Caretel Infotech Ltd. vs Hindustan Petroleum Corporation ... on 9 April, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3327, 2019 (14) SCC 81, AIRONLINE 2019 SC 458, 2019 (5) ABR 174, (2019) 2 CURCC 225, 2019 (4) KCCR SN 343 (SC), (2019) 6 SCALE 70, AIR 2019 SC (CIV) 2629

Author: Sanjay Kishan Kaul

Bench: S.A. Bobde, Sanjay Kishan Kaul, Indira Banerjee

REPOR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3588 OF 2019
[Arising out of SLP(C) No.46 of 2019]

CARETEL INFOTECH LTD. ….APPELLANT

Versus

HINDUSTAN PETROLEUM
CORPORATION LIMITED & ORS. ….RESPONDEN

JUDGMENT

SANJAY KISHAN KAUL, J.

1. Leave granted.

2. Hindustan Petroleum Corporation Limited (respondent No.1) floated an e-public tender on 4.12.2017 for setting up call centres for receiving, recording and replying to information enquiries and complaints from LPG customers of IOC/HPC/BPC. The appellant participated in the tender. Clause 20 of the tender reads as under:

Date: 2019.04.09 16:25:25 IST Reason:

> "20. Black List/Ban/Holiday List i. Bids received from parties who have been banned/blacklisted/put on holiday list or parties in respect of whom the action for blacklisting and holiday listing has been initiated by HPCL/any Government/Quasi Government Agencies or PSUs, shall not be considered for either evaluation or for award of work. Offer of Vendor who has not submitted declaration on black listed or holiday listed shall be considered as non-responsive and offer shall be rejected.
>
> ii. The bidder shall give a written declaration indicating that they are not on holiday list/banned/blacklisted as on due date of this tender."

3. The appellant was issued a show cause notice on 5.12.2017 in respect of another tender, i.e., after floating of the tender, but before submitting of the bid, for blacklisting on the allegation of furnishing false information and bid documents, submitted for providing Kisan Call Centre Services to the Department of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare, Government of India.

4. The show cause notice alleged that on questions being raised about the correctness of information furnished by the appellant in the bid documents regarding running of call centres at different locations, an inquiry was made through officers and despite further information being sought, the same was not forthcoming. The operative portion of the show cause notice reads as under:

> "Accordingly, in the above circumstances a situation has, prima facie, emerged that M/s Caretel Infotech Pvt. Ltd. has endeavoured to procure the above tender by providing false, misleading and wrong information. Therefore, the Department hereby issues notice to M/s Caretel Infotech Pvt. Ltd. to show cause as to why suitable action for blacklisting the firm (M/s. Caretel Infotech Pvt. Ltd.) should not be initiated. You are requested to clarify your position within 7 (seven) days from the date of issue of this letter. Response received after expiry of the provided time limit will not be entertained." (emphasis supplied)

5. The appellant submitted the bid in respect of the e-tender on 19.12.2017. In terms of clause 20 extracted aforesaid, a format had been provided for the declaration to be made, which is as under:

> "DECLARATION NON BLACKLISTED/NON BANNED/NON HOLIDAY LISTED PARTY WE CONFIRM THAT WE HAVE NOT BEEN BANNED OR BLACK LISTED OR DELISTED OR HOLIDAY LISTED BY ANY GOVERNMENT OR QUASI GOVERNMENT AGENCIES OR PUBLIC SECTOR UNDERTAKINGS Date: _____ Name of Tenderer: _____ Place: _____ Signature & Seal of Tenderer : _____ Note: If a bidder has been banned by any Government or Quasi Government Agencies or Public Sector Undertakings, this fact must be clearly stated with details. If this declaration is not given along with the UNPRICED Bid, the tender will be rejected as non-responsive." The appellant submitted the declaration in terms aforesaid, i.e., stating that the appellant had not been blacklisted by any Government or Quasi Government Agency or Public Sector

Undertakings.

