2024 SCC OnLine SC 2700

In the Supreme Court of India

(BEFORE BELA M. TRIVEDI AND SATISH CHANDRA SHARMA, JJ.)

Banshidhar Construction Pvt. Ltd. ... Appellant(s);

Versus

Bharat Coking Coal Limited and Others ... Respondent(s).

Civil Appeal No. 11005 of 2024 (@ Special Leave Petition (Civil) No. 17383/2024)

Decided on October 4, 2024

Advocates who appeared in this case :

For Appellant(s) Mr. Pankaj Bhagat, AOR

Ms. Ratika Mehrotra, Adv.

For Respondent(s) Mr. Ankur Kashyap, Adv.

Mr. Ajith S Ranganathan, Adv.

Mr. Amit Sharma, AOR

Mr. Dipesh Sinha, Adv.

The Judgment of the Court was delivered by

BELA M. TRIVEDI, J.:— Leave granted.

2. The short question that falls for consideration before this Court is whether the Respondent Bharat Coking Coal Limited (BCCL) was justified in rejecting the Technical bid of the Appellant, while accepting the Technical bid of the Respondent no. 8 - Company, and declaring it to be successful bidder, though the Respondent no. 8 had not complied with the mandatory requirement of submitting the important documents relating to the qualification criteria as contained in Clause 10 of the Notice Inviting Tender (NIT) dated 16.08.2023, and thereby had failed to qualify the Eligibility criteria laid down therein?

3. The Appellant-Banshidhar Construction Private Limited has assailed the Judgment and Order dated 18.07.2024 passed by the High Court of Jharkhand at Ranchi in Writ Petition (Civil) No. 2896 of 2024, whereby the High Court has dismissed the said writ petition, confirming the impugned decision dated 06.05.2024 of the Technical Bid Committee of the Respondent-BCCL rejecting the Technical bid of the Appellant.

4. The Respondent no. 1- BCCL is a subsidiary of Coal India Limited and the Respondent Nos. 2-7 are the authorities/employees of the BCCL. On 16.08.2023 the Respondent no. 1 floated a Tender bearing reference No. NIT no. BCCL/CMC/MDO-RS/SIMLABAHAL/BASTACOLLA

Area/2023/318 for the project to “Re-open, salvage, rehabilitate, develop, construct and operate for excavation I extraction of coal from Amalgamated East Bhuggatdih Simlabahal Coal Mine and delivery thereof to the Authority at Bastacolla Area of BCCL” on revenue sharing basis, for a period of twenty-five years. The Appellant-company vide Board Resolution dated 07.11.2023 resolved to authorise its Director Lalti Devi for the purpose of participating in the said Tender and also executed a Power of Attorney in the prescribed format in her favour. The said Power of Attorney was notarized on 14.11.2023. Accordingly, the Appellant participated in the said Tender by submitting its bid on 29.11.2023.

5. The Technical bids of the said Tender were opened on 04.12.2023 and after the evaluation of the same, the Appellant was declared to be technically disqualified on 06.05.2024. As per the Tender Summary Reports dated 07.05.2024, the Technical bid of the Appellant was stated to have been rejected on the ground that it did not comply with the Clause 10 of NIT (Part I/Cover I other important documents (OID) Point No. 02 Appendix II (Power of Attorney for signing of bid.)

6. The Financial bids of the two technically qualified bidders were opened on 07.05.2024 and the Respondent no. 8-Company was declared to be the successful bidder. The Appellant being aggrieved by the said decision of the respondent-BCCL, had filed the Writ Petition before the High Court, which has been dismissed by the High Court vide the impugned order.

7. On 23.08.2024 the Court had issued Notices to the Respondents and the learned counsel appearing for Respondents on caveat, had orally assured the Court that they shall not proceed further with the project in question. In order to have clarity on the decision taken by the Tender Recommendation Committee of the BCCL on 06.05.2024, we had called for the original file in respect of the entire tender proceedings from the Respondents nos. 1 to 7 vide the order dated 17.09.2024 and the same was produced for our perusal.

