, they were given an opportunity to establish the authenticity of the said documents, which they failed to do; on verification of the authenticity of the experience certificate, NMDC Ltd., Bacheli, had confirmed that the documents submitted by Prime Constructions were tampered; and the above acts were unwarranted, unethical, and against established business principles and practices. Prime Constructions was called upon to show-cause, to the Standing Banning Committee, as to why business dealings with it, including its sister concerns if any, should not be banned by Bhilai Steel Plant of SAIL. Thereafter, by proceedings dated 31.10.2011, Prime Constructions were informed that their firm was guilty of submitting a false experience certificate, as fulfillment of the eligibility criteria of the tender enquiry dated 09.03.2011, with the intention to mislead/cheat the Bhilai Steel Plant Management; and, accordingly, business dealings with their firm were banned for a period of two years w.e.f. 31.10.2011; during the banned period, new/fresh tender enquiry could not be issued by Bhilai Steel Plant to their firm; and, if their firm submitted any offer/quotation/bid against the open tender of Bhilai Steel Plant, the same would not be considered and accepted by SAIL, Bhilai.

23. It was nearly a year thereafter was an open tender enquiry issued by the Respondent-Company, by proceedings dated 13.10.2012, and sealed tenders - in two parts - were invited for the subject works. The techno-commercial bids, including that of the petitioner, were opened on 31.12.2012. When these bids were being evaluated, the Respondent-Company learnt that Prime Constructions had tampered with the certificate issued by their Bacheli Complex and had submitted a copy of the tampered certificate, along with their tender, to Bhilai Steel Plant, SAIL. The petitioner was called upon to explain the facts, and to show-cause why their bid for the subject works should not be

rejected in view of the said offence.

24. The petitioner, by their reply dated 21.04.2013, informed the Respondent-Company that Prime Constructions was dissolved and merged with them vide Merger-Cum-Dissolution Deed dated 01.04.2010; for all intents and purposes, Prime Constructions had become extinct and defunct from that date; dissolution of Prime Constructions was notified in the Gazette dated 16.09.2010; the Registrar of Firms had dissolved Prime Constructions on 19.01.2011; the petitioner had taken over Prime Constructions with its assets and liabilities on a special resolution being passed in its general meeting held on 01.04.2010; the alleged tampered documents were, supposedly, furnished to Bhilai Steel Plant by Prime Constructions, Bhilai for a tender submitted by them on 09.04.2011 i.e., a year after Prime Constructions was officially dissolved and had become extinct; Prime Constructions, Hyderabad had no branch in Bhilai; Prime Constructions, Bhilai was obviously a fictitious firm, and efforts were being made to tarnish the petitioner's name with malicious intent; neither the petitioner nor Prime Constructions had participated in any tender floated by Bhilai Steel Plant nor had they authorised any person or firm to participate in any tender on its behalf; Prime Constructions, Bhilai is a different firm from Prime Constructions, Hyderabad, and has no nexus with their erstwhile firm; any document issued to one firm and submitted by another with malafide intent has no legal validity; the petitioner did not require a certificate for 5.00 Lakhs cubic meters excavation work, as shown in the alleged tampered certificate, since, by 09.04.2011, they had in their possession 19.40 Lakh cubic meters earth work completion certificate issued by NMDC; their record with NMDC had been blemishless; action, under various clauses of the NIT, could be taken only against fraudulent practices pertaining to the contract/contracts in question, and to the detriment of the employer; they had never resorted to any fraudulent activity against NMDC and its interest, nor against any other agency's interest; there was no case pending against Prime Constructions with SAIL, Bhilai as stated in the notice; they learnt, after enquiry, that the price bid for the tender submitted to SAIL, Bhilai was not even opened, and the EMD had also been refunded; they were making efforts to find out the culprit who had indulged in fraudulent activities by using the name of their erstwhile and now defunct firm, to initiate legal proceedings; and they had already published advertisements in national newspapers to that effect. The respondents were requested to absolve them from the above issue, help them in preventing their reputation being tarnished from likely libel, and to treat their offer, for the two tenders, as per NIT conditions.