6. The appellant also submitted an undertaking, once again, in the prescribed form. The format of undertaking is as under:

"ON LETTER HEAD Undertaking by the bidder I/we hereby undertake that the entire information furnished/given to you in our bid and attachments are true to the best of our knowledge and belief and nothing therein is false.

I/We further undertake, that if it is found during the tender stage (before accepting our bid/placement of Purchase Order by HPCL) that any information or document furnished/submitted by us is false or incorrect, then we agree that HPCL shall be free to reject our tender/bid. If the same is found to be false or incorrect during any stage after accepting of our bid/placement of Purchase Order, then HPCL shall have the right to summarily cancel our tender and procure the balance quantity from any alternate source. HPCL shall have the right to recover the differential amount between the rates of our contract and the rates at which HPCL is compelled to procure from the alternate source, if the latter rate is higher. To this effect, the recovery can be made by HPCL by encashing any bank guarantee that we may have submitted or from any pending bills under this contract or any other contract with HPCL. Further HPCL shall be at liberty to take any appropriate action as deemed fit in such an eventuality.

I/we further undertake as and when called upon by Hindustan Petroleum Corporation Limited, to produce, for its inspection, original(s) of the document(s) of which copies have been annexed hereto.

Date: _____ Name of Bidder: _____

Place: _____ Signature & Seal
of Bidder : _____"

7. Respondent No.1 evaluated the technical and financial bids and declared the appellant as L-1 and respondent No.3 as L-2 on 16.1.2018.

The letter of acceptance of the tender awarded to the appellant was issued on 12.2.2018 for a value of Rs.791 lakh basic for services to be rendered for a period of two years.

8. Respondent No.3 filed a writ petition in the Bombay High Court on 17.2.2018, assailing the declaration of the appellant as L-1. The purchase order in favour of the appellant confirming the terms of contract and mode of payment was issued on 21.2.2018. One day later, on 22.2.2018, the Ministry of Agriculture and Farmers Welfare passed an order blacklisting and debarring the

appellant from participating in any tender process of the Government of India, Ministry of Agriculture and Farmers' Welfare for two years with effect from the date of issue of the order. This order was assailed by the appellant by filing a writ petition before the Delhi High Court, which was pleased to issue notice on 9.3.2018, and we are informed that subsequently, on 12.3.2019, that petition was dismissed and a Letters Patent Appeal filed against the same is pending.

9. Respondent No.3, having become aware of the factum of blacklisting of the appellant amended the petition to incorporate the said fact. The writ petition was allowed by the impugned order of the Division Bench dated 21.12.2018.

10. The decision of the High Court is predicated on two facts – firstly the non-disclosure of the factum of the show cause notice issued to the appellant amounted to violation of the undertaking. Linked to this issue is that clause 20(iii) of the tender provided for an integrity pact "ensuring transparency and fair dealing" and that integrity pact had been duly signed and submitted by the appellant. Secondly, the Division Bench doubted the compliance, by the appellant, of clause 8 read with clause 10(g) of Section 4 of the tender. This controversy pertains to the clause dealing with the business continuity and the requirement of submitting a valid ISO certificate for the purpose of securing the tender. The relevant clauses read as under:

> "8. Business Continuity OMCs currently have an agreement for inbound calls with a service provider based in different Regions. The successful bidder has to submit the transition plan to migrate to new platform and facility with "ZERO" disruption of services with respect to following areas:
>
> a) Toll-free services.
>
> b) IVRS based call handling.
>
> c) Diversion of call traffic at the successful bidder's premises.
>
> d) Trained Operators at the time of Go-Live date." ....

"10. Other Mandatory Requirements:

xxxx xxxx xxxx xxxx xxxx

g) Valid ISO Certification 27001 for security and ISO 2301 for Business Continuity." It is not disputed that the certificate of registration submitted by the appellant was issued by Elite Certifications Pvt. Ltd., respondent No.2. However, respondent No.3 sought to throw doubts on the certificate and the High Court found reason to believe the same even though in the counter affidavit filed by respondent No.1 a stand was taken to the contrary.