SUBMISSION BY THE LEARNED ADVOCATES : -

8. Learned Senior Advocate Mr. Ravi Shankar Prasad appearing for the Appellant vehemently submitted that the reason for rejecting the Appellant's Technical bid was grossly arbitrary and discriminatory in as much as not only the bid of Respondent No. 8 was accepted though it was not accompanied by important documents, but it was allowed to subsequently file the said documents to make up the lack of eligibility. He further submitted that the Appellant had complied with all the conditions of the NIT, however The Technical bid of the Appellant was rejected on the extraneous ground by the Technical Bid Committee of the Respondent-BCCI that the bid documents were signed on 13.11.2023, and other documents including Power of Attorney were

notarized on 14.11.2023. According to him the bid documents were uploaded/filed on 29.11.2023 i.e. within the stipulated time, which complied with all the mandatory requirements of Clause 10 of the NIT. Mr. Prasad has relied upon various decisions of this Court to submit that the decision of the Government and its instrumentalities must not only be tested by the application of Wednesbury principle of reasonableness but also must be free from arbitrariness. Invoking the Public Trust Doctrine, Mr. Prasad lastly submitted that Appellant's bid was much more competitive and favourable (Rs. 700 crores approx.) to the Respondent BCCL, and by allotting the tender to the Respondent no. 8 which even otherwise was ineligible, a commensurate loss was caused to the public through the Respondent BCCL.

9. However, the learned Solicitor General Mr. Tushar Mehta, learned senior counsel Mr. Anupam Lal Das and Mr. Vikramjit Banerjee, ASG appearing for Respondent no. 1 to 7 justifying the decision of Tender Evaluation Committee rejecting the Technical Bid of the Appellant, submitted that the Power of Attorney was dated 07.11.2023, which was notarized on 14.11.2023, whereas the mandatory bid documents were executed on 13.11.2023, which was not in consonance with clause 10 Part I/Cover 1 (OID) of NIT. According to them, the mandatory bid documents were executed on 13.11.2023, when the Executant had no authority to execute the said bid documents. A person submitting the bid was required to have a valid Power of Attorney in his favour at least on the date on which he was signing and executing the bid documents, and therefore the Appellant did not meet with the Eligibility criteria prescribed under the terms of the NIT. They further submitted that during the course of evaluation the Respondent BCCL could seek shortfall documents from the Bidders, but could not permit them to replace the bid documents. So far as Respondent no. 8 - Company was concerned, the Tender Committee had sought clarification on 09.04.2024 regarding the Audited Annual Reports, which approach and methodology of the Committee was consistent with the other bidders also who were similarly situated as the Respondent no. 8. The learned Counsels also submitted that as per the settled legal position the project being infrastructure project and of national importance, and the scope of judicial review in the matter of award of Contracts being very limited, the Court may not interface with the same, even if the Court finds that there was total arbitrariness or that the tender was granted in a *malafide* manner. The ld. Counsels have relied upon catena of decisions to buttress their submissions, which shall be dealt with hereinafter as may be necessary.

10. The learned senior counsel Mr. Balbir Singh appearing for Respondent no. 8 while adopting the submissions made on behalf of Respondent nos. 1 to 7 submitted that the Respondent no. 8 was

declared as successful bidder on 10.06.2024 and thereafter the Respondent no. 1-BCCL and M/s. Simlabahal Coal Mines Private Limited (a Special Purpose Vehicle constituted by the respondent no. 8-company) have also entered into a Coal Mining Agreement dated 27.06.2024. He further submitted that there was no pleading of *malafide* raised in the Appeal by the Appellant and as per the settled legal position, the Courts should not use magnifying glass while scanning the decision-making process of the authorities to make small mistake to appear like a big blunder.

ANALYSIS : -

11. The undisputed facts as discernible from the pleadings and the documents on record and from the submissions made by the learned Counsels for the parties are that the Notice Inviting Tender for the project in question was issued by the Respondent BCCL on 16.08.2023, in response to which, the Appellant and the Respondent No. 8 had submitted their respective bid documents. The Appellant Company vide the Board Resolution dated 07.11.2023 had authorised its Director Lalti Devi for the purpose of participating in the tender and a Power Of Attorney dated 07.11.2023 was executed in her favour. The said Power Of Attorney was notarised before the Notary on 14.11.2023. It is also not disputed that the Appellant submitted/uploaded the bid documents on 29.11.2023, that is before the last date of submission, 01.12.2023. It is also not disputed that the Technical bids were opened on 04.12.2023 and the Appellant was declared technically disqualified on 06.05.2024. The extract of Tender Summary Report dated 07.05.2024 stated in the Column 'Remarks' that the Appellant 'Did not comply with Clause No. 10 of NIT (Part I/Cover I Other Important Documents (OID) Point No. 02 Appendix II (Power of attorney for signing of bid)."