25. The petitioner submitted its reply, to the show-cause notice dated 17.04.2013, four days thereafter on 21.04.2013. While the show-cause notice dated 17.04.2013 refers only to Prime Constructions, curiously the reply submitted by the petitioner thereto, dated 21.04.2013, states that the tender document had been tampered by Prime Constructions, Bhilai; Prime Constructions, Bhilai was different from Prime Constructions, Hyderabad; no case is pending against Prime Constructions with SAIL, Bhilai; and the price bid for the said tender had not been opened and the EMD had been returned. The petitioner's reply

dated 21.04.2013 does not disclose their source of information that there was another firm at Bhilai with the same name of "Prime Constructions". The petitioner does not dispute that the tampered certificate, submitted along with the tender to SAIL, Bhilai, was a copy of the certificate issued to Prime Constructions (which had merged with the petitioner) by the Bacheli Complex of the Respondent-Company on 25.07.2009. They do not also dispute that the certificate was tampered and, as against the certified quantity of excavation of 2.5 Lakh cubic metres, 5.00 Lakhs cubic metres was shown as the certified quantity of excavation by Prime Constructions. The tender submitted by Prime Constructions, to Bhilai Steel Plant on 09.04.2011, was for the work of "Desilting of 5.00 Lakh Cum of Iron Ore Slime at Hitkasa Tailing Dam & Transportation to the dumping area at Dalli Mech Mine", The experience stipulated, for participating in the tender process for the said work, was excavation of 5.00 lakh cubic metres. The work certificate dated 25.07.2009, issued to Prime Constructions by the respondent company, was for excavation of only 2.5 lakhs cubic metres which experience was insufficient for participation in the SAIL tender. The petitioner's assertion that there was no need for them to tamper with the certificate, issued by the Bacheli Complex of the Respondent-Company from 2.5 Lakh cubic meters to 5.00 Lakhs cubic meters, as they had already in their possession 19.40 CMB earth work completion certificate issued by NMDC, has been denied in the counter-affidavit filed by respondents 1 and 2 wherein it is stated that Prime Constructions had submitted their tender to SAIL, Bhilai on 09.02.2011; and the work completion certificate, for excavation of 19.49 Lakhs cubic meters of earthwork, was issued by the Respondent-Company more than 2 years thereafter on 22.02.2013.

26. The case of the respondent-company is that the work, of "Development of Haul road from Dep. 11B Mine to Dumper Platform", was awarded to Prime Constructions on 07.05.2010; when Prime Constructions had been merged and dissolved on 01.04.2010, it was not clear to them how the work was executed thereafter in the name of Prime Constructions, and how the work order issued by the 1st respondent was accepted by Prime Constructions on 07.05.2010 even after their merger and dissolution. The petitioner's explanation thereto is that the tender notification, for the said work of "Development of Haul road from Dep.11B Mine to Dumper Platform", was issued on 14.11.2009; Prime Constructions had submitted their tender thereto on 29.12.2009; the tender was, however, finalised and a work order was issued only on 05.06.2010, subsequent to the dissolution of Prime Constructions on 01.04.2010; they had requested the 2nd respondent to change the work order, issued in the name of Prime Constructions, in their name; the 2nd respondent had, vide letter dated 16.10.2011, imposed submission of a bank guarantee afresh, in the name of the petitioner, as a condition for compliance with their request and, by that time, the work itself was completed.

27. The letter of the 2nd respondent dated 16.10.2011 discloses that a request was made by the petitioner, vide letter dated 24.09.2011, for the change of the name of the contractor for the aforesaid work, of "Development of Haul road from Dep.11B Mine to

Dumper Platform") from Prime Constructions to their name; and the officials of the respondent company had requested the petitioner to suitably amend the bank guarantee dated 30.06.2010 for Rs. 1,46,07,000/-, submitted in the name of Prime Constructions towards Contract Performance Guarantee, into the petitioner's name so as to consider their request for change of name. There is no explanation forthcoming from the petitioner as to why, even after Prime Constructions was dissolved on 01.04.2010, a bank guarantee was furnished in the name of the dissolved firm "Prime Constructions" to the respondent on 30.06.2010. Though the work of "Development of Haul road from Dep.11B Mine to Dumper Platform", was awarded to Prime Constructions on 07.05.2010, the petitioner requested for a change of name in the work order, substituting their name in the place of Prime Constructions, nearly one and half years thereafter by their letter dated 24.09.2011. The request for change of name, vide letter dated 24.09.2011, was only after SAIL, Bhilai had issued notice dated 20.08.2011 to Prime Constructions informing them that, against the tender enquiry dated 09.03.2011, for the work of "Desilting of 5.00 Lakh Cum of Iron Ore Slime at Hitkasa Tailing Dam & Transportation to the dumping area at Dalli Mech Mine", the document submitted by them with reference to experience against fulfilment of the eligibility criteria of the tender, i.e., work order and work completion certificate issued by NMDC dated 25.07.2009, were tampered with. The petitioner has not chosen to explain why they had not sought a change of name, for the work awarded to Prime Constructions on 07.05.2010, soon thereafter; and why they requested for the change of name, by their letter dated 24.09.2011, only after the show cause notice dated 20.08.2011 was issued to Prime Constructions by SAIL, Bhilai.

