The Vice Chairman And Managing ... vs Shishir Realty Pvt Ltd . on 29 November, 2021

Author: N. V. Ramana

Bench: Surya Kant, Vineet Saran, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3956-3957 OF 2017

THE VICE CHAIRMAN & MANAGING DIRECTOR,
CITY AND INDUSTRIAL DEVELOPMENT CORPORATION
OF MAHARASHTRA LTD.& ANR. …APPELLANTS

VERSUS

SHISHIR REALTY PRIVATE LIMITED & ORS. ETC. …RESPONDENTS

WITH

CIVIL APPEAL NOS. 3959-3961 OF 2017

SANJAY KUMAR SURVE …APPELLANT

VERSUS

THE STATE OF MAHARASHTRA & ORS. ETC. …RESPONDENTS

JUDGMENT

N. V. RAMANA, CJI

1. These Civil Appeals arise out of the impugned judgment dated 06.12.2013 passed by the High Court of Judicature at Bombay in Writ Petition No. 702 of 2011, Writ Petition No. 5245 of 2011, and Public Interest Litigation No. 55 of 2011.

2. At the outset, a brief sketch of the facts is necessary for determining the issue. On 11.06.2008, the appellants in Civil Appeal Nos. 3956-3957 of 2017 (City and Industrial Development Corporation of Maharashtra, for short "CIDCO") called for a tender for lease of land within its jurisdiction, for purposes of development of necessary infrastructure such as Hotels etc., around Navi Mumbai Airport. Respondent-M/s Metropolis Hotels was one of the bidders.

3. Before approval of the tender, technical qualifications of the bidders were scrutinized and approved by the CIDCO's legal team on 25.07.2008 in the following manner:

> "Metropolis Hotels is a Partnership firm consisting of M/s Sun-n-Sand Hotel Pvt. Ltd. and Shishir Realty Pvt. Ltd having their share 30% each. A short question arises for the determination is whether Board Resolution of the partnership firm is required to be annexed with the offer.
>
> It appears from the technical bid of M/s Metropolis Hotels that the said bid is signed by both the partners jointly. Section 4 of the Indian Partnership Act 1932 defines 'Partner' and 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "Firm Name". Partnership is not created by status and arises from contract. In the Indian Partnership Act, 1932, there are no directors, and all the partners are jointly and severally responsible for all the acts of the firm.
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> In view of this Board Resolution is not required. Therefore, the remarks appearing on the scrutiny sheet at Sr. No. 19, requires to be ignored and technical offer should be accepted." On 25.07.2008, the financial bids were opened, which stood as under:
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> SL. NAME OF OFFEROR RATE QUOTED (RS. REMARKS NO. PER SQ MTRS.)
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> 1. M/s. Metropolis Hotel 60,085.10 1st Highest (Respondent no.1 in C.A. No. 3957 of 2017)
>
> 2. M/s. Indian Hotels Co. 55319.15 2nd Highest Ltd.
>
> 3. M/s. Sun-N-Sand 49,361.70 3rd Highest Hotels Pvt. Ltd.
>
> 4. M/s. L&T Leela Venture 48,063.90 4th Highest Co.

4. On 25.07.2008, M/s. Indian Hotels Company Ltd., who were H2 in the bidding process, wrote to CIDCO, objecting to the eligibility of the highest bidder in the following manner:

> "3. We are informed that the highest bidder is a partnership firm and has relied on the experience of one of this partners to satisfy the eligibility norm. The same partner

> has also bid on its own. This amounts to multiple bidder with the same experience being concerned for more than one bid." On 04.08.2008, these objections were considered by the law officers of the CIDCO and subsequently rejected.

5. On 07.08.2008, the CIDCO issued a letter of allotment in favour of M/s. Metropolis Hotels. Being the highest bidder, M/s. Metropolis Hotels was accordingly, allotted Plot No. 5, admeasuring about 47,000 sq. mtrs., for construction of a five-star hotel near the proposed Navi Mumbai Airport.

6. Thereafter, on 29.12.2009, M/s. Metropolis Hotels-Respondent no.1, by way of a letter to CIDCO, applied for change of user of 34,000 sq. mtrs. of the said plot to commercial-cum-residential use. On 11.02.2010, this request for change/expansion of user of Plot No.5 was considered and subsequently permitted only for 23,000 sq. mtrs.

7. On 11.03.2010, M/s. Metropolis Hotels requested for subdivision of the Plot No.5 into two, i.e. 24,000 sq. mtrs. for the five-star hotel and 23,000 sq. mtrs. for the residential-cum-commercial plot. By way of a letter dated 29.03.2010, CIDCO demarcated the said plot as requested, forming Plot No.5 (admeasuring 24,000 sq. mtrs.) and Plot No.5A (admeasuring 22,999.08 sq. mtrs). M/s. Metropolis Hotels also requested assignment of their rights in respect of the plot on which the residential-cum-commercial user was permitted, i.e. Plot No.5A. Assignment of this plot to M/s. Shishir Realty Private Ltd. was approved by CIDCO in its letter dated 30.03.2010, wherein it referred to the said assignee as one of the partners in the original allotment.

8. On 30.03.2010, the CIDCO executed two separate lease deeds in respect of the two plots, i.e. Plot No. 5 and Plot No. 5A. M/s. Shishir Realty Private Ltd. took further steps for mortgaging their plot with the permission of the CIDCO and obtained loan for development of the said plot for commercial-cum-residential user. Third-party rights were also created.