11. On 7.1.2019, notice was issued on the present appeal filed against the impugned order and an interim order was passed in the following terms:

> "In the meantime, Respondent No.1 (HPCL) may take a decision but not implement it. The petitioner may continue under the contract until further orders." The result of the same is that the appellant has continued to give services under the contract now for almost more than thirteen (13) months out of the contract for two years and respondent No.1, though is stated to have issued a notice to the appellant in pursuance of the directions contained in the impugned order, has deemed it fit not to proceed with the inquiry and to await the verdict in the present appeal.

12. We have heard Mr. Shyam Diwan, learned senior counsel for the appellant, Mr. K.V. Vishwanathan, learned senior counsel for respondent No.3 and Mr. Parijat Sinha, learned counsel for respondent No.1. The submissions on the two aspects advanced by learned counsel for the parties and our findings are recorded hereinafter. Blacklisting:

13. Mr. Shyam Diwan, learned senior counsel for the appellant contends that the impugned order misreads the blacklisting clause 20. The submission was that undoubtedly, the appellant could not have been categorised as a party who has been banned/blacklisted/put on holiday list. This is also in the context of the fact that such blacklisting has severe consequences and the clause itself provided that non-submission of declaration in the prescribed format would make the bid non- responsive and the offer would be rejected. In terms of clause 20(ii), the written declaration had to be given as on the due date of the tender. The format in which this declaration was to be given was specified and was not left to the own words of the bidder. The format extracted aforesaid clearly stated that such declaration was required to be furnished only if the bidder had "been banned or black listed or delisted or holiday listed." That position was not prevalent on the date of submission of the bid, on 19.12.2017 as by that date only a show cause notice had been issued, on 5.12.2017. The order of blacklisting was passed on 22.2.2018, after the date of acceptance of the tender and placement of the purchase order on the appellant, on 21.2.2018.

14. In the aforesaid context, it is also contended that 'Annexure 21' lays down the 'Guidelines for Holiday Listing (Banning of Business Dealing)'. That occasion would arise if the tender awarding authority, i.e., respondent No.1 would have initiated any process and as per clause 2.5, the banning was to be with prospective effect, i.e., for future business dealings. The contract in question, having already been placed on the appellant, there can be no question of retrospective blacklisting of the appellant.

15. The second limb of the submission is based on clause 20(i) to the extent it refers to "or parties in respect of whom the action for blacklisting and holiday listing has been initiated by HPCL/any Government/quasi Government agencies or PSUs." This clause, it was submitted, had to be read with the wordings of the show cause notice. Undisputedly, the format in which the information had to be furnished only provided for an eventual blacklisting having taken place. The operative portion of the show cause notice, extracted aforesaid, states "why suitable action for blacklisting the firm (M/s. Caretel Infotech Pvt. Ltd.) should not be initiated."1 The requirement of clause 20(i) was the 1 Emphasis supplied actual initiation. Thus, it was pleaded that blacklisting had not been "initiated" by mere issuing of the show cause notice, as the notice was to show cause as to why proceedings should not be initiated, i.e., a prior stage.

16. On the other hand, Mr. Vishwanathan, learned senior counsel for respondent No.3, contended that the format was prescribed in the context of clause 20(ii), which was a case where blacklisting had already taken place, as on the due date of the tender. However, as per clause 20(i) there were four eventualities: (a) banned; (b) blacklisted; (c) put on holiday list; or (d) action for blacklisting or holiday listing had been initiated. It was his submission that the present case was one where blacklisting had been, at least, initiated and, therefore, the appellant was duty bound to make a disclosure of this fact along with his tender, not as per the format, but in terms of the undertaking to be given by the bidder, which required full disclosure. That undertaking, it was submitted, was breached, as held by the impugned order.

