Sahakar Global Limited Jv And Anr. vs Municipal Corporation Of Delhi on 8 April, 2025

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment reserved on: 27.02.202
% Judgment delivered on:08.04.202
+ W.P.(C) 2492/2025& CM APPL. 11777/2025
SAHAKAR GLOBAL LIMITED JV AND ANR. .....Petitioners

Through: Mr. Neeraj Kishan Kaul, Sr
Mr. Percival Billimoria, S
Mr. Mukesh Butani, Mr. Rak
Sinha, Mr. Pawan Kumar Ban
Anand Srivastava, Mr. Hars
Mr. Siddharth Agrawal, Mr.
UlHaq, Ms. Rachita Sood, M
Bhathija, Mr. Ritwik Mahap
Varun Tyagi, Mr. Varad Koh
Mr. Asheesh Bhandari, Mr.
Srivastava, Mr. Ajay Chawl

versus

MUNICIPAL CORPORATION OF DELHI .....Re

Through: Mr. Sanjiv Sen, Sr. Adv. w
Sanjay Vashishtha, SC, MCD
Gunjan Rathore, Mr. Prahal
Ms. Harshita Rai and Mr. S
Goswami, Mr. Sumit, Advs.
Mr. Sumit Kumar, Additiona
Commissioner, Toll Tax, MC

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

DEVENDRA KUMAR UPADHYAYA, C.J.

-: CHALLENGE :-

1. By instituting this Petition under Article 226 of the Constitution of India, the Petitioners seek to challenge the decision of the Municipal Corporation of Delhi [„MCD]/sole respondent, as embodied in the letter dated 05.11.2024 issued by the Additional Deputy Commissioner (Toll Tax), MCD and addressed to the Petitioner no.1 whereby, the respondent/Corporation in its meeting held on 05.10.2024 decided - "to explore the possibility of time gap arrangement by engaging the existing contractor on same terms and conditions of existing contract at new „H-1 rate so that there is no revenue loss to MCD or any other time gap arrangement and parallelly explore how the revenue can be increased by bringing more competition within 6 months".

2. In fact, the challenge is to the impugned decision whereby the notice inviting tender bearing NIT No. ADC/TT/HQ/MCD/2024/D-894 dated 07.02.2024 (hereinafter referred to as „NIT) has been abandoned. Thus, the prayer made in the writ petition is to set aside the impugned decision of the respondent/Corporation and also to quash the letter dated 05.11.2024 and all subsequent consequential decisions in that regard.

3. The Petitioners have further prayed for issuance of an appropriate writ or order directing the respondent/Corporation to issue a „Letter of Award in favour of the Petitioner no.1, being the „H-1 bidder in the tender issued pursuant to the NIT dated 07.02.2024.

4. The challenge to the impugned decision of the respondent/Corporation has been made primarilyon the ground that in the tender process undertaken by the respondent/Corporation pursuant to the NIT dated 07.02.2024, the Petitioner no.1 was declared as the „H-1 bidder, whose bid price was higher than the reserve price and accordingly instead of awarding the contract to the Petitioner no.1, the impugned decision has been taken by the respondent/Corporation to explore how revenue can be increased by bringing more competition within 6 months, as a result of which the tender process stands cancelled.

-: FACTS : -

5. The respondent/Corporation issued a notice on 07.02.2024 inviting tender for the engagement of a contractor for the collection of Toll and Environment Compensation Charges to be collected at 154 border points from specified commercial vehicles entering Delhi for a period of three years. The reserve price for the collection of Toll Tax was fixed at Rs.847,00,00,000/- annually.

6. Petitioner no.1 is a Joint Venture Consortium of M/s. Sahakar Global Limited, which is the lead member and the other two firms namely, M/s. Prakash Asphaltings& Toll Highways (India) Ltd. and M/s. Skylark Infra Engineering Pvt. Ltd., which participated in the tender process and made deposit

of earnest money of Rs.18.70 Crores with the

7. The Petitioner no.1 was declared to be technically qualified in the meeting dated 03.04.2024 of the High Level Committee of the respondent/Corporation, and accordingly, the said decision declaring Petitioner no.1 to have technically qualified was communicated by way of an email dated 04.04.2024.

8. The financial bids of the technically qualified bidders were opened on 04.04.2024, and the bid for Rs.864,18,18,999/- submitted by Petitioner no.1 was found to be the highest. It is to be noticed, at this juncture itself, that the bid submitted by Petitioner no. 1 was higher by Rs.17.18 Crores than the reserve price per annum.

9. The financial bids of the technically qualified bidders in response to the subject tender dated 07.02.2024 was considered in a meeting of High Level Committee of the respondent/Corporation, and the Petitioner no.1 was found to be the highest bidder [„H-1].

10. The Petitioner no.1 having been found to be „H-1 requested the respondent/Corporation, vide its letter dated 24.05.2024, to furnish the information regarding the issuance of the Letter of Award and also enquired about other formalities to be fulfilled for execution of the contract.