9. As complaints were made regarding irregularities in allotment of plots of land, change of user and deviation from the terms and conditions of the tender, a preliminary enquiry was held by the Principal Secretary, Urban Development Department as per the directions of the State Government of Maharashtra. Based on such enquiry, the newly appointed Vice-Chairman issued a show-cause notice dated 06.12.2010 to M/s. Metropolis Hotels and M/s. Shishir Realty Private Ltd.(respondents-lessees) as to why the lease deeds which were executed in their favour should not be cancelled on account of breach of tender conditions by M/s. Metropolis Hotels. It may be relevant to note observations made in the show cause notice which inter alia read as under:

> "13. Since the tenders were invited for grant of lease of five-star hotel plot, only bidders interested in development of 5-star Hotel participated in the bidding process. Had the Corporation invited tenders with residential + commercial use of the plot, several bidders could have participated in the bidding process and the Corporation might have fetched higher revenue. Due to change of user and sub-division of the plot contrary to the terms and conditions of invitation of offer, several eligible bidders were deprived and also caused financial loss to the public exchequer. Besides this, due to change of user and sub-division of the plot, the basic object of

development of 5□star hotel is frustrated.

14. For the bench or benches (sic) of the terms and conditions of tender and letter of allotment dated – 07.08.2008, you are hereby called upon to show cause as to why the Corporation should not cancel or revoke the agreements concluded vide Letter of Allotment dated 07.08.2008 and Agremeents to lease dated 30.03.2010, in respect of Plot No.5, admeasuring 24,000 m in favour of M/s.

Metropolis Hotels and Plot No.5A, admeasuring 23,000 m2 in favour of M/s. Shishir Realty Pvt. Ltd."

10. Vide order dated 16.03.2011, the Vice Chairman, CIDCO, cancelled the lease deeds, pursuant to the enquiry. The issues under consideration, as identified in the said order, are reproduced as under:

SL. FINDING ISSUES NO. S

1. Whether M/s. Metropolis Hotels was eligible to participate in the bidding process for allotment of 5□No Star Hotel Plot, in accordance with Clause 4(c) of the invitation of offer?

2. Whether change of user for part of the plot admeasuring 23,000 m2 and sub□division of plot in breach Yes of the terms and conditions represented in the Tender document and letter of allotment?

3. Whether transfer of part of the sub□divided plot of admeasuring 23,000m2 with change of user in favour of M/s. Shishir Realty Pvt.

Ltd. before execution of agreement No to lease was consistent with Condition No.16 of the General Terms and Conditions of Tender and Condition No.21 of the letter of allotment?

4. Whether change of user and sub□division of plot has adversely Yes affected the object of development of 5 Star Hotel in Navi Mumbai?

5. Whether change of user and sub□division of plot and transfer of part [No] of the plot was legal, just and proper?

11. Pertaining to the first issue of the eligibility of M/s. Metropolis Hotels to participate in the bidding process, the order held that Clause 4(c) of the tender document obligated the bidders to have a registered partnership firm. It concluded that since M/s. Metropolis Hotels was not registered, on the date of submission of the bid, they were ineligible for bidding. Accordingly, their offer was void ab initio. The second reason provided was that M/s. Sun□N□Sand Hotels, being partners in M/s. Metropolis Hotels, could not have submitted a separate bid, which also vitiated the bid made by Metropolis Hotels.

12. On the aspect of whether sub-division of the plots and change of land use were consistent with the terms and conditions of the tender document and letter of allotment, the order observed that offers were invited for five-star hotels and sub-division/change of use could not have been permitted as such changes were not conducive to public interest and were against express terms and conditions mentioned within the agreement.

13. On the third issue of whether transfer of part of the sub-divided plot to Shishir Realty Pvt. Ltd was consistent with terms of the tender and letter of allotment or not, the order observed that the terms of the allotment letter read with the General Terms and Conditions clearly showed that the transferee should fulfil all eligibility criteria prescribed in the invitation of offer. As there was nothing on record to establish that M/s. Shishir Realty Pvt. Ltd. had fulfilled such criteria, the transfer was held to be in violation of such terms and conditions.

14. On the aspect of whether the change of user and sub-division of the plot adversely affected the object of development of a five-star hotel, the order noted that the change of user and sub-division of plots were in contravention of the terms and conditions initially offered. Due to such changes, the basic object of development of a five-star hotel in Navi Mumbai was frustrated.

15. On the aspect of whether allotment of the plot, change of land use, and sub-division of plots was arbitrary, illegal, and unjustified, the order noted that the deviations could be categorized as major deviations from the terms and conditions mentioned in both the tender documents and letter of allotment. Such deviation frustrated the basic purpose of development of a five-star hotel. Therefore, it was concluded that the aspect of promissory estoppel against the CIDCO would not be applicable as specific terms of the tender and letter of allotment were deviated. Further, such deviations were not in public interest. Accordingly, the two lease deeds in favour of the respondents-lessees were cancelled.

16. Aggrieved by the cancellation of the lease deeds, M/s. Metropolis Hotels and Shishir Realty Pvt. Ltd., challenged the aforesaid order of the Vice Chairman, CIDCO, through two writ petitions being Writ Petition No. 702 of 2011 and Writ Petition No. 5245 of 2011 before the High Court of Judicature at Bombay. Separately, a PIL was also filed challenging the allotment of the plot in question, change of land use, and sub-division of the said plot.

17. The High Court, vide impugned order dated 06.12.2013, while quashing the aforesaid cancellation order passed by CIDCO, held that the change of land use and sub-division of the plot had taken place with due authorization of the CIDCO. Further, it held that the CIDCO was not able to show any concrete violations which go to the root of the matter. Finally, the High Court held that, without producing any pressing need on record, the CIDCO is precluded and estopped on the doctrine of promissory estoppel from canceling the allotment.

18. Aggrieved by the impugned judgment, the CIDCO and PIL petitioner-appellant in C.A. Nos. 3959-3961 of 2017 have filed separate appeals before this Court.