28. Sri G. Ramgopal, Learned Counsel for the petitioner, does not dispute that rejection of the price bid and return of EMD by SAIL could only have been for the reason that the technical bid of Prime Constructions was rejected. The contention of the Learned Counsel is that the partnership firm which had merged with the petitioner was Prime Constructions, Hyderabad an entity different and distinct from Prime Constructions, Bhilai. No explanation is, however, forthcoming as to how the so called Prime Constructions, Bhilai had access to the work completion certificate given by the Respondent-Company to Prime Constructions (the erstwhile firm which had merged with the petitioner). Neither does the petitioner's reply dated 21.04.2013, submitted within four days of the show cause notice dated 17.04.2013, nor the affidavit filed in support of the Writ Petition explain how the petitioner came to know that the bid submitted by Prime Constructions to SAIL, Bhilai was rejected and the EMD returned.

29. An additional affidavit was filed by the petitioner on 15.09.2013, during the course of hearing of the Writ Petition, wherein it was stated that, after receipt of the notice dated 17.04.2013 from the 1st respondent, they had approached the Head of the Department (Civil) regarding issuance of the notice; he had informed them that there was a case with the Vigilance Department; they had then met the Manager (Vigilance) who had appraised the facts, and had informed them about the issues mentioned in the notice; the Manager had also informed them that Prime Constructions, Bhilai had submitted their tender to

SAIL, Bhilai; basing on that information they had stated, in the reply notice, that Prime Constructions, Bhilai had submitted their tender to Bhilai Steel Plant; the erstwhile partnership firm i.e. Prime Constructions, Hyderabad was a sub-contractor of Ratna Infrastructure Projects Pvt. Ltd. and, as a sub-contractor, had successfully completed some works with NMDC; Ratna Infrastructure Projects Pvt. Ltd. has a branch office at Bhilai, and is also engaged in doing works in Bhilai Steel plant; after verifying the particulars from the Civil and Vigilance departments of NMDC, they had called up the General Manager of Ratna Infrastructure Projects Pvt. Ltd. to enquire about the particulars of the tender submitted by Prime Constructions, Bhilai; after verifying with the concerned authorities in Bhilai Steel plant, Ratna Infrastructure Projects Pvt. Ltd. had informed them that the tender submitted by Prime Constructions was not opened by that time, and even the EMD had been refunded; and, after causing this enquiry, they had submitted their reply to the notice issued by the 2nd respondent.

30. The work completion certificate dated 22.02.2013, issued by NMDC to Prime Constructions, was for the work executed by them as a sub-contractor of Ratna Infrastructure Projects Ltd. It is this certificate dated 22.02.2013 which reflects the earth work excavated by the petitioner to be 19,49,302.38 cubic metres. If, as is now contended on behalf of the petitioner, Ratna Infrastructure Projects Ltd. is engaged in executing works for SAIL, Bhilai can it be said, with certainty, that no tender could have been submitted by Prime Constructions (the erstwhile firm which merged with the petitioner) to SAIL, Bhilai.

31. While cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action, [Jagdish Mandal Vs. State of Orissa and Others](#), , the decision to reject the bid/tender of the petitioner, in the facts and circumstances of the present case, cannot be said to be so arbitrary and unreasonable as to violate Article 14 of the Constitution of India. Notwithstanding the petitioner's self-serving assertion that Prime Constructions, Bhilai is distinct and different from Prime Constructions, Hyderabad, the overwhelming material evidence on record shows that the tender submitted to SAIL, Bhilai, using the certificate issued by the respondent-company in favour of Prime Constructions, (after tampering with the figures, relating to the quantity of work executed, in order to satisfy the eligibility criteria prescribed by SAIL, Bhilai for participation in the tender), was by Prime Constructions.