11. The respondent/Corporation, by means of a communication dated 24.05.2024, informed the Petitioner no.1 that the competent authority for approval of the rate in the respondent/Corporation is the „Standing Committee , which has not been in existence since January 2023, and therefore, the Corporation was not in a position to issue Letter of Award to the Petitioner no.1. It was further informed by way of the said letter to the Petitioner no.1 that the proposal shall be put up before the Standing Committee as and when the same would be constituted. Since the Letter of Award pursuant to the declaration of Petitioner no.1 as „H-1 bidder was not being issued, a writ petition, being W.P. (C) 9268/2024, was instituted by the Petitioner no.1 before this Court seeking a direction to the respondent/Corporation to award the contract notwithstanding non- availability of the Standing Committee. Since the validity of the bid was to expire on 15.07.2024, the respondent/Corporation requested the Petitioner no.1 to extend the bid validity by three months and further to extend the validity of the Bank Guarantee submitted by the Petitioner no.1 in lieu of earnest money deposited. On 18.07.2024, the Petitioner no.1 extended the bid validity up to 03.11.2024 and also extended the validity of EMD Bank Guarantee. The Commissioner, Toll Tax Department of the respondent/Corporation sent a letter to the Municipal Secretary on 19.08.2024, informing him that a proposal had been sent to the Government of National Capital Territory of Delhi [„GNCTD] and Urban Development Department for approval of the project or delegation of powers to approve in terms of the provisions contained in Section 202 of the Delhi Municipal Corporation Act, 1957. It appears that in a meeting of the respondent/Corporation held on 21.08.2024, the issue regarding the award of contract to the Petitioner no.1 was discussed, however, the said consideration was postponed. The respondent/Corporation, by means of its letter dated 22.08.2024, again requested the Petitioner no.1 to extend the Bank Guarantee furnished in lieu of the earnest money deposited by the Petitioner no.1. In response to the said letter dated 22.08.2024, the Petitioner no.1 extended the Bank Guarantee and submitted the same by means of its letter

dated 28.08.2024.

12. Thereafter, a meeting of the respondent/Corporation was to be held on 25.09.2024 for consideration of certain agenda, including the agenda relating to the grant of Letter of Award to the Petitioner no.1. However, the said meeting was adjourned without transacting any business. On 05.10.2024, an agenda dated 05.10.2024 (Urgent Business No. 47) was circulated to the members of the House of MCD for considering the issue relating to the issuance of Letter of Award to the Petitioner no.1 and on 05.10.2024 itself the impugned decision was taken by the respondent/Corporation wherein, it was directed to explore how the revenue can be increased by bringing more competition within six months. The said decision taken by the House of the MCD was communicated to the Petitioner no.1 by means of a letter dated 05.11.2024, wherein the resolution passed by the respondent/Corporation is quoted, which is as under: -

> "..... Explore the possibility of time gap arrangement by engaging the existing contractor on same terms & conditions of existing contract of new H-1 rate so that there is no revenue loss to MCD or any other time gap arrangement and parallelly explore how the revenue can be increased by bringing more competition within 6 months.
>
> 2. Accordingly, as per decision of House, the existing Toll & ECC contractor M/s Sahakar Global SDMC JV LLP was engaged for the subject work at a toll collection remittance @ Rs.16,61,88,827/- per week with other terms and conditions of the Contract Agreement dated 09.04.2021, as an interim measure for six months w.e.f. 09.10.2024 (6.00 AM) or till the engagement of new Contractor, whichever is earlier.
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> 3. Further action as per the decision of the Corporation is being taken."

13. By the said letter, it has been informed that the existing contractor, M/s. Sahakar Global SDMC JV LLP has been engaged at Toll Collection Remittance at the rate of Rs.16,61,88,827/- per week with other terms and conditions of the earlier contract agreement dated 09.04.2021as an interim measure for six months w.e.f. 09.10.2024 or till the engagement of a new contractor, whichever was earlier.

14. Petitioner no.1 has also been informed by the said letter dated 24.10.2024 that no further action was required in respect of the letter of the Petitioner dated 24.10.2024. The earnest money deposited by the Petitioner no.1 in the form of a Bank Guarantee was also released, and the Petitioner no.1 was informed that he may collect the same or it may be collected by his authorized representative on any working day from the Office of the Additional Deputy Commissioner (Toll Tax) of the respondent/Corporation.

15. We may notice that by the letter dated 24.10.2024, which has been referred to in the impugned letter dated 05.11.2024, wherein it has been stated that no further action was required in respect of the letter dated 24.10.2024, was written by the Petitioner no.1 to the Commissioner of the respondent/Corporation stating therein that since the validity of the bid submitted by the Petitioner

no.1 pursuant to the subject NIT was coming to an end on 03.10.2024 and therefore, the Petitioner no.1 extended the validity of its bid for such further period till the process for award of the new contract to the Petitioner no.1 is completed. It is in response to the said letter dated 24.10.2024 that Petitioner no.1 was informed by the Additional Deputy Commissioner (Toll Tax) of the respondent/Corporation, vide his letter dated 05.11.2024, that no further action is required at the end of the Petitioner no.1. That is to say, the extension of validity of the bids submitted by the Petitioner no.1 was not accepted by the respondent/Corporation. As a result of the impugned decision, the tender floated vide NIT dated 07.02.2024 stands abandoned, and accordingly, the instant writ petition has been filed challenging the said decision as also the letter dated 05.11.2024 whereby the proposal to extend the validity of the bid by the Petitioner no. 1 has not been accepted and the Bank Guarantee has been released and the Petitioner no.1 has been required to collect the same. As observed above, apart from challenging the impugned decision and the letter dated 05.11.2024, it has also been prayed on behalf of the Petitioners that an appropriate direction be issued to the respondent/Corporation to issue the Letter of Award in favour of the Petitioner no.1, who is „H-1 bidder in the tender process undertaken pursuant to the NIT dated 07.02.2024.

-: SUBMISSION ON BEHALF OF THE PETITIONERS:-

> 16. Mr. Neeraj Kishan Kaul, learned Senior Advocate representing the Petitioners has vehemently argued that the tender process in which the Petitioner no.1 was declared „H-1 bidder has been cancelled by the impugned decision of the respondent/Corporation without following due process and giving an opportunity of hearing to the Petitioner no.1 and, as such, the same is not sustainable. Mr. Kaul has further argued that the reason indicated in the impugned decision is also not tenable as the subject tender was adequately publicised and due time was given to the interested parties.

He has also argued that the Commissioner of the MCD had recommended on various occasions for issuance of a Letter of Award in favour of Petitioner no.1, however ignoring the said recommendation, the impugned decision has been taken which does not bear any justifiable reason or rationale, and therefore, the same is liable to be set aside.