17. Learned counsel further contended that the plea sought to be raised by the appellant, on the interpretation of clause 20(i), was not even the case pleaded by the appellant in their challenge to the blacklisting order, in their writ petition, but what was pleaded there was only the absence of an opportunity of hearing.

18. In the alternative, learned counsel also sought to contend that respondent No.1 had not complied with the interim directions, at the stage of issuing notice on 7.1.2019, and ought to have implemented the impugned order and held an inquiry and that inquiry report ought to have been placed before the Court.

19. On the other hand, learned counsel for respondent No.1 submitted that respondent No.1 had, in its wisdom, stayed its hand after issuance of notice in pursuance to the impugned order and preferred to await the decision of this Court.

20. On careful consideration of the rival submissions, we are of the view that there is force in the contention of learned counsel for the appellant. We are, in fact, in agreement with both the aspects, i.e., the interpretation of clause 20 read with the format, as well as with the effect of the show cause notice.

21. It is no doubt true that clause 20 does provide for four eventualities, as submitted by learned counsel for respondent No.3. The present case is not one where on the date of submission of the tender the appellant had been banned, blacklisted or put on holiday list. The question before us, thus, would be the effect of an action for blacklisting and holiday listing being initiated. The declaration to be given by the bidder is specified in clause 20(ii), which deals with the first three aspects. The format enclosed with the tender documents also refers only to these three eventualities. It is not a case where no specific format is provided, where possibly it could have been contended that the disclosure has to be in respect of all the four aspects. The format having been provided, if initiation of blacklisting was to be specified, then that ought to have been included in the format. It cannot be said that the undertaking by the appellant made it the bounden duty of the appellant to disclose the aspect of a show cause notice for blacklisting. We say so as there is a specific clause with the specific format provided for, requiring disclosures, as per the same.

22. It may be possible to contend that the format is not correctly made. But then, that is the problem of the framing of the format by respondent No.1. It appears that respondent No.1 also, faced with the

factual situation, took a considered view that since clause 20(i) provided for the four eventualities, while the format did not provide for it, the appellant could not be penalised. May be, for future the format would require an appropriate modification!

23. If we refer to the undertaking submitted by the appellant all that it states is that the information furnished in the bid and attachments are true to the best of the knowledge and belief of the bidder. In case any false or incorrect information is submitted, the bid can be rejected. It cannot be said that there is any false information given by the appellant as to violate the stated condition 4 of clause 20(i). We may look at another angle of the same issue, i.e., the integrity pact provided for in clause 20(iii) with the format thereof, a detailed one. The integrity pack provided that the "parties shall make certain commitments to each other in regard to ensuring transparency and fair dealing in the procurement activities of the Corporation." The duly signed integrity pact is an essential condition for a valid bid. This clause, thus, deals with the transparency and fair dealing of the activities carried out under the tender were it to be awarded insofar as the procurement activities are concerned. Once again, this would not have any relevance to the stated fourth part of clause 20(i).

24. We may also look at this aspect from another perspective. Blacklisting has very serious consequences. A show cause notice may result in blacklisting or may not result in blacklisting. The mere show cause notice being issued, to visit such a severe consequence on a bidder, may be difficult to sustain.

25. The case of the appellant is further fortified by even the language used in the show cause notice. The show cause notice itself, in the last paragraph, calls upon the appellant to show cause as to why suitable action for blacklisting "should not be initiated." Pursuant to the response of the appellant, the next stage would have been the initiation of the blacklisting process, if the explanation was not found satisfactory. The term used in the blacklisting clause 20(i), on the other hand, talks about a situation where blacklisting has already been initiated. Plain English words used must be given their ordinary grammatical meaning, an aspect discussed in a little more detail hereinafter.