12. It is also not disputed that the Respondent No. 8 had not submitted the scanned copies of the Audited balance sheets required to be submitted as per Clause 10 of the NIT in relation to the financial capacity, while submitting/uploading the tender documents and that it was only when a clarification was sought from the Respondent No. 8 about the shortfall of documents, the said Audited balance sheets were submitted on 17.04.2024, after the Technical bids were opened on 04.12.2023. It is further not disputed that the Financial bids of the eligible two technically qualified bidders were opened on 07.05.2024 and the Respondent No. 8 Company was found to be the successful bidder.

13. In the instant case the entire controversy centres around the interpretation of the Clause 10 of the NIT dated 16.08.2023, hence the same is reproduced for the sake of convenience.

> "10. For substantiating the Financial Capacity, the Bidders are required to furnish the following information online:

(a) Value of Net Worth (to be submitted in Indian Rupees and in the format provided at Annex III of Appendix I of RFB);

(b) Value of Total Income in the last 3 (three) financial years as chosen by the Bidder (to be submitted in Indian Rupees and in the format provided at Annex III of Appendix I of RFB);

(c) Membership number of the chartered accountant[£], where applicable; and

(d) Scanned copies of the documents as specified in Paragraph 10 of the NIT, in relation to the Financial Capacity.

Note: In case the Bidder is a Consortium, the aforesaid certificates and information shall be submitted in respect of all the Members and the Financial Capacity of the Consortium will be assessed by adding the information so furnished.

Bidders shall submit the information in an objective manner confirmed by the uploaded documents. The documents related to the information furnished online, based on which the auto evaluation takes place, will only be considered. If a Bidder uploads any other document, it will not be given any cognizance.

A scanned copy of the following documents shall be submitted online by the Bidders in support of the information/declaration furnished by the Bidder at the time of submission of their Bids:

Sl. No.	Submission of documents related to qualification criteria	Scanned copy of documents (selfcertified and notarized/certified[®]) to be uploaded by Bidders in support of information/declaration furnished online by the Bidder against each qualification criteria (CONFIRMATORY DOCUMENT)
1.	Bidder's Covering Letter and acceptance of bid conditions	Copy of the Bidder's Covering Letter, acceptance of the Bid conditions and making commitments on the Bidder's letter head as per proforma (provided at Appendix I of RFB) Note : In case the Bidder is a Consortium, the above documents are to be signed by all the Members.
2.	Financial Capacity	i) Certificate having UDIN number specifying the Net Worth of the Bidder as at the close of the latest financial year among the 3 (three) financial years as chosen by the Bidder, from a chartered accountant based on the financial

			statements audited by statutory auditor[∞] exhibiting the information submitted by the Bidder and confirming that the methodology adopted for calculating the Net Worth conforms to the provisions of the Bidding Documents; ii) Certificate having UDIN number specifying the average Total Income of the Bidder during the last 3 (three) financial years, as chosen by the Bidder, from a chartered accountant based on the financial statements audited by statutory auditor[∞] exhibiting the information submitted by the Bidder online and also specifying the methodology adopted for calculating the average Total Income; iii) Audited annual reports of the Bidder for the last 3 (three) financial years, as chosen by the Bidder, comprising of the audited balance sheets and profit and loss accounts of the Bidder. iv) A duly filled in Annex III (provided at Appendix I of RFB). Notes: i. For the purpose of Financial Capacity, the Bidder can choose any 3 (three) financial years from the 4 (four) immediately completed consecutive financial years as on the date of invitation of Bids. However, the 3 (three) financial years chosen by the Bidder shall be the same for each Member (in case of Consortium) and the Associate(s), whose Financial Capacity is furnished and relied upon by the Bidder. ii. In case the Bidder is a Consortium, the above documents are to be submitted in respect of all the Members. iii. The Bidder shall submit the documents reflecting the Net Worth