17. Further argument on behalf of the Petitioners is that in the absence of any plausible and sustainable reason for cancelling the tender process in which the Petitioner no.1 was declared to be „H-1 , the sanctity of the tender process has been compromised, and the legitimate expectation of the Petitioners being treated fairly by the respondent/Corporation has been frustrated for the reason that arbitrary cancellation of the tender process violates such legitimate expectation of the Petitioners.

18. Mr. Kaul has also argued that the public tender process must ensure transparency, efficiency and fair treatment to the participating bidders and further that the mere possibility of more money in the public coffer cannot itself constitute public interest and accordingly, the impugned decision cannot be said to be serving any public interest and therefore, is liable to be set aside.

19. Mr. Kaul, drawing our attention to a Circular dated 29.10.2021 issued by the Ministry of Finance, Department of Expenditure, Government of India, which embodies the Procurement Policy, has argued that the practice of going for re-tender as a safe course of action does not appear to be correct for the reason that re-bidding entails costs in two ways; firstly, the actual costs of re-tendering and secondly, the delay in execution of the work with consequent delay in the attainment of the purpose for which procurement is being done. He has emphasised that as per the said procurement policy embodied in the Circular dated 29.10.2021 of the Government of India, lack of competition cannot be determined solely on the basis of number of bidders and that even when only one bid is submitted, the process should be considered to be valid, if the procurement was satisfactorily advertised, sufficient time was given for submission of bids, the qualification criteria were not unduly restrictive, and further that the prices are found to be reasonable in comparison to the market values.

20. On the aforesaid counts, it has been argued on behalf of the Petitioners that the impugned decision cancelling the tender process in which the Petitioner no.1 was declared to be „H-1 is absolutely arbitrary and without any sustainable reason or material and hence is liable to be struck down.

-: SUBMISSION ON BEHALF OF THE RESPONDENT/CORPORATION:-

21. Per contra, learned Senior counsel representing respondent/Corporation, Mr. Sanjiv Sen has vehemently opposed the prayers made in the writ petition and has submitted that in terms of the tender document, the respondent/Corporation reserves the right to reject any/all applications/bids without any reasons. Referring to Note - 12 (on Page 145 of the Writ Petition) of the tender document, it has further been argued by learned Senior counsel for the respondent/Corporation that the Commissioner of the Corporation, on its behalf, reserves the right to accept or reject any or all the proposals or cancel the engagement without assigning any reason(s) whatsoever. It has also been argued on behalf of the respondent/Corporation that merely because the Petitioner no. 1 was declared to be „H-1 bidder, no vested right can be said to have accrued in its favour for the issuance of Letter of Award or for an award of contract pursuant to the subject NIT dated 07.02.2024. It is also argued by the learned counsel representing the respondent/Corporation that no one has got any indefeasible right to do business with the Government.

22. Our attention has also been drawn to „Award Criteria as spelt out in the tender document (on Page 193 of the Writ Petition), Clause - 2, which provides that notwithstanding any clauses mentioned in the RFP, the MCD reserves the right to accept or reject any proposal offer and to anull or suspend the engagement process and reject all the proposals offers at any time prior to award of contract without any assurance for costs or consequences on the part of the applicants bidding firms as approved by the competent authority. Clause - 2 of the Award Criteria as provided for in the tender documents is quoted herein below:

> "I. AWARD CRITERIA 1.0 .....

> 2.0 MCD Right To Reject: Not withstanding any clauses mentioned in the RFP, the MCD reserves the right to accept or reject any Proposal offer and to null or suspend the engagement process and reject all the proposals offers at any time prior to award of contract without any assurance for costs or consequences on the part of the Applicants bidding Firms as approved by the competent authority."

23. Reliance in this regard has also been placed on behalf of the respondent/Corporation to Note (12) of the tender document, wherein it has been provided that the Commissioner of the MCD on behalf of the MCD reserves the right to accept or reject any or all the proposals or cancel the engagement process without assigning any reasons whatsoever. Note (12) (available at page 145 of the writ petition) is extracted below:

> "12. MCD rights of rejection/acceptance: The Commissioner, MCD on behalf of MCD reserves the Right to accept or reject any or all the Proposals or cancel the engagement process without assigning any reason(s) whatsoever."

24. We have also been taken to the resolution of the House of the respondent/Corporation wherein, the impugned decision was taken. The said resolution is extracted hereunder:

> Subject: Regarding award of contract to H-I Bidder i.e. M/s Sahakar Global Ltd. JV for "Engagement of a contractor by MCD for Toll & Environment Compensation Charge (ECC) Collection at Border Points from specifiedcommercial vehicles entering Delhi" (NIT No.ADC/TT/HQ/MCD/2024/D-894 dated 7-2-2024).
>
> Sh. Mukesh Kumar Goel moved and Sh. Parveen Kumar seconded the following motion:-
>
> Resolution No.334 Resolved that proposal of the Commissioner as contained in his letter No. F.33/Toll Tax/MCD/136/C&C dated 19-8-2024, regarding award of contract to H-1 Bidder i.e. M/sSahakar Global Ltd.- JV for "Engagement of a contractor by MCD for Toll & Environment Compensation Charge (ECC) Collection at Border Points from specified commercial vehicles entering Delhi" (NIT No.ADC/TT/HQ/MCD/2024/D- 894 dated 7-2-2024) is approved with the following amendment:-
>
> Explore the possibility of time gap arrangement by engaging the existing contractor on same terms & conditions of existing contract at new HI rate so that there is no revenue loss to MCD or any other time gap arrangement and parallely explore how the revenue can be increased by bringing more competition within 6 months.
>
> The motion was carried."