32. The limited question that has to be considered in a writ petition filed by the unsuccessful tenderer is whether the authority had acted unreasonably in taking the decision to reject the tender. Before interfering in tender or contractual matters, in the exercise of its power of judicial review, the Court should pose to itself the following questions: i) Whether the process adopted or decision made by the authority is malafide or intended to favour someone or whether the process adopted or the decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible

authority acting reasonably and in accordance with relevant law could have reached"; and
ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226 of the Constitution of India. [Jagdish Mandal Vs. State of Orissa and Others](#), ; M/s. Michigan Rubber (I) Ltd. Judgment of the Supreme Court in Civil Appeal No. 5898 of 2012 dated 17.08.2012; [Himachal Pradesh Housing and Urban Development Authority Vs. Universal Estate and Another](#), and [Tejas Constructions and Infrastructure Pvt. Ltd. Vs. Municipal Council, Sendhwa and Another](#),

33. This Court must ever remain conscious that, while exercising its jurisdiction under Article 226 of the Constitution of India, it does not sit in appeal over the decision of the Respondent-Company in rejecting the petitioner's tender. It is only if the decision to reject the tender is so unreasonable, that no reasonable man could have taken such a decision, can the decision be said to be vitiated by arbitrariness violating Article 14 of the Constitution of India. Rejection of the petitioner's tender, in the present case, was on the ground that the information received by the respondent-company showed that Prime Constructions had indulged in fraudulent and corrupt practices, albeit in relation to a tender submitted to another public sector undertaking, and not in relation to the subject tenders. Even if the other view, canvassed on behalf of the petitioner, that there is an element of doubt whether it was Prime Constructions (the firm which had hitherto; executed works for the respondent company) which had submitted the tender to SAIL, Bhilai which culminated in an order of blacklisting being passed, were to appeal to this Court, there would still be no justification in interfering with the impugned order as the view taken by the respondent-company is also a possible view, and not one which no reasonable man could have taken.

V. Is The Decision Taken by The Respondent, to Reject The Petitioner's Tender, Mala fide?

34. The records placed before this Court shows that the Manager (Vigilance) of the Respondent-Company had submitted a note on 15.01.2013 that a case was pending against Prime Constructions for providing a false and fabricated experience certificate of NMDC to SAIL, Bhilai; again on 14.02.2013 the Manager (Vigilance) had informed that Prime Constructions had tampered with the NMDC completion certificate submitted in the tendering process at SAIL, Bhilai, the Bachel Complex had sent the documents, and all the documents related to the case may be sent to the Head Office for necessary advice. It is only thereafter was a decision taken to initiate action against the petitioner. In cases where the decision-making process is multi-layered, officers associated with the process are free and are, indeed, expected to take views on various issues based on their individual perceptions. If every step in the decision-making process is viewed with suspicion, the integrity of the entire process would be in jeopardy. Officers taking views, in the decision-making process, will feel handicapped in expressing their opinions freely and frankly for fear of being seen to be doing so for mala fide reasons which would, in turn, affect public interest. [Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd. and Others](#),). In a multi-layered decision making process, such as the one which arises for

consideration in the present case, it cannot be readily accepted that the decision to reject the tender is vitiated by malice. It is wholly unnecessary for this Court to delve on this aspect any further, as no foundation is laid in support of the contention that the impugned order is vitiated by malafides.

35. VI. Interference by Courts, With Decisions Taken by The State or Its Instrumentalities in The Contractual Realm, is Justified Only in Larger Public Interest:

36. Sri G. Ramgopal, Learned Counsel for the petitioner, would submit that there is no provision in the tender documents, or even under clause 19 of the invitation to tender, to reject the petitioner's tender on vague grounds and bald allegations; and larger public interest would require the impugned order to be set aside as the petitioner has quoted a price lower than respondents 3 and 4. On the other hand Sri K. Raghavachari, Learned Standing Counsel for the respondent-company, would submit that the conduct of the petitioner must be borne in mind by this Court while exercising its discretionary jurisdiction; permitting a person, against whom serious allegations of fraud are alleged, to participate in the tender process would not be in larger public interest; and, even if the petitioner is absolved later, he can always claim damages against the respondents.