26. Thus, it is difficult to accept the submission of learned counsel for respondent No.3 that the show cause notice dated 5.12.2017 itself amounted to the process of blacklisting having already been initiated.

27. On both these accounts it cannot be said that the appellant would be disentitled to the contract.

28. Insofar as the effect of the blacklisting order dated 22.2.2018 is concerned, in the eventuality of respondent No.1 considering it proper to initiate certain action, that would have to be in terms of the guidelines for blacklisting of HPCL. The guidelines itself show that the ban would have prospective effect, for future business dealings. Thus, the same would have no application to the tender awarded.

Business Continuity Certificate:

29. The second reason which found favour with the High Court was the doubts created by respondent No.3 over the Business Continuity Certificate filed by the appellant. Clause 8, dealing with business continuity, requires the successful bidder to submit the transition plan to migrate to new platform and facility with zero disruption of services, with respect to four aspects provided hereinbefore. In terms of clause 10(g), valid ISO Certificate 27001 for security and ISO 2301 for business continuity have to be provided. It is not in question that the appellant did submit a certificate of business continuity, as obtained from respondent No.2.

30. Respondent No.3 has sought to cast doubts on this business certificates, and the Division Bench, in terms of the impugned order, has also embarked on a course of inquiry into this certificate by calling upon parties to file their affidavits and has thereafter taken a call to express its own doubts over the certificate. In our view, such a course of action was not permissible.

31. There are serious disputes relating to the allegations made by respondent No.3, which are rebutted by the appellant. Opportunity had to be afforded to cross-examine the deponents who had filed affidavits. This would really not be possible in writ proceedings and could have only been determined in suit proceedings. There cannot always be a shortcut, through a process of writ proceedings under Article 226 of the Constitution of India, when such disputes exist. We may usefully refer to the observations of this Court in Roshina T v. Abdul Azeez K.T. & Ors.,2 opining that the writ jurisdiction under Article 226 of the Constitution of India is not intended to replace ordinary remedies by way of a civil suit, and this jurisdiction should not be exercised casually or lightly on mere asking by the litigant.

32. We may notice another important aspect also, i.e., reluctance of respondent No.1 to accept the allegations of respondent No.3. If respondent No.1 itself had doubts on the certificate, that would have been another matter. This is not so as is apparent from the affidavit filed by 2 (2019) 2 SCC 329 respondent No.1. In any case, at best, this aspect ought to have been left to the wisdom of respondent No.1, rather than the Court embarking on the course of action it followed, as if it was sitting in appeal over a decision of respondent No.1. We may add that if respondent No.1 itself has any doubts on these certificates, nothing prevented, nor still prevents respondent No.1 from looking into this aspect.

33. We do not agree with the contention of learned senior counsel for respondent No.3 that the interim order dated 7.1.2019 mandated respondent No.1 to enquire into all these aspects, in pursuance of the directions contained in the impugned order. All that was observed was that respondent No.1 “may” take a decision, but the interdict was against implementing it. Respondent No.1 in its wisdom, as submitted by learned counsel for respondent No.1, has chosen not to proceed further, after issuance of notice to the appellant and has decided to await the decision of this Court. We have already come to the conclusion that it was not really within the domain of the High Court to have issued the direction, as it sought to do.

34. The operative directions of the High Court, as contained in para 47 of the judgment, to take appropriate decisions, in the conspectus of the observations made, really amounts to directing respondent No.1 to breach its contract with the appellant. We are of the view that, thus, no such

direction ought to have been issued to compel a breach of the contract by the appellant.

35. We, thus, are unable to sustain the impugned order even on this ground.

Epilogue:

36. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and Public Sector Enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the Public Sector.

37. In Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr.3, this Court has expounded further on this aspect, while observing that the decision making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a decision. It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute 3 (2016) 16 SCC 818 their view for that of the administrative authority. Mere disagreement with the decision making process would not suffice.