25. It has been stated by the learned counsel representing the respondent/Corporation that as is apparent the resolution was passed by the House of the respondent/Corporation on the proposal of

the Commissioner of the Corporation as contained in his letter dated 19.08.2024. He has also referred to the contents of the letter of the Commissioner dated 19.08.2024 and has submitted that though in the said proposal, the Commissioner had recommended that the approval may be accorded for entering into a contract with the „H-1 bidder i.e. the Petitioner no.1 at the rate of Rs.864,18,18,999/- per annum (Rs.16,61,88,827/- per week) only for Toll collection with an enhancement of 5% after two years from the date of award of the contract with the condition to remit the weekly collection on actual basis to the Corporation. Further recommendation made in the said proposal was that on approval, the Commissioner of the Corporation or its authorized representative will enter into a contract with the Petitioner no.1 and manage the contract as per the contract agreement. The relevant extract of the said letter of the Commissioner dated 19.08.2024, which was considered by the House and impugned decision was taken, is extracted herein below:

> "In view of the aforesaid extraordinary prevailing situation and facts of the case, it is proposed that as an immediate measure, approval may be accorded towards entering into contract with the H-1 bidder i.e. M/s. Sahakar Global Limited-JV for "Engagement of a Contractor by MCD for Toll & Environment Compensation Charge (ECC) collection at border points from Specified Commercial Vehicles entering Delhi' as per RFP/NIT @Rs. 864,18,18,999/- per annum (Rs. 16,61,88,827/- per week) only for toll collection with the enhancement of 5% after two years from the date of Award of Contract and with the condition to remit the weekly ECC collection on actual basis to the MCD as per the RFP document. On approval the Commissioner, MCD or its authorized representative will enter into Contract with M/s. Sahakar Global Limited-JV and manage the contract as per contract agreement. The proposal is placed before the Corporation, in the form of Preamble under DMC Act, 1957 (as amended till date), as an item of Urgent Business. The matter will be ex post facto placed before the Standing Committee as done in the past."

26. The submission of the learned counsel for the respondent/Corporation is that though Commissioner had proposed to the House for accepting the Petitioner s bid pursuant to the subject NIT, however the House, in its wisdom, took a decision to explore the possibility of time gap arrangement by engaging the existing contractor on the same terms and conditions of the existing contract at new „H-1 rate or any other time gap arrangement and further to parallelly explore how the revenue can be increased by bringing more competition within six months. It has been argued that the contents of the agenda which was considered by the House, which culminated into the impugned decision, was not binding on the House and the House, considering all the aspects, took a decision to find an appropriate time gap arrangement and also to explore how the revenue can be increased by bringing more competition. His submission is that, even if the contents of the letter written by the Commissioner dated 19.08.2024 is to be treated as a recommendation, the House was not bound by it, which in its wisdom has taken the impugned decision in public interest.

27. On instructions, learned counsel representing the respondent/Corporation has stated that a period of more than one year has elapsed from the date of issuance of subject NIT and therefore, the House of the respondent/Corporation has taken the impugned decision as a result of which public money/public revenue shall increase which is a valid consideration for cancelling the tender

process. He has also stated, on instructions, that the tentative base price in the new tender shall be fixed as more than Rs.900 Crores and on market research the tender is expected to fetch more than Rs.1,000 Crores. Relying upon the judgment of Hon ble Supreme Court in the case of Indore Vikas Praadhikaran (IDA) and Another v. Shri Humud Jain Samaj Trust and Another, AIR 2025 SC 322, it has been argued that in case the decision in such matters are to achieve public interest, the same cannot be said to be arbitrary or unreasonable. He has also placed reliance on another judgment of Hon ble Supreme Court in the case of Laxmikant and Others v. Satyawan and Others, (1996) 4 SCC 208, wherein it has been held that State or its authorities or instrumentalities are not bound to accept the highest bid and further that the acceptance of the highest bid is subject to various conditions. It has also been stated on behalf of the respondent/Corporation that matter could not be considered by the Standing Committee on account of a pending litigation in that regard in the Hon ble Supreme Court.

28. The submission made by the learned counsel representing the respondent/Corporation, thus, is that impugned decision taken by the House of the respondent/Corporation is in public interest, for valid reasons and therefore, the same cannot be termed to be mala fide or arbitrary so as to call for any interference by this Court in the instant writ petition.

-: ARGUMENTS IN REJOINDER ON BEHALF OF THE PETITIONERS :-

29. Refuting the submissions made by the learned counsel representing the respondent/Corporation, Mr. Kaul, learned Senior counsel representing the Petitioners has argued that one year period has elapsed only on account of the procrastination on the part of the respondent/Corporation for which the Petitioners are not responsible. He has further argued that, in fact, the Petitioner s conduct has been unblemished.

30. Drawing our attention to the language used in the resolution passed by the House, which has culminated in the impugned decision, it has been stated by the learned Senior Counsel for the Petitioner, Mr. Kaul that the said resolution at one place states that the House has approved the recommendation made by the Commissioner of the respondent/Corporation, however, the resolution records further that the recommendation of the Commissioner is approved with the amendment. His submission is that it is this approval with the amendment to the proposal made by the Commissioner which has resulted in the impugned decision. He has further stated that the Petitioner no.1, ever since he was declared to be the highest bidder, has been legitimately expecting to be treated fairly by the respondents. However, such legitimate expectation of the Petitioner has been frustrated by the impugned decision. It is also stated by Mr. Kaul that the material being relied upon by the respondent to submit that more than Rs.900 Crores may be fetched if the re-tendering is resorted to, was not available with the House on the basis of which the impugned decision has been taken. It is his further submission that any decision in such matters cannot be on the ipse dixit of the House of the respondent/Corporation; rather, the decision has to be based on some material. He has reiterated his submission that in case the impugned decision of the respondent/Corporation is not set aside, the sanctity of the tender process shall be compromised.