		of the Associate(s) whose Technical Capacity and/or Financial Capacity is furnished and relied upon.
3.	Integrity pact	Duly signed and witnessed integrity pact as per proforma provided at Appendix VIII of RFB. Note : In case the Bidder is a Consortium, the integrity pact is to be signed by all the Members.
4.	Authorization for Digital Signature Certificate ("DSC")	a) If the Bidder itself is the DSC holder bidding online, then selfdeclaration of the Bidder to this effect; or b) If the DSC holder is bidding online on behalf of the bidder then the power of attorney[β] granted by the Bidder, evidencing authorization granted to the DSC holder to submit the Bid on behalf of the Bidder.
5.	Undertaking in Support of the authenticity of submitted information and documents and other commitments	An undertaking is to be given by the Bidder as per the format given at Enclosure I of this NIT, confirming the genuineness of the information furnished online, authenticity of scanned copy of documents uploaded and such other declarations. Note : In case the Bidder is a Consortium, the undertaking is to be signed by all the Members. (Original undertaking shall be submitted as per the provisions of NIT)
6. Any other document to support the qualification information as submitted by the Bidder online.		
Note : Only one file in .pdf format can be uploaded against each qualification criteria. Any additional/other relevant documents to support the information/declaration furnished by Bidder online against qualification criteria may also be added by the Bidder in the same file (in .pdf format) to be uploaded against respective qualification criteria.		

Part-1/Cover-1-Other Important Documents ("OID")

Sl. No.	Criteria	Scanned copy of documents (self-certified and notarized/certified[®]) to be uploaded by Bidder in support of information/declaration furnished

		online by the Bidder against each criteria (CONFIRMATORY DOCUMENT)
1.	Legal status of the Bidder	Documents to be submitted as applicable: 1. Affidavit or any other document to prove the proprietorship/individual status of the Bidder (applicable only where the Bidder is an individual or sole proprietor); 2. Partnership deed/agreement containing name of partners and Certificate of Incorporation (applicable only where the Bidder is a partnership firm or a limited liability partnership); 3. Memorandum and Articles of Association with certificate of incorporation containing name of Bidder or any similar charter/constitutional documents (applicable where the Bidder is a company); 4. Appropriate documents as applicable for any other Bidder not mentioned above. 5. Annex I (Appendix I of RFB) duly filled in and uploaded 6. In case of Consortium: (i) Details of all Member(s) as at 1/2/3 (as applicable) above, (ii) Joint Bidding Agreement as per format provided at Appendix IV of RFB: (iii) Annex I (Appendix I of RFB) duly filled in and uploaded; (iv) Annex IV (Appendix I of RFB) duly filled in and uploaded 7. An undertaking in the format given in Enclosure-III with respect to the ultimate beneficial ownership of the Bidder/Members, in light of the General Financial Rules, 2017 read with the OM No. F. No. 6/18/2019-PPD dated 23rd July 2020 the Consolidated FDI Policy (effective from 15th October 2020) and the Press Note No. 3 (2020 Series) dated

		17th April 2020 issued by the Department for Promotion of Industry and Internal Trade (FDI Policy Section), Ministry of Commerce and Industry, Government of India, each as amended or supplemented from time to time. 8. GST registration certificate.
2.	Power of attorney[β]	As per the format annexed as Appendix II (as applicable) and Appendix III (in case the Bidder is a Consortium)
3.	Mandate Form for Electronic Fund Transfer	Copy of mandate form duly filled in as per proforma provided at Enclosure II of this NIT
4.	Any other document to support the qualification information as submitted by the Bidder online.	

14. It is pertinent to note that the Request For Bid (RFB) annexed to the NIT, contained "Instructions to Bidders" in Section II thereof. The Clause 2.1.6 of the said Instructions stated that non-compliance with any of the bidding instructions may lead to rejection of the Bid. Further, Clause 2.2.5 thereof specifically stated that the Bidder shall furnish the requisite documents listed in Paragraphs 9 and Paragraphs 10 of NIT.

15. From the bare perusal of the afore stated Clause 10, it clearly transpires that the Bidders were required to furnish the information and the scanned copies of the documents relating to qualification criteria particularly to substantiate their Financial capacity. For the purpose of substantiating Financial Capacity, the Bidders were obliged to submit the scanned copies (self-certified and notarised/certified) of the Audited Annual Reports for the last three financial years as chosen by the Bidder, comprising of the audited balance sheets and profit and loss accounts of the Bidder, along with other documents as stated therein. This was the mandatory requirement of the NIT, the same being related to the qualification criteria as also transpiring from Clause 2.2.5 of the RFB.