19. Mr. Rakesh Dwivedi, learned Sr. Counsel, appearing on behalf of the CIDCO, has argued that:

a) The High Court judgment cannot be sustained as the same was delivered ignoring blatant violations and illegalities committed during the tender process.

b) Primarily, the bid by M/s. Metropolis Hotels itself was illegal as it has only registered subsequent to the allotment, which is a clear violation of clause 4(c) and 8(b) of the tender document.

c) Moreover, subsequent to the award of the contract, M/s.

Metropolis Hotels went beyond the tender conditions and expanded the usage to residential□cum□ commercial. Additionally consequent to change of usage, the M/s. Metropolis Hotels sub□divided the plot and executed a fresh lease in favour of Shishir Realty Pvt. Ltd. The aforesaid acts were in breach of the original allotment letter.

d) This Court while concerned with distribution of State largesse, should ensure that no arbitrariness, favouritism has taken place.

e) The Respondents cannot claim any relief based on the doctrine of promissory estoppel as being a creature of equity, it must yield when the equity so requires. Considering it would be inequitable to hold the Government to the promise made by it, the Court should not raise an equity in favour of the promisee and enforce the promise against the Government.

f) It is well settled legal proposition that the private interest would always yield place to the public interest. Considering, the irregularities committed by the respondents, it is expedient to revoke the allotment in favour of the Respondents especially when no grave prejudice will be caused to the allottee.

20. Mr. Atmaram Nadkarni, learned Sr. Counsel, appearing on behalf of the State of Maharashtra while supporting the submissions made by CIDCO, has argued that:

a) This court, in a catena of judgments, has held that the representations made to the public by way of tender conditions and policies cannot be changed arbitrarily after the allotment.

b) The rules of the game cannot be changed once the game is played.

21. Mr Harinder Toor, learned Counsel, appearing on behalf of the PIL petitioner□appellant in C.A. No. 3959□3961, has argued that:

a) The PIL petitioner/appellant is a social activist and is involved in the business of construction services.

b) The change of land use is in violation of clause 15 of the letter of allotment, which mandated that the allotted land shall be used only for the construction of a five star

hotel.

c) The change of land use was illegal and arbitrary.

d) The sub-division of plots was also invalid.

22. Dr. Abhishek Manu Singhvi, learned Senior Counsel, appearing on behalf of Shishir Realty Pvt. Ltd., argues that:

a) M/s.Metropolis Hotels was a partnership firm and had applied for registration. When bid was made, they had declared the same to CIDCO. The enforcing committee received the bid being fully aware that the application for registration of partnership firm was pending before the registrar and decided to go with their bid as it was Rs.23 crore higher than the next bid.

b) Additionally, the enquiry that was conducted against the said allocation was in complete abrogation of natural justice. No notice was issued to the respondents during the pendency of the enquiry. Even while accepting the report of the Principal Secretary, no hearing was given to the respondents.

c) Not only is CIDCO bound by the principles of estoppel, but they have also failed to prove any losses attributable to the respondent.

d) CIDCO has only raised bald allegations of collusion with management. Had there been any real apprehension of collusion or financial losses arising out of this transaction, the State would have taken criminal action/disciplinary actions against the erring officials.

However, CIDCO have failed to place anything on record to prove the same.

23.Mr. Mukul Rohatgi, Learned Senior Counsel, appearing on behalf of M/s. Metropolis Hotels argues that:

a) The purpose of construction of a five-star hotel has been frustrated considering the fact that the same was contingent on the coming up of Navi Mumbai Airport.

b) Without there being an airport, it would be commercially absurd to construct a five-star hotel in the middle of nowhere.

c) The bidding process was conducted in 2008, when there was a huge recession both globally and in India. The tender had attracted M/s. Metropolis Hotels because it was stated that the Navi Mumbai Airport would be built near the concerned plot, and the area would be declared a Special Economic Zone. However, the promises of the tender document were not fulfilled and hence, an application for change of user was

made. The 1997 policy allows for a change of user and hence, there is no illegality.

d) There is no violation of any condition of the tender document concerning sub□ division of plots.

e) Moreover, even after the allotment was made the respondents have complied with the due procedure and have paid the requisite fees. After accepting the requisite charges to the tune of Rs. 321 crores, the cancellation of the allotment after 13 years is not only highly inequitable but will also cause grave prejudice to the respondents.

f) He disputes the bona□fides of the PIL petitioner.

24. Heard learned counsels from both sides.

25. Before we delve into analysis of the case, it is pertinent to examine the role of Constitutional Courts in reviewing the tender process. The Constitution of India allows the government to enter into contracts and perform certain commercial activities. Due to increase in government business, there is a requirement of this Court to uphold certain discretion accruing to the government and disallow certain conduct in light of prevailing circumstances. Merely instilling an agency with discretion may not be prohibited by the Constitution, rather it is unfettered use of such discretion, that is prohibited; the Constitution frowns upon those decisions which are taken in gross abuse of law. English Courts have developed many legal standards for evaluating administrative decisions, one of them being enumerated in the case of Council of Civil Service Unions v. Minister for the Civil Service, [1985] AC 374, wherein Lord Diplock has summarized the grounds of challenging such decisions under the broad heads of illegality, irrationality, procedural impropriety and legitimate expectation. Beyond these grounds, a recent development in the form of proportionality has further increased the scope of judicial review.

26. Being governed under “rule of law” every action of the State or its instrumentality while exercising its executive powers must met the aforesaid requirements. While recognising the existing principle of freedom to enter or not to enter into contracts by the state and its instrumentalities, the manner, method and motive behind the aforesaid decision can be subjected to judicial review on the touchstone of equality, fairness, proportionality and natural justice. The decision of the executive must strike a balance with the alleged violation with that of the penalty imposed.