31. In support of his submission, learned Senior counsel representing the Petitioners, Mr. Kaul has relied on the following judgments:

(i) Subodh Kumar Singh Rathour v. Chief Executive Officer& Ors.,[2024 SCC OnLine SC 1682];

(ii) Ramana Dayaram Shetty v. International Airport Authority of India & Ors.,[(1979) 3 SCC 489];

(iii) Vice Chairman & Managing Director, City & Industrial Development Corporation of Maharashtra Ltd. v. Shishir Realty Pvt. Ltd.,[(2022) 16 SCC 527];

(iv) M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd.,[(2023) 2SCC 703];

(v) Nagar Nigam v. Al Farheem Meat Exporters Pvt. Ltd.,(2006) 13 SCC 382];

(vi) LIC v. Consumer Education & Research Centre,[(1995) 5 SCC 482];

(vii) Mahabir Auto Stores v. Indian Oil Corporation,[(1990) 3 SCC 752];

(viii) Sivanandan C.□ v. High Court of Kerala,[(2024) 3 SCC 799];

(ix) VasantkumarRadhakisan Vora v. Board of Trustees of Port of Bombay,[(1991) 1 SCC 761];

(x) Noble Resources Ltd. v. State of Orissa,[(2006) 10 SCC 236];

(xi) ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.,[(2004) 3 SCC 553];

(xii) Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors.,[(1991) 1 SCC 212];

(xiii) Banshidhar Construction Private Limited v. Bharat Cooking Coal Limited and Others,(2024) 10 Supreme Court Cases 273.

-: DISCUSSION &ANALYSIS :-

(i) Scope of Judicial Review of State Action in matters relating to Government Contracts/tenders

32. The Hon ble Supreme Court, on reviewing and revisiting the past judgments, has elucidated and summed up the legal principles governing the scope of judicial review of the actions of the State in matters relating to contract/tender in aThreeJudge Bench Judgment in the case of Subodh Kumar

Singh Rathour v. Chief Executive Officer and Others, (supra).

33. Elaborating the earlier decisions, concept of public law element, scope of judicial review in contractual matters and import of arbitrariness in State actions in contractual disputes, the Hon ble Supreme Court in Subodh Kumar Singh Rathour(supra) has concluded finally that although disputes arising out of contracts are not amenable to writ jurisdiction, yet keeping in mind the obligation of the State to act fairly, it is well settled that when contractual power is being used for public purpose, it is certainly amenable to judicial review. The Hon ble Supreme Court has further observed that wherever State action is found to be arbitrary, unfair or unreasonable, the State is under obligation to comply with the principles enshrined in Article 14 of the Constitution and hence even in contractual matters, where the State is a party to the contract, such action shall be amenable to writ jurisdiction.

34. The exception to judicial review of State action in such matters has also been carved out by Hon ble Supreme Court in Subodh Kumar Singh Rathour, (supra), according to which certain aspects of the tender process such as matters concerning modalities of the contract, namely, the required work, execution methods, material quality, timeframe, supervision standards, and other aspects impacting the purpose of the tender are to be kept out of the purview of the judicial review and parties in such matters may be relegated to ordinary private law remedy. The conclusions in Subodh Kumar Singh Rathour, (supra) can be found in paragraphs 56 to 59 which are extracted herein below:

> "56. What can be discerned from the above is that there has been a considerable shift in the scope of judicial review of the court when it comes to contractual disputes where one of the parties is the State or its instrumentalities. In view of the law laid down by this Court in >ABL (supra), Joshi Technologies (supra) and in M.P. Power (supra), it is difficult to accept the contention of the respondent that the writ petition filed by the appellant before the High Court was not maintainable and the relief prayed for was rightly declined by the High Court in exercise of its Writ jurisdiction. Where State action is challenged on the ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article 14 of the Constitution and not act in an arbitrary, unfair and unreasonable manner. This is the constitutional limit of their authority. There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. With the rise of the Social Service State more and more public-private partnerships continue to emerge, which makes it all the more imperative for the courts to protect the sanctity of such relations.
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> 57. It is needless to state that in matters concerning specific modalities of the contract -- such as required work, execution methods, material quality, timeframe, supervision standards, and other aspects impacting the tender's purpose -- the court usually refrains from interference. State authorities, like private individuals, have a consensual element in contract formation. The stipulations or terms in the

> underlying contract purpose are part of the consensual aspect, which need not be entertained by the courts in writ jurisdiction and the parties may be relegated to ordinary private law remedy. Judicial review does not extend to fixing contract stipulations but ensures that the public authorities act within their authority to prevent arbitrariness.
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> 58. Thus, the demarcation between a private law element and public law element in the context of contractual disputes if any, may be assessed by ascertaining whether the dispute or the controversy pertains to the consensual aspect of the contract or tender in question or not. Judicial review is permissible to prevent arbitrariness of public authorities and to ensure that they do not exceed or abuse their powers in contractual transactions and requires overseeing the administrative power of public authorities to award or cancel contracts or any of its stipulations.
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> 59. Therefore, what can be culled out from the above is that although disputes arising purely out of contracts are not amenable to writ jurisdiction yet keeping in mind the obligation of the State to act fairly and not arbitrarily or capriciously, it is now well settled that when contractual power is being used for public purpose, it is certainly amenable to judicial review."

35. As already observed above, Subodh Kumar Singh Rathour, (supra) discusses the past judgments on the issue and has quoted with approval, the judgment of the Apex Court in M.P. Power Management Co. Ltd, (supra) where the scope of judicial review by the Courts in contractual disputes concerning public authorities has been exhaustively discussed. M.P. Power Management Co. Ltd, (supra) finds mentioned in Subodh Kumar Singh Rathour, (supra) in paragraph 55 which is also extracted herein below:

> "55. Thereafter, this Court in its decision in M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd. reported in (2023) 2 SCC 703 exhaustively delineated the scope of judicial review of the courts in contractual disputes concerning public authorities. The aforesaid decision is in the following parts:--
>
> [...](i) Scope of Judicial Review in matters pertaining to Contractual Disputes:--
>
> This Court held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the courts is no longer a good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract. The relevant observations read as under:-- "53. [...] when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true

> ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr. Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly.