16. Admittedly, the Respondent No. 8 had not submitted the scanned copies of its audited Annual Reports for the last three financial years, at the time of submitting/uploading the bid documents, before the last date fixed i.e 01.12.2023 and the same were submitted on 17.04.2024 only when the clarification was sought from the Respondent No. 8, after the Technical bids were opened on 04.12.2023.

17. When the Technical bid of the Appellant was rejected by the Respondents on 06.05.2024 on the ground that it did not comply with the Clause 10 of the NIT namely Part I/Cover I Other Important Documents (OID) Point No. 02 Appendix II (Power of attorney for

signing of bid), there was no justification on the part of the Respondent authorities for accepting the Technical bid of the Respondent No. 8, which clearly was not in compliance with the same mandatory Clause 10 of NIT. The Respondent BCCL has miserably failed to justify as to how the Technical bid of the Respondent no. 8 was accepted when it had not submitted the requisite important documents related to the qualification criteria as mentioned in Clause 10 of the NIT.

18. A lame submission was made on behalf of the Respondent BCCL that the Tender Evaluation Committee could call for the shortfall of documents and could not allow replacement of the documents, and that the Respondent no. 8 was asked to submit the shortfall documents only. We are neither impressed nor can accept the said submissions. Further, apart from the fact that the Technical bid of the Respondent no. 8 deserved to be rejected at the threshold for non-compliance of Clause 10 of NIT, there was also no legal and justifiable reason for rejecting the Technical bid of the Appellant. Admittedly when the tender documents were submitted by the Appellant, the Power Of Attorney authorising the concerned signatory to act on behalf of the Appellant was duly notarised. Merely because the bid documents were signed on 13.11.2023 by the authorized signatory Ms. Lalti Devi on the basis of the Power of Attorney executed in her favour on 07.11.2023, and the said Power Of Attorney was notarised on 14.11.2023, it could not be said that the said representative of the Appellant Company did not possess the requisite authority to submit the documents on the day when the bid documents were submitted, nor could it be said that there was any non-compliance of the mandatory requirement of the Clause 10 of the NIT as sought to be projected by the Respondent BCCL. It was nowhere stated in the NIT that the Power Of Attorney had to be notarised before signing the bid documents. As per Part-1/Cover I of Clause 10 of NIT, pertaining to the other important documents, the only requirement was to furnish the scanned copies of documents (self certified and notarised/certified) to be uploaded by the bidder in support of the information/declaration furnished online by the Bidder against each criteria, and against the criteria for Power Of Attorney, it was stated that it should be as per the format annexed. The Power Of Attorney submitted by the Appellant was as per the format and duly notarised on 14.11.2023, and all the requisite documents along with notarised POA were submitted before the last date fixed for submission.

19. It would be apposite to note that as per Section 2 of the Power Of Attorney Act, 1882, the donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been

executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. In the instant case, the POA was duly executed in favour of the donee, the signatory of the documents, and was duly notarised before its submission along with other important documents required to be submitted as per the NIT by the Appellant, before the last date of submission fixed by the Respondent BCCL. Hence, there was no legal or justifiable ground to reject the Technical bid of the Appellant.

20. Thus, the said action of the Respondent BCCL in rejecting the Technical bid of the Appellant on absolutely extraneous ground and accepting the Technical bid of the Respondent no. 8 though submitted in utter non-compliance of the mandatory requirement of Clause 10 of the NIT, and subsequently calling upon the Respondent no. 8 to furnish the shortfall of documents after the opening of technical bids of the Bidders, was totally arbitrary and illegal.

21. There cannot be any disagreement to the legal proposition propounded in catena of decisions of this Court relied upon by the learned counsels for the Respondents to the effect that the Court does not sit as a Court of Appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contracts. However, it is equally well settled that the decision of the government/its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by *malafides.* Government bodies being public authorities are expected to uphold fairness, equality and public interest even while dealing with contractual matters. Right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process and that the entire bidding process is carried out in absolutely transparent manner.

22. At this juncture, we may reiterate the well-established tenets of law pertaining to the scope of judicial intervention in Government contracts.