27. This Court, in many of its orders reviewing tender conditions, has vouched for providing sufficient discretion and independence to administrative authorities so as to enable them to perform their duties in the interest of the public. Further, the observation of judicial restraint while reviewing such contracts is a continuing trend which can be seen in a catena of cases.1 The power of judicial review accorded to Constitutional Court of India and its jurisdiction is supervisory.

28. This court in the case of M/s Star Enterprises v. City and Industrial Development Corporation of Maharashtra Ltd., (1990) 3 SCC 280 reiterated the aforesaid concerns and stated the necessity of judicial review even with respect to the commercial transactions undertaken by the State. This court

held as follows:

> "10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been 1 Municipal Corporation, Ujjain v. BVG India Ltd., (2018) 5 SCC 462 vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process." (emphasis supplied)

29. In this context, this Court in Tata Cellular v. Union of India, 1994 (6) SCC 651, observed certain principles elucidated as under:

> "94.The principles deducible from the above are:
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> (1) The modern trend points to judicial restraint in administrative action.
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> (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." (emphasis supplied)

30. These principles acquire importance as the efficacy of commercial activities in the public sector increases greatly. It appears that public interest litigation has opened a large window to entertain any tender, regardless of scale, which are now sought to be challenged as a matter of routine. Such disruption could hardly have been the objective of expanding the need of Constitutional Review. Close scrutiny of minute details, contrary to the view of the tendering authority, makes execution of contracts in the public sector a cumbersome exercise. Often, it is the case that parties entertain the idea of a long-drawn-out litigation at the very threshold itself. The purpose of imbibing the spirit of competition in a process such as that of the bidding process, is lost in this meandering exercise and delays suffered due to pending litigation. This causes great disadvantage to the government and public sector in general. This Court, in appropriate cases while interpreting the contract, can restrict the review mechanism by not inuring to the interpretation so provided by third parties or parties competing for the tender, unless the impugned interpretation is shown to be gross abuse of law. 2 The object of judicial review cannot be that in every contract where some parties lose out, a second opportunity is provided to such parties to pick holes so as to disqualify successful parties, on grounds which even the party floating the tender find to be without merit. With this brief background on the standard of judicial review, we may analyze the case at hand.

31. At the outset, the respondents-lessees have argued that entire process of cancellation of the tender stood vitiated as it was based on the enquiry conducted by the Principal Secretary, Urban Development Department, without affording a chance to be heard.

32. It is borne from the records that, upon receiving the certain complaints, the State Government initiated enquiry against the alleged irregularities during the tender process. On 18.09.2010, the Shishir Realty Private Ltd. received an order from the Navi Mumbai Municipal Corporation directing them 2 B. S. N Joshi & sons Ltd. v. Nair Coal Services Ltd., (2006) 11 SCC 548 not to carry any further construction and stay the development.

33. On 03.11.2010, the enquiry committee submitted its report to the State Government recommending the cancellation of tender. On 19.11.2010, the State Government accepted the findings of the enquiry committee and directed CIDCO, to implement the findings of the enquiry committee.

34. Shishir Realty Private Ltd. has placed on record letter dated 23.12.2010 addressed to the Urban Development Department and CIDCO, stating that he was shocked to see a newspaper report stating that a committee appointed by the State Government has recommended the cancellation of the allotment done in their favour. The aggrieved Respondent challenged the aforesaid recommendation as it was passed without affording an opportunity of hearing them-the aggrieved party.

35. Subsequent to the aforesaid letter, on 28.12.2010, the Respondents-lessees received a show-cause notice dated back to 06.12.2010. The respondents-lessees submitted their responses on 30.12.2010, 13.01.2011 and on 19.02.2011. Finally hearing was given to the respondent on

03.03.2011. Thereafter, finally on 16.03.2011, the CIDCO cancelled/revoked the letter of allotment and the subsequent permissions. Vide the aforesaid order, the Manager (Town Services) was also directed to take over possession of the plots within 15 days.

36. The perusal of the materials produced on record shows that the initiation of the enquiry by the Principal Secretary, Urban Development Department was suo-motu, without any natural justice being provided for the respondents-lessees. After arriving at a conclusion, a show-cause notice was issued by CIDCO to sanctify the enquiry. The afore-said fact of post-decisional hearing just to sanctify the process of cancellation is clearly evidenced in the order dated 16.03.2011, passed by the Vice-Chairman and Managing Director CIDCO, cancelling the tender in the following terms:

> "1. The Government of Maharashtra through the Principal Secretary, Urban Development Department conducted enquiry into the irregularities in allotments of plots, change of user and deviation of the terms and conditions of the tender made by the then Vice Chairman and Managing Director, CIDCO, during the period from Ist October, 2009 to 31st March, 2010. The Principal Secretary Urban Development Department conducted the enquiry and submitted his report to the State Government on 03.11.2010. The change of user, sub-division and transfer of part of plot no. 5, Sector 46A, Nerul, to M/s Metropolis Hotels was also covered in the enquiry conducted by the Principal Secretary, Urban Development Department. The State Government accepted the findings and recommendations of the enquiry committee and directed the Managing Director, CIDCO, vide letter dated 19.11.2010, to implement the findings and recommendations of the Principal Secretary, Urban Development Department. The Principal Secretary has recorded his findings about the irregularities in acceptance of tender and breach of tender conditions, change of user, sub-division of plot and further transfer of part of the plot and further recommended cancellation of the tender process.
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> 2. Although the State Government issued directions to cancel the entire tender process, it was felt necessary to re-examine the entire issue for allotment of land .... by conducting an enquiry and giving opportunity of hearing to the parties."

37. Such illegal procedure adopted, clearly vitiates the subsequent order by the Vice-Chairman, due to the irregularity, which goes to the root of the matter. The conduct of the appellant authorities indicate that the enquiry was not conducted with an open mind. The pre-existing findings of the Principal Secretary recommending the cancellation of allocation has the potential to color the entire proceedings held subsequently just to meet the procedural requirements.