There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.

i. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

ii. The principle laid down in Bareilly Development Authority (supra) that in the case of a non statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

iii. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-

off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary."

(Emphasis supplied)

(ii) Exercise of Writ Jurisdiction in disputes at the stage prior to the Award of Contract:--

> An action under a writ will lie even at the stage prior to the award of a contract by the State wherever such award of contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind. In doing so, the courts may set- aside the decision which is found to be vitiated for the reasons stated above but cannot substitute the same with its own decision. The relevant observations read as under:--
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> iv. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See R.D. Shetty (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India."
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> (Emphasis supplied)

(iii) Exercise of Writ Jurisdiction after the Contract comes into Existence:--

This court held that even after the contract comes into existence an action may lie by way of a writ to either (I) obviate an arbitrary or unreasonable action on part of the State or (II) to call upon it to honour its obligations unless there is a serious or genuine dispute as regards the liability of the State from honouring such obligation. Existence of an alternative remedy or a disputed question of fact may be a ground to not entertain the parties in a writ as long as it is not being used as smokescreen to defeat genuine claims of public law remedy. The relevant observations read as under:--

"v. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

vi. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

vii. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a Writ Petition in a contractual matter. Again, the question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the Petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit. viii. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a Writ Petition (See in this regard, the view of this Court even in ABL (supra) explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co., by its observations in paragraph-14 in ABL (supra)].

ix. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a Writ Petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

x. The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can

generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State."

(Emphasis supplied)

(iv) Exercise of Writ Jurisdiction after Termination or Breach of the Contract:--

A relief by way of a writ under Article 226 of the Constitution will also lie against a termination or a breach of a contract, wherever such action is found to either be palpably unauthorized or arbitrary. Before turning away the parties to the remedy of civil suit, the courts must be mindful to see whether such termination or breach was within the contractual domain or whether the State was merely purporting to exercise powers under the contract for any ulterior motive. Any action of the State to cancel or terminate a contract which is beyond the terms agreed thereunder will be amenable to the writ jurisdiction to ascertain if such decision is imbued with arbitrariness or influenced by any extraneous considerations. The relevant observations read as under:--

xi. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the Petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the Petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy.

This is not to deprive the Court of its constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

xii. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (See in this regard Kumari Shrilekha Vidyarthi v. State of U.P.). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases."

(Emphasis supplied)

(v) Other relevant considerations for Exercise of Writ Jurisdiction:-- Lastly, this Court held that the courts may entertain a contractual dispute under its writ jurisdiction where (I) there is any violation of natural justice or (II) where doing so would serve the public interest or (III) where though the facts are convoluted or disputed, but the courts have already undertaken an in-depth scrutiny of the same provided that the it was pursuant to a sound exercise of its writ jurisdiction. The relevant observations read as under:--

xiii. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

xiv. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.

xv. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach

of Article

14. [See Sudhir Kumar Singh (supra)]."

(Emphasis supplied)"

36. The facts discussed in Subodh Kumar Singh Rathour, (supra) were that pursuant to a tender process, the appellant therein had submitted its bid and his quotation was found to be the highest and was, accordingly, classified as „H-1 . On the appellant being found „H-1 , two letters of intent were issued in his favour, declaring his firm as the successful bidder for the tender and, thereafter, a formal memorandum of tender for work was also executed and issued to the appellant. Upon completion of the formalities, the work orders were also issued to the appellant in the said case, pursuant to which he had also commenced his work.However, the respondent in the said case issued a notice cancelling the tender for the work issued in favour of the appellant on account of certain alleged technical faults in the tender itself. It was stated in the notice cancelling the tender that the tender was found to be „non-specific and „not well defined , and that had created ambiguity, resulting in financial losses to the respondent. It is this notice of cancellation which was initially challenged before the High Court of Calcutta by filing a writ petition, which, however, was dismissed by a learned Single Judge on certain grounds. The appellant challenged the judgment of the learned Single Judge before a Division Bench of Calcutta High Cout, which too was dismissed. It is these two judgments, the one rendered by the learned Single Judge and the other by the Division Bench of the High Court of Calcutta, which became the subject matter of challenge before the Hon ble Supreme Court in Subodh Kumar Singh Rathour(supra). Thus, challenge to the cancellation of tender in Subodh Kumar Singh Rathour, (supra) was made in a fact situation where the tender was allotted pursuant to which the appellant therein was issued letters of intent and also work orders whereupon the appellant had commenced his work in terms of the contract.

37. The Hon ble Supreme Court in Subodh Kumar Singh Rathour, (supra) further held, on review of previous judgments, that the decision to terminate a contract must be based on public interest duly supported by cogent materials and circumstances in order to ensure that State actions are fair, transparent and accountable. It was further held that public interest cannot be used as a pretext to arbitrarily terminate contracts and there has to be a clear and demonstrable ramification or detriment in public interest to justify any such act.

38. Subodh Kumar Singh Rathour(supra) further underscores the significance of the sanctity of public-private partnership tenders. The Apex Court has observed in the said judgment that the sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness and further that the sanctity of contract is a fundamental principle that underpins the stability and predictability of legal and commercial relationships.Paragraphs 126 and 127 of the judgment in Subodh Kumar Singh Rathour, (supra) reads as under:

> "126. The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the

contract, with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding bindingness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest etc.

127. The sanctity of contracts is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder. In this regard we may make a reference to the decision of this Court in Sivanandan C.T. v. High Court of Kerala reported in (2024) 3 SCC 799 wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances. The relevant portion reads as under:--

"18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure xxx xxxxxx

45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14."