38. Another aspect emphasised is that the author of the document is the best person to understand and appreciate its requirements. In the facts of the present case, the view, on interpreting the tender documents, of respondent No.1 must prevail. Respondent No.1 itself, appreciative of the wording of clause 20 and the format, has taken a considered view. Respondent No.3 cannot compel its own interpretation of the contract to be thrust on respondent No.1, or ask the Court to compel respondent No.1 to accept that interpretation. In fact, the Court went on to observe in the aforesaid judgment that it is possible that the author of the tender may give an interpretation that is not acceptable to the Constitutional Court, but that itself would not be a reason for interfering with the interpretation given. We reproduce the observations in this behalf as under:

> “15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements

> and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

39. We may also refer to the judgment of this Court in Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL) & Anr.,4 authored by one of us (Sanjay Kishan Kaul, J.). The legal principles for interpretation of commercial contracts have been discussed. In the said judgment, a reference was made to the observations of the Privy Council in Attorney General of Belize v. Belize Telecom Ltd. 5 as under:

> "16. Before discussing in greater detail the reasoning of the Court of Appeal, the Board will make some general observations about the process of implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended..." ....
>
> "19. .....In Trollope & Colls Ltd. v. North West Metropolitan Regional Hospital Board [1973] 1 WLR 601, 609 Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said:
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> "the court does not make a contract for the parties. The court 4 (2018) 11 SCC 508 5 (2009) 1 WLR 1988 (PC) will not even improve the contract which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves."

40. Nabha Power Limited (NPL)6 also took note of the earlier judgment of this court in Satya Jain (Dead) Through LRs. and Ors. vs. Anis Ahmed Rushdie (Dead) Through LRs. and Ors.7, which discussed the principle of business efficacy as proposed by Bowen, L.J. in the Moorcock8. It has been elucidated that this test requires that terms can be implied only if it is necessary to give business efficacy to the contract to avoid failure of the contract and only the bare minimum of

implication is to be there to achieve this goal. Thus, if the contract makes business sense without the implication of terms, the courts will not imply the 6 (supra) 7 (2013) 8 SCC 131 8 (1889) LR 14 PD 64 (CA) same.

41. The judgment in Nabha Power Limited (NPL)9 concluded with the following observations in para 72:

> "72. We may, however, in the end, extend a word of caution. It should certainly not be an endeavour of commercial courts to look to implied terms of contract. In the current day and age, making of contracts is a matter of high technical expertise with legal brains from all sides involved in the process of drafting a contract. It is even preceded by opportunities of seeking clarifications and doubts so that the parties know what they are getting into. Thus, normally a contract should be read as it reads, as per its express terms. The implied terms is a concept, which is necessitated only when the Penta-test referred to aforesaid comes into play. There has to be a strict necessity for it. In the present case, we have really only read the contract in the manner it reads. We have not really read into it any 'implied term' but from the collection of clauses, come to a conclusion as to what the contract says. The formula for energy charges, to our mind, was quite clear. We have only expounded it in accordance to its natural grammatical contour, keeping in mind the nature of the contract."

42. We have considered it appropriate to, once again, emphasise the aforesaid aspects, especially in the context of endeavours of courts to give their own interpretation to contracts, more specifically tender terms, at the behest of a third party competing for the tender, rather than what is propounded by the party framing the tender. The object cannot be that in every contract, where some parties would lose out, they should get the 9 (supra) opportunity to somehow pick holes, to disqualify the successful parties, on grounds on which even the party floating the tender finds no merit.

43. The observations made aforesaid should be understood in the larger context, so as to avoid situations similar to the one we find in the impugned order.

Conclusion:

44. The result of the aforesaid discussion is that the impugned order is set aside and the writ petition filed by respondent No.3 is accordingly dismissed.

45. The appeal is accordingly allowed, leaving the parties to bear their own costs.

.....J. [S.A. Bobde] .....J. [Sanjay Kishan Kaul] New Delhi.

April 09, 2019.