37. Clause No. 19.1(a)(ii) of the conditions, of the Notice Inviting Tender (NIT) for the subject works, defines "fraudulent practice" to mean misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the employer. Clause No. 19.1(b) of the NIT stipulates that a proposal, for award of work, would be rejected if it was determined that the bidder, recommended for the award of work, had engaged in corrupt or fraudulent practices in competing for the contract in question. Clause No. 19.1(c) stipulates that the bidder would be declared ineligible, either indefinitely or for a stated period of time, to be awarded a contract/contracts if, at any time, it was determined that the bidder had engaged in corrupt or fraudulent practices in competing for, or in executing, the contract. Reliance placed by the petitioner, on the aforesaid clauses of the NIT, in support of their contention that the bid can only be rejected for fraudulent and corrupt practices in connection with the subject tenders, and not otherwise, is misplaced, as the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary, and a Writ is not issued as of right or as a matter of course. ([C.R. Reddy Law College Employees' Association and Others Vs. Bar Council of India and Others](#), The discretionary power of this Court, under Article 226 of the Constitution of India, need not be exercised in every case where there is an error of law. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. ([Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya](#), Exercise of discretionary power should be for the sake of justice and, if granting relief results in greater harm to the society, the Court may refrain from exercising the power. [State of Maharashtra and Others Vs. Prabhu](#),). Discretionary power must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether the intervention of the

Court is called for or not. [Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another](#), [Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others](#), Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or a substantial question of public importance is involved. [Rashpal Malhotra Vs. Mrs Satya Rajput and Another](#), ; Council of Scientific and Industrial Research v. K.G.S. Bhatt AIR 1987 SC 1972).

38. The "duty to act fairly" is a part of the fair procedure envisaged under Articles 14 and 21, and every activity of the public authority, or those under public duty, must be received and guided by public interest. ([Union of India \(UOI\) Vs. Mohan Lal Capoor and Others](#), [Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others](#), [LIC of India and Another Vs. Consumer Education and Research center and Others](#), On a challenge to the award of a contract or rejection of a tender, by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. The elements of public interest are (1) public money would be expended for the purposes of the contract; (2) the goods or services which are being commissioned could be for a public purpose; (3) the public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously; and (4) the public would also be interested in the quality of the work undertaken or goods supplied by the tenderer.V [Raunag International Limited Vs. I.V.R. Construction Ltd. and Others](#), Save substantial public interest being adversely affected, or the transaction being vitiated by malafides, the Court should not, under Article 226 of the Constitution of India, ordinarily interfere in matters in the contractual domain. Even when some defect is found in the decision-making process, the Court must exercise its discretion with great caution and only, in furtherance of public interest, and not merely on the making out of a legal point. Only when it comes to the conclusion that overwhelming public interest requires interference, should it intervene. [Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others](#), . As rejection of the petitioner"s bid is on the ground that the certificate issued by NMDC had been tampered with, and the tampered certificate was submitted by Prime Constructions along with their tender to SAIL, Bhilai, which culminated in their being blacklisted by SAIL for a period of two years, judicial restraint is in order as action being taken for fraudulent and corrupt practices, even if it be in relation to works other than the work for which the bid was rejected, is also in the larger public interest of ensuring that contractors, indulging in fraudulent and corrupt practices, are dealt with sternly and are not permitted to go scot free.

VII. Price Not the Sole Criteria:

39. While Sri G. Ramgopal, Learned Counsel for the petitioner, would submit that the petitioner"s price bid was lower than that of the fourth respondent, it is the case of the respondents, in their counter-affidavit, that the price bid of the petitioner was not opened, and it is not known whether they were the lowest tenderer. It is no doubt true that the Government cannot give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it unless, of course, there are other

considerations which render it reasonable and in public interest to do so [Meerut Development Authority Vs. Association of Management Studies and Another](#), Kasturi Lal Lakshmi Reddy v. State of J&K (1904) SCC 1; [Jagdish Mandal Vs. State of Orissa and Others](#). However price need not always be the sole criterion for awarding a contract. A mere difference in the prices offered by the tenderers may or may not be decisive in deciding whether any public interest is involved necessitating intervention in such a commercial transaction. [Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others](#), A contract need not be given to the lowest tenderer, and the employer is the best judge thereof as it is, ordinarily, within its domain. The Court's interference in such matters should be minimal and it should, normally, exercise judicial restraint unless illegality or arbitrariness, on the part of the employer, is apparent on the face of the record. [Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others](#). The larger public interest served by discouraging contractors, from indulging in corrupt or fraudulent practices, far outweigh the price difference, if any.

VIII. Conclusion:

For the reasons aforementioned, the impugned order of the 2nd respondent dated 03.08.2013, rejecting the petitioner's tender for the subject works, does not necessitate interference in proceedings under Article 226 of the Constitution of India. The Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. However, in the circumstances, without costs.