(Emphasis supplied)"

39. The subject matter of discussion in Subodh Kumar Singh Rathour, (supra) was, thus, an arbitrary cancellation of contract, and it is in these circumstances that the Hon ble Supreme Court

has observed that cancellation of a contract deprives a person of his very valuable rights and is a very drastic step. It has further been observed that, therefore, public authorities should be circumspect in disturbing their contractual obligations through means beyond the terms of the contract in the exercise of their executive powers. The Hon ble Supreme Court, however, in the same breath, also observes that it is not that the State has no power to alter or cancel a contract that it has entered, however, if the State deems it necessary to alter or cancel a contract on the grounds of public interest or change in policy, then such considerations must be bona-fide and should be earnestly reflected in the decision-making process and also in the final decision itself.Paragraph 129 of the judgment in Subodh Kumar Singh Rathour, (supra) is apposite to be referred to, which reads as under:

> "129. We caution the public authorities to be circumspect in disturbing or wriggling out of its contractual obligations through means beyond the terms of the contract in exercise of their executive powers. We do not say for a moment that the State has no power to alter or cancel a contract that it has entered into. However, if the State deems it necessary to alter or cancel a contract on the ground of public interest or change in policy then such considerations must be bona-fide and should be earnestly reflected in the decision-making process and also in the final decision itself. We say so because otherwise, it would have a very chilling effect as participating and winning a tender would tend to be viewed as a situation worse than losing one at the threshold."

40. Thus, Subodh Kumar Singh Rathour(supra) is a case where a contract pursuant to the tender process which was entered into, was cancelled at a stage pursuant to the contract work by the contractor that had already been commenced, whereas, in the instant case, no letter of award or work order has been issued. The contract, pursuant to the declaration of the Petitioner as „H-1 in pursuance of the subject tender, has also not been constituted.

41. M.P. Power Management Co. Ltd, (supra) has been quoted with the approval in Subodh Kumar Singh Rathour(supra) wherein it has been held that an action under writ jurisdiction will lie even at the stage prior to award of contract by the State wherever such award of a contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind.

42. In Subodh Kumar Singh Rathour, (supra) while arriving at the conclusions, the Hon ble Supreme Court has referred to Ramana Dayaram Shetty(supra), apart from other earlier judgments.

43. In Vice Chairman& Managing Director, (supra), it has been held that in the matters of Government contracts public authorities are expected to ensure that no bias, favoritism or arbitrariness are shown during the bidding process and further that favoritism and good faith standards are to be observed in the contracts entered into by public authorities which connotes that such public authorities shall conduct themselves in a non-arbitrary manner even during the performance of their contractual obligations. It is also to be noticed that in Vice Chairman& Managing Director (supra), the facts as noticed by the Apex Court were that in the bidding process, a party was declared as the highest bidder and, accordingly, a lease deed was also executed in its

favour by the appellant/ corporation. However, subsequently, the lease deed executed by the appellant/ corporation in the said case was cancelled, and it is the cancellation of the lease deed which became the subject matter of challenge before the High Court of Judicature at Bombay and the High Court in writ proceedings quashed the cancellation of the lease. An appeal was thus preferred by the appellant/ corporation against the said judgment of the Bombay High Court, and the Hon ble Supreme Court found that the cancellation of the lease executed was not based on non-arbitrary reasons. Thus, it is also a case where,atthe conclusion of the bidding process, a lease deed was executed by the tendering authority in favour of the participating firm which had quoted the highest bid.

44. The judgment in M.P. Power Management Co. Ltd, (supra) has extensively been quoted by the Apex Court in Subodh Kumar Singh Rathour, (supra) which has been discussed above. The conclusions drawn in M.P. Power Management Co. Ltd, (supra) by the Apex Court can be found in paragraphs 82 to 82.15 of the said judgment, which are extracted herein below:-

> "82. We may cull out our conclusions in regard to the points, which we have framed:
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> 82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court. 82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] , may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 :
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> 2020 SCC OnLine SC 847].
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> 82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.
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> 82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651].

82.5. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition. 82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the Petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit. 82.8. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd. [State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22] , by its observations in SCC para 14 in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]].

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant. 82.10. The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation.

The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the Petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the Petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]. It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

82.12. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742]). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.

82.13. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate forum.

82.14. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it

is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself. 82.15. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847])."

45. From the afore-quoted extract of the judgment in M.P. Power Management Co. Ltd (supra), what we find is that it is settled that a writ petition would lie when the State purports to award any largesse even at a stage prior to the contract being entered into. However, the Apex Court has further observed that such judicial scrutiny would be undertaken within the nature of judicial review as declared by the Apex Court in its decision in Tata Cellular v. Union of India,(1994) 6 SCC 651. Thus, there is no doubt that the action on the part of the State or its instrumentality in the matter relating to Government contracts will lie even to the stage prior to the contract being executed.However, judicial review in such matters has to be undertaken in terms of the principles declared by the Apex Court in Tata Cellular, (supra).

46. In Nagar Nigam v. Al. Farheem Meat Exporters Pvt. Ltd, (2006) 13 SCC 382, Hon ble Apex Court has observed that it is well settled that having regard to the provisions of Article 14 of the Constitution of India, the State or its instrumentality cannot distribute its largesse at its own sweet will and further that the Court can ensure that statutory functions are not carried out at the whims and caprices of the officers of the Government in an arbitrary manner. The Apex Court has further observed that the Court cannot itself take over such functions which are otherwise to be exercised by the authorities concerned.

47. The Apex Court in LIC (supra)has held that every action of public authority should be acted in the public interest and that if it is shown that the exercise of power is arbitrary, unjust and unfair, there will be no answer for the State or its instrumentality to say that their actions are in the field of private law and they are free to describe any conditions or limitations in their actions as private citizens. Paragraph 27 of the said judgment is relevant to be extracted herein, which runs as under:

> "27. In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest."

48. Similar views have been expressed and legal principles, as discussed above, have been enunciated by the Apex Court in other judgments cited on behalf of the Petitioner, namely Mahabir Auto Stores (supra), Noble Resources Ltd. (supra), ABL International Ltd. (supra), Kumari Shrileha

Vidyarthi (supra) and Banshidhar Construction (supra).