38. Natural justice is an important aspect while reviewing the administrative orders. Providing effective natural justice to affected parties, before a decision is taken, it is necessary to maintain rule of law. Natural justice is the sworn enemy of intolerant authority. Any attempt by authority to circumvent the requirement of providing effective hearing before reaching a conclusion, cannot pass the muster. Coming to the

> facts herein, the post-decisional hearing given to the respondent-lessee is reduced to a lip-service, which cannot be upheld in the eyes of law.
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> 39. As a first step of judicial review, we need to note that when statutory functionaries such as CIDCO render an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. 3 To this extent, we agree with the submission of Dr. Abhishek Manu Singhvi, that the scope of this Court is limited. Hence, we will only consider the impugned order of CIDCO dated 16.03.2011 and the reasoning supplied therein.
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> 40. At this juncture, it is pertinent to consider certain allegations of violation raised by the appellant authorities.

The first aspect for the consideration of this Court is whether M/s. Metropolis Hotels Ltd. was disqualified from participating in the bidding process. The impugned order dated 16.03.2011 of CIDCO provides two reasons: the first being that M/s. Metropolis Hotels was not a registered partnership firm while applying for the tender process, and the second that one of the partners of M/s. Metropolis 3 Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, (1978) 1 SCC 405.

Hotels, namely M/s. Sun-N-Sand Hotels Pvt. Ltd, had submitted a separate bid.

41. The perusal of the bid document clearly indicates that the respondent-M/s. Metropolis Hotels at the time of applying for the bid had duly disclosed that the firm had already applied for registration and had also forwarded the Registration Form and Partnership Deed along with the tender documents. Subsequently, on 16.01.2009 the Registrar of the firms issued the certificate of registration in favour of the respondent-M/s. Metropolis Hotels.

42. Having considered the communication and legal opinion tendered before accepting the highest bid, CIDCO's law officers did their due diligence, who opined that partnerships being creatures of contracts, the requirement of Board resolutions and other technical objections raised were not an essential condition. Therefore, at this stage it may not be equitable to review such issues in detail.

43. Moreover, after accepting the lease premium of Rs.282,39,99,700/- and a transfer fee of Rs. 1,38,56,000/-, the appellant authority cannot contend that the respondents-lessees lacked the eligibility to contend in the tender. The respondents-lessees also pointed out that, being the highest bidder with a margin of Rs. 23 crores over the second highest bidder, the appellant authority did not go into the technicalities behind the matter. Even, the High Court while passing the impugned judgment has commented that the appellant was aware about the pending registration, and even assented to the same as no objections were raised while assessing the technical bids.

44. The second objection which the CIDCO in its order notes as under:

> "Apart from this, M/s. Sun N Sand Hotels Pvt. Ltd., one of partners of M/s. Metropolis Hotels also submitted separate offer in the bidding process. Such multiple offers were submitted by M/s. Sun N Sand Hotels Pvt. Ltd. with a view to get the land allotted. On this count also, the offer of M/s. Metropolis Hotels stand vitiated, and the concluded agreement is liable to be terminated."

45. In our considered opinion, the aforesaid paragraph does not indicate sufficient reasons. There is no reason provided as to what provision of law such bids violate. Further, there is no concrete allegation or adjudication on the suggested cartelization. There is no reasoning considered as to why such a practice was harmful to public interest. We may note that such considerations are important elements of party autonomy and commercial freedoms while framing the contract, which is not within the purview of judicial review. As there is no such law or contract provision which bars such conduct, the considerations undertaken by the order of CIDCO are extraneous and the same cannot be accepted.

46. The second aspect considered by the appellant (CIDCO) was the change of land use. According to CIDCO, such change of land use was not permitted under the contract. Therefore, it was argued to be not valid. On the contrary, the respondents have argued that not only CIDCO was authorized to change the usage but also the Clause 19 of the allotment letter provided that development of the plot was governed under the General Development Control Regulations for Navi Mumbai which also had similar provisions. Moreover, the respondents–lessees contended that, this was not the first instance of change of usage. To support the said averment, the respondents–lessees placed strong reliance upon the decision of this Court in the identical matter of CIDCO Maharashtra Ltd. v. M/s. Shree Ambica Developers, in C.A. No.7581 of 2012. This Court held therein:

> "We have as a measure of abundant caution examined the relevant official record which was produced before us by Mr. Bhasme, counsel appearing for the appellant. While the application for change may have been filed only a few days after the auction was conducted, the same was processed at different levels giving an opportunity to officials dealing with specialised fields to record their opinion on the permissibility of the proposed change. From a perusal of the notings recorded on the file, we are satisfied that the change was found to be permissible in – accordance with General Development Control Regulations. We must say to the credit of M/s Lalit and Bhasme that they did not question the correctness of the views recorded by the officers, who examined the permissibility of a change as prayed for by the company. It was not their contention that the change was against the development plan that could have made the same untenable in law, nor was there any suggestion that any one of the functionaries associated with the decision making process had played a fraud on the statute or the exercise of power vested in him. It is true that the official record produced before us, does not reveal that the question of financial implications, if any, involved in the change which could and perhaps ought to have been examined was examined by any one at any stage. But so long as the appellant did not make absence of such a consideration a ground for cancellation of change in use, we cannot help leave alone permit the Corporation to add the same as a ground for supporting

> the order recalling – the grant of the change. The order passed by the Corporation/its Managing Director cancelling the earlier change was based entirely on the alleged absence of authority vested in it to direct such a change." (emphasis supplied)