23. In *Sterling Computers Limited* v. *M & N Publications Limited*[1], this Court while dealing with the scope of judicial review of award of contracts held:—

> "18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of *Chief Constable of the North Wales Police* v. *Evans* [[1982] 3 All ER 141] where it was said that : (p. 144a)
>
> "The purpose of judicial review is to ensure that the individual

receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, *Chief Constable of the North Wales Police* v. *Evans* [[1982] 3 All ER 141] the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution."

24. In *Tata Cellular* v. *Union of India*[2], this Court had laid down certain priniciples for the judicial review of administrative action.

"94. The principles deducible from the above are:

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

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

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

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

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

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

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

25. It has also been held in *ABL International Limited* v. *Export*

Credit Guarantee Corporation of India Limited[3], as under:—

> "53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution."

26. In *Jagdish Mandal* v. *State of Orissa*[4], this Court after discussing number of judgments laid down two tests to determine the extent of judicial interference in tender matters. They are:—

> "22. (*i*) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;
>
> or
>
> Whether the process adopted or 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;"
>
> (*ii*) Whether public interest is affected.
>
> If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting 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."

27. In *Mihan India Ltd.* v. *GMR Airports Ltd.*[5], while observing that the government contracts granted by the government bodies must uphold fairness, equality and rule of law while dealing with the contractual matters, it was observed in Para 50 as under:—

> "50. In view of the above, it is apparent that in government contracts, if granted by the government bodies, it is expected to uphold fairness, equality and rule of law while dealing with contractual matters. Right to equality under Article 14 of the Constitution of India abhors arbitrariness. The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied. It is said that the constitutional guarantee as provided under Article 14 of the Constitution of India demands the State to act in a fair and reasonable manner unless public interest demands otherwise. It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest."

28. It was sought to be submitted by the learned Counsels for the Respondents relying upon the observations made in *Central Coalfields Limited* v. *SLL-SML (Joint Venture Consortium)*[6], that whether a term of

NIT is essential or not is a decision taken by the employer which should be respected. However, in the said judgment also it is observed that if the employer has exercised the inherent authority to deviate from the essential term, such deviation has to be made applicable to all the bidders and potential bidders. It was observed in Para 47 and 48 as under:—

> "47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in *Ramana Dayaram Shetty* [*Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in *Tata Cellular* [*Tata Cellular* v. *Union of India*, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in *Jagdish Mandal* [*Jagdish Mandal* v. *State of Orissa*, (2007) 14 SCC 517] followed in *Michigan Rubber* [*Michigan Rubber (India) Ltd.* v. *State of Karnataka*, (2012) 8 SCC 216].
>
> 48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in *Ramana Dayaram Shetty* [*Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489]. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

29. The submissions made by the learned Counsels for the Respondents that the project in question being Infrastructure project and also one of the Mega projects, this Court may not interfere more particularly in view of the fact that agreement has already been entered into between the Respondent BCCL and the Special Purpose Vehicle of the Respondent no. 8, cannot be accepted, when we have found that

the impugned decision of the Respondent BCCL was grossly arbitrary, illegal, discriminatory and violative of Article 14 of the Constitution of India. As held earlier, the Government bodies/instrumentalities are expected to act in absolutely fair, reasonable and transparent manner, particularly in the award of contracts for Mega projects. Any element of arbitrariness or discrimination may lead to hampering of the entire project which would not be in the public interest.

30. In that view of the matter, the impugned decision of the Respondent - BCCL dated 06.05.2024 rejecting the Technical bid of the Appellant and further declaring the Respondent no. 8 as successful bidder is set aside. Any action/process undertaken or agreement entered into pursuant to the said decision also stand set aside. It shall be open for the Respondent - BCCL to initiate fresh tender process for the Project and to process the same in question in accordance with law.

31. The Appeal is allowed accordingly.

[∞] In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFB.

[£] Any approximate equivalent of a chartered accountant may provide the relevant certificates required under this RFB. Jurisdictions which do not have a license/certification/membership requirement for accountants to describe themselves or to practice as chartered accountants (or any approximate equivalent), any qualified accountant may provide the certificates required under this RFB.

[®] For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders/Members from countries that have signed the Hague Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

[1] (1993) 1 SCC 445

[2] (1994) 6 SCC 651

[3] (2004) 3 SCC 553

[4] *(2007) 14 SCC 517*

[5] *2022 SCC OnLine SC 574*

[6] (2016) 8 SCC 622

---

this text must be verified from the original source.