49. In view of the aforesaid discussion, the scope and extent of judicial review of the action of the State by this Court in the exercise of its jurisdiction under Article 226 of the Constitution in matters relating to tender/ contract is well established which can be summarized, so far as the same is relevant for the purpose of consideration of the issue arising in this case, as below:

> A. Judicial review of State action, even in matters of contract, is permissible in disputes which arise after the contract is entered into by an authority.
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> B. Judicial review is also permissible in relation to disputes which arise in a tender/ contract matterthat are to be awarded by the public authorities at the stage prior to the award of the contract. C. Even at the stage after termination or breach of contract, actions of the State/ instrumentality can be subjected to judicial review. D. However, judicial review of the actions of the public authorities are permissible on the grounds of the action complained against being arbitrary, unfair or unreasonable, being contrary to the principle enunciated under Article 14 of the Constitution of India. E. The writ Court, while exercising judicial review in relation to disputes arising at a stage prior to the award of contract, can undertake scrutiny, however, such judicial review/ scrutiny would be undertaken within the nature of judicial review as declared by the Apex Court in the decision in Tata Cellular (supra). F. The writ Court can judicially review a contractual dispute where one of the parties to the contract is a public authority and also in such a situation where there is a violation of principles of natural justice, where the action complained against does not serve any public interest and the public authority has not acted in good faith.
>
> (ii) The highest bidder has no vested right to have the contract concluded in his favour.

50. It is the case of the Petitioners as set up in the writ petition that pursuant to the subject tender process, Petitioner No.1 was found to be the highest bidder on 04.04.2024 and that the High Level Committee in its meeting held on 05.04.2024 declared the Petitioner No.1 to be the highest bidder and further found the rates quoted by it to be higher by 9.86% than the rates quoted in previous tender and also 4.63% higher than the present remittance and further that it was higher than the minimum reserve price. Accordingly, PetitionerNo.1 has been requesting the respondent/Corporation to issue the letter of award, and for the said purpose, it has also furnished the bank guarantee as required. However, as per the case set up by the Petitioner, the respondent/Corporation, though the Petitioner has been legitimately expecting, instead of issuing the letter of award, has cancelled the tender process by the impugned decision. The question in light of these facts, as pleaded by the Petitioner, is that merely because the Petitioner has been declared as an „H-1 bidder, in the absence of a letter of award or execution of a contract, can any right be said to have been vested in the

51. The said issue has been discussed by the Hon ble Supreme Court in Indore Vikas Praadhikaran(supra), wherein it has been held that in the absence of a concluded contract i.e. in absence of allotment letter and acceptance of highest bid, the bidder does not acquire any vested right.

52. The facts in Indore Vikas Praadhikaran(supra), as can be gathered from the said judgment, were that an advertisement was issued by Indore Vikas Praadhikaran inviting bids for leasing out certain piece of land. Pursuant to the said advertisement, three bids were received and the bid of the respondent No.1 therein was found to be the highest („H-1). However, on certain evaluation made, the tender committee of Indore Vikas Praadhikaran arrived at a conclusion not to accept any of the bids and, accordingly, a fresh tender was issued. The decision of the tender committee was accepted by the Board of Indore Vikas Praadhikaran and, accordingly, the bid of the respondent No. 1 therein was rejected. It is the said decision of rejection of bid that became subject matter of challenge before the Madhya Pradesh High Court. However, the writ petition was dismissed by a learned Single Judge holding that the highest bidder does not acquire any vested right. The judgment of the learned Single Judge was challenged in an intra-Court appeal before the Division Bench of the Madhya Pradesh High Court, which allowed the appeal and directed Indore Vikas Praadhikaran to allot the plot to respondent No.1 on certain conditions. The judgment of the Division Bench of Madhya Pradesh High Court was challenged before the Hon ble Supreme Court in appeal, and the Hon ble Supreme Court, while discussing the law relating to the right of H-1 bidder and on review of earlier judgments of the Apex Court, allowed the appeal. The Apex Court in Indore Vikas Praadhikaran(supra) also held that in the absence of an allotment letter, no relief could have been granted in favour of respondent No.1 as there was no concluded contract. It has further been observed by the Hon ble Supreme Court in the said judgment that the decision taken by the Tender Evaluation Committee to generate more revenues could not have been interfered with by the Division Bench of the Madhya Pradesh High Court.

(Emphasis supplied)

53. Paragraphs 12 to 14 of the judgment in Indore Vikas Praadhikaran(supra) are extracted herein below:

> "12. In the present case, the undisputed facts reveal that first NIT was issued on 17.07.2020 and respondent No. 1 was certainly the highest bidder by offering a bid of Rs. 25,671.90/- per square meter. The Tender Evaluation Committee after examining the bid arrived at a conclusion to cancel the tender as it came to its notice that an outstanding property tax demand amounting to Rs. 1,25,82,262/- was not taken into account while fixing the base price. It was resolved to issue a fresh NIT and, therefore, a fresh NIT was issued on 17.11.2021 and for the reasons best known to the respondent No. 1, it did not participate in the second NIT and instead preferred a writ petition on 24.11.2021 before the High Court of Madhya Pradesh. Learned Single Judge was justified in dismissing the writ petition on the ground that merely by offering highest bid, the respondent No. 1 did not acquire any vested right for the execution of the contract in its favour. The Division Bench of the High Court,

however, allowed the writ appeal and has gone to the extent in directing the IDA to accept the offer of respondent No. 1 which was made before the Court for an amount of Rs.

26,000/- per square meter in respect of the land in question, and further directing IDA to allot the land in question to respondent No. 1. This Court in the case of State of Jharkhand v. CWE-SOMA Consortium (supra) while dealing with the similar issue of annulment of tender process, in paras 21, 22 and 23 has held as under:

"21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651], SCC in para 70 it was held as under : (SCC p. 675) "70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

22. The Government must have freedom of contract. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138], SCC in para