47. Upon the perusal of the above cited decision, we are of the opinion that the aforesaid opinion is squarely applicable in the present case. Although the argument made by the CIDCO is attractive at the outset, a deeper analysis makes it clear that such argument is devoid of merit. In this context, it may be necessary to note certain clauses contained in the Tender Document and Allotment Letter:

> "4. Who is eligible to offer to acquire plot
>
> (a) A person competent to contract under the Indian Contract Act is eligible to make offer to acquire plot.
>
> (b) A company incorporated under the Indian companies Act, 1956 is eligible to make offer to acquire plot.
>
> (c) A partnership firm registered under Indian Partnership Act, 1932 is eligible to offer to acquire plot. Offer shall be signed by all partners and enclosed with a true certified copies of Deed of Partnership and certificate of registration.
>
> (d)A public trust registered under Public Trust Act, 1950 and also registered under Society Registration Act, 1860 is eligible to offer to acquire plot.
>
> (e) A Co□operative society registered under the Maharashtra Co□operative Societies Act, 1960.

The Offer form must be signed by the Chairman or the Hon. Secretary of the society without which it will be held invalid. The authorization of general body must be enclosed with the offer.

18. General CIDCO reserves the rights to amend, revoke or modify the above conditions at its discretion as well as to reject any or all offers without assigning any reasons.

... General Terms and Conditions prescribed for disposal of plots by open offer.

....

....

15. Application of General Development Control Regulation for Navi Mumbai The development of land will be governed by the prevailing provision contained in the General Development Control Regulation of Navi Mumbai. Any modification to the said Regulation and in particular to the Floor Space Index and change of use of the land shall not be made lessee (sic). If he so desires, may apply for the application of the modified regulation of the General Development Control Regulation to

CIDCO. The Corporation may at its sole discretion, apply the modification of such regulation on payment of (1) Development charges (2) Additional premium and (3) other charges if any as may be decided by the Corporation from time to time. (...)

16. Transfer of assignment of rights The intending lease can transfer or assign his rights, interests of benefits which may accrue to him from the Agreement with the prior written permission of the Corporation and on payment of such transfer charges as may be prescribed by the Corporation from time to time. Such permission can however be granted only after the agreed lease premium and any other amount required has been paid in full and after execution of Agreement to lease. In case of transfer of plot, the Transferee should fulfill all eligibility conditions prescribed in condition 4 of the invitation of offer." Conditions provided in the Allotment letter:

> 19. Application of General Development Control Regulation for Navi Mumbai The development of land will be governed by the prevailing provisions contained in the General Development Control Regulation of Navi Mumbai. Any modification to the said regulation and in particular to the Floor Space index and charge of use of the land shall not be made automatically applicable but the intending lessee, if you so desire, may apply for the application of the modified regulation of the General Development Control.

(emphasis supplied) Clause 15 of the tender document and the corresponding Condition 19 of the allotment letter, allows for such modification. Although the language used in the aforesaid clause is contradictory, this Court needs to interpret the same to harmonize and eliminate any absurdity. 4 If the interpretation supplied by CIDCO, by reading Clause 15 (m) and (n) of allotment letter with Clause 15 of the tender document in isolation, is accepted, then the phrase 'If he so desires, may apply for the application of the modified regulation of the General Development Control Regulation to CIDCO', as occurring under Clause 15 of the tender document, is rendered redundant. In this context, the aforesaid clause needs to be interpreted to mean that, 'lessee cannot apply for change of land use as a matter of right, rather, CIDCO, on its discretion could grant such 'change in land use' on satisfaction based on material considerations'.

4Ramana Dayaram Shetty v. International Airport Authority of India, AIR 1979 SC 1628.

48. The contradictory contractual clauses, seen within various documents issued by CIDCO, have led to this seemingly unending dispute, which required more than a decade to be settled. This only emphasizes the importance of due diligence and careful drafting, which could have avoided such type of litigation in the first place.

49. In the same breath, the CIDCO has fairly conceded that the power of change of land of use does exist with CIDCO and has, on multiple occasions, been used to change the land use pattern. Most importantly, in the present case, after accepting the change of user fee, the authorities cannot post□ facto question the same.

50. In this case, the plots fell in the zone of commercial-cum-residential area, and through the contract, this condition was earmarked for construction of a five-star hotel. As seen from the records, the respondents-lessees sought dilution of this condition basing on the fact that the airport, which was supposed to come up near the area had not materialized; similarly situated hotels were loss-making endeavors; and a general economic slump. Further, the order of the CIDCO dated 11.02.2010 clearly indicates the reasons as to the change in land use in view of prevailing circumstances in the following manner:

> "The plot was aid (sic) in August 2008 for development of a Five Star Hotel along with the allied activities and it received a price of Rs.60085.10 per sq. mtr. The plot was initially with 1.5 FSI which was increasable to FSI 2.0 as per Government Policy. For the period prior and after the date of sale instances of sale of plots by tender for various usages are keep as C/351 to C/377. It is well know fact that the real estate markets in the later part of the year 2008 literally crashed and the downward trend of 25% to 30% was noticed across various real estate markets and segments. As a result of this, the Board had also decided to bring down the prices of NRI Phase-II Pat-II by 10% as well as rescheduling the installments. Also the DPC rates were brought down to 10%. The sale instances on the file show that the prices of residential and commercial lands during that period were comparable or some cases lower than the plot in question. But nonetheless the fact of depressed market cannot be ignored. In cases of some of the plots which are sold at higher rates, the Bidders did not pay the first installment and therefore their EMD's were forfeited and in some cases on their request references have been made to the government for extension of time for payment." From the aforesaid reasoning, CIDCO has not been able to show as to how the its own order was illegal or arbitrary.
>
> Moreover, they have not been able to identify whether the consideration taken by CIDCO at that time was deficient.
>
> The prevailing circumstances and changes in the factual conditions need to be appropriately considered. In our considered opinion, it may be noted that delay in construction of Navi-Mumbai airport, economic slump and loss-making endeavors by similarly situated hotels are 'material considerations' and the order has appropriately taken the same into account.

51. The last submission on this aspect which the learned senior counsel for the CIDCO, Shri Rakesh Dwivedi, takes is that the relaxation of land use was made under the policy of 1997 which has been substituted by a new policy in 2004. However, such submission is patently wrong, considering the fact that the letter dated 11.02.2010 specifically alludes to the expanded policy of 2004 whereby additional categories of land use were added. It is mentioned in the letter that the policy of the CIDCO was not to impose any limit on the user of an area out of allotted area which can be converted. In light of the aforesaid discussion, the change of land use from five-star hotel to partly residential-cum-commercial purpose cannot be said to be illegal or arbitrary.

52. The third aspect which needs to be considered is the legality of sub-division of plots and subsequent transfer of rights. It has been contended that the terms of the tender and letter of allotment do not allow such transfer. However, on perusal of the aforementioned Clause 16 of the General Terms and Conditions and the corresponding Condition 21 of the allotment letter, it is clearly revealed that the allottee was permitted to transfer or assign his rights, interests or benefits with prior written permission of the Corporation and on payment of such transfer charges as may be prescribed by the Corporation. Both the clause and the condition have further stipulated that such permission could be granted only after the agreed lease premium has been paid in full and after execution of agreement to lease. In the present case, agreed lease premium was paid in full. However, agreement to lease was made on the very next day, i.e. on 30.03.2010. In our view, merely because the agreement to lease was executed on the very next day, the assignment and transfer would not be invalidated. Such breach cannot in itself be termed as a fundamental to annul the tender, especially after receiving the lease amount, CIDCO cannot question the subsequent transfer. We can only state that such clause can be construed as a warranty alone rather than a condition, in light of the circumstances. The CIDCO, being a public body, had a duty to act fairly. Having acquiescence of the facts and allowing such transfer, they ought not to have taken such a hyper-technical view on contractual interpretation. In light of the aforesaid reasoning, we do not find any substantial reason sought to be adduced by the CIDCO to differ from the High Court.

53. Ultimately, we need to consider whether there was any illegality or unfairness in the aforesaid transaction. Learned senior counsel representing the appellants have submitted that allowing subdivision of plots with change in land use, had caused substantive loss to the State largesse, as many people would have shown a proclivity to buy land with different land use. On the contrary, the learned senior counsel representing the Respondents-lessees have stated that the allotment, change in land use and transfer have taken place in accordance with law. There is no substantial deviation as sought to be projected by the appellants herein. The appellants herein have sought to invoke the doctrine of promissory estoppel to argue that the CIDCO could not have walked out of the bargain, merely because of the possibility of larger profits. It is pertinent to note that, the CIDCO has failed to prove any losses suffered.

54. When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. Courts need to have a broader understanding of public interest, while reviewing such contracts.

55. In Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, it was held as under:

> “22... The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such

> interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.
>
> (emphasis supplied)

56. Similarly, this Court in the case of Andhra Pradesh Dairy Development Corporation Federation v. B. Narasimha Reddy, (2011) 9 SCC 286 held as under:

> "40. In the matter of the Government of a State, the succeeding Government is duty bound to continue and carry on the unfinished job of the previous Government, for the reason that the action is that of the "State", within the meaning of Article 12 of the Constitution, which continues to subsist and therefore, it is not required that the new Government can plead contrary to the State action taken by the previous Government in respect of a particular subject. The State, being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply. Thus, unless the act done by the previous Government is found to be contrary to the statutory provisions, unreasonable or against policy, the State should not change its stand merely because the other political party has come into power. "Political agenda of an individual or a political party should not be subversive of rule of law." The Government has to rise above the nexus of vested interest and nepotism, etc. as the principles of governance have to be tested on the touchstone of justice, equity and fair play." (emphasis supplied)

57. In the present case, it was argued by the respondents that with the change in the executive head in CIDCO, enquiry was initiated against the allotment made in favour of the respondent M/s. Metropolis Hotel during the tenure of the earlier executive head. Even the inquiry, that was conducted against the respondents lessees stood vitiated as no proper notice or hearing was given to them before passing the impugned order. Additionally, from the above analysis it clear that the change of usage and the subsequent division was well within the statutory limitations. Therefore, the earlier undertakings taken by the appellant authorities cannot be set aside with the change of person in power, without any rhyme or reason. After all one cannot change the rules of the game once it has started.

58. From the contradictory submissions asserted before this Court and the concessions given regarding practice of CIDCO to allow change in land use in other cases, clearly points to a 'regime revenge'. Such conclusion reached herein is further buttressed by the fact that no inquiry or disciplinary proceedings were initiated against the earlier Vice Chairman, whose orders have been annulled. Such phenomenon is clearly detrimental to the constitutional values and rule of law.

59. As the last leg of the submission, the respondents lessees have claimed that considering they have acted upon the directions of the appellant authority and have duly paid the requisite amounts to the tune of Rs. 321.32 crores, CIDCO is bound by the doctrine of promissory estoppel. On the

contrary, principles of estoppel do not apply if enforcing the promise would lead to the prejudice of public interest.

60. Before we delve into the aforesaid arguments, it is imperative for us to go to have a look at certain decisions of this Court. This Court in the case of Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh, (1979) 2 SCC 409 laid down the necessity of the government being bound by the principles of promissory estoppel in the following words:

> "24. ... The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. ... It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel... It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out

by the Government and determine which way the equity lies. ....The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden." (emphasis supplied) In the aforesaid case, this Court held that it would not be enough for the Government to merely state that public interest requires that the Government should not be compelled to carry out the promise. It is imperative that the Government when seeking exoneration from liability of enforcing contract, must satisfy the Court as to how public interest overrides the necessity of enforcing the contract. The aforesaid opinion has been reiterated in the case Union of India v. Godfrey Philips India Ltd., (1985) 4 SCC 369 :

"12.There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. ...

13. Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case[(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or, power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it." (emphasis supplied)

61. Therefore, although the appellants are right in claiming that Government cannot be compelled to perform its undertaking, but equity demands that the Government must place on record sufficient material on record to claim such exemption. The aforesaid opinion was affirmed by this Court in the case of Vasantkumar Radhakisan Vora (Dead) by His LRs. v. Board of Trustees of the Port of Bombay, (1991) 1 SCC 761. The court held therein:

> "20. When it seeks to relieve itself from its application the government or the public authority are bound to place before the court the material, the circumstances or grounds on which it seeks to resile from the promise made or obligation undertaken by insistence of enforcing the promise, how the public interest would be jeopardised as against the private interest. It is well settled legal proposition that the private interest would always yield place to the public interest." (emphasis supplied)

62. The learned senior counsel, Mr. Rakesh Dwivedi, has sought to argue that promises made to the respondents-lessees are contradicted by the representation given to the general public, that the land was being allotted for construction of a 5-star Hotel. He has sought to create an exception of public interest as a limit to promissory estoppel.

63. As we have noted earlier, there is no substantial violation portrayed by the appellants herein with respect to allotment of the scheduled land. Further, the tender documents, as analyzed above, make it clear that the CIDCO had the power to change the land use, sub-divide and transfer the plots and accordingly, has been carried out in terms of the same. In this context, we may only observe that 'good faith standards' applicable in Government contracts, serve an important purpose in reinforcing the 'reliance interest' in contracts.

64. Even, the High Court while passing the impugned judgment has correctly held that respondents-lessees have acted pursuant to the permission granted by CIDCO. Moreover, after getting the commencement certificate and other necessary clearances, the respondents-lessees borrowed a substantial sum of money from other financial institutions for the development of the plot. However, due to the ongoing dispute, no development could take place for the past decade.

65. It is admitted as per record that the respondent-M/s. Metropolis Hotel was the highest bidder. Moreover, the appellants failed to bring anything on record to prove that the state exchequer has suffered losses pursuant to the said allotment. Nothing has been produced on record, the public interest that will be prejudiced if the respondents-lessees are allowed to go ahead with the said project. On the contrary, the respondents-lessees acting in furtherance of the assurances given by the authorities, obtained huge financial assistance. Equity demands that when the State failed to produce an iota of evidence of either financial loss or any other public interest that has been affected, it should be compelled to fulfill its promises. In fact, it is respondents-lessees who shall be gravely prejudiced if the order of cancellation is upheld by this Court after investing a significant amount and facing prolonged litigation.

66. Lastly, the PIL petitioner-Appellant in C.A Nos. 3959-3961 of 2017 has tried to argue the case on the same lines as that of the CIDCO. The public interest as sought to be shown in his PIL, is doubtful, in light of his involvement in the business of construction service. Moreover, the tone and tenor of the notice dated 12.01.2009, issued by the PIL Petitioner to the CIDCO, threatening the concerned officers with criminal prosecution under Sections 405, 406, 420 read with Section 120(b) of IPC, inter alia, on the ground of allowing partnership firm, which was in the process of registration, to bid, needs to be viewed with some suspicion. In fact, the non-prosecution of the erring officials for the alleged mismanagement and irregularities is quite telling.

67. Before we state the conclusions, this Court would like to reiterate certain well-established tenets of law pertaining to Government contracts. When we speak of Government contracts, constitutional factors are also in play. Governmental bodies being public authorities are expected to uphold fairness, equality and rule of law even while dealing with contractual matters. It is a settled principle that 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. A transparent bidding process is much favoured by this Court to ensure that constitutional requirements are satisfied.

68. Fairness and the good faith standard ingrained in the contracts entered into by public authorities mandates such public authorities to conduct themselves in a non-arbitrary manner during the performance of their contractual obligations.

69. The constitutional guarantee against arbitrariness as provided under Article 14, demands the State to act in a fair and reasonable manner unless public interest demands otherwise. However, the degree of compromise of any private legitimate interest must correspond proportionately to the public interest, so claimed.

70. At this juncture, it is pertinent to remember that, by merely using grounds of public interest or loss to the treasury, the successor public authority cannot undo the work undertaken by the previous authority. Such a claim must be proven using material facts, evidence and figures. If it were otherwise, then there will remain no sanctity in the words and undertaking of the Government. Businessmen will be hesitant to enter Government contract or make any investment in furtherance of the same. Such a practice is counter-productive to the economy and the business environment in general.

71. From a consideration of the aforesaid facts and circumstances, it is clear that there is an element of abuse of bureaucratic power behind subsequent change in the tender allotment. After conducting a tender process and receiving money, the Government backtracked which led to this present prolonged litigation. The impugned order of CIDCO, inter alia, annulling the allotment on hyper-technical grounds cannot be sustained for being contrary to the doctrine of fairness. The reasons stated in the aforesaid order are perverse and per-se based on extraneous considerations. As analyzed above, we are not able to identify any substantive violation of law or tender conditions, which mandate annulling the allotment and subsequent arrangements, thereby proving the conduct of the appellant authority to be disproportionate.

72. In light of the above discussion, we find no merit in the appeal of the appellants herein. Accordingly, these civil appeals are dismissed with costs.

73. Pending applications, if any, stand disposed of.

.....CJI.

(N.V. RAMANA) .....J. (VINEET SARAN) .....J. (SURYA KANT) NEW DELHI;

NOVEMBER 29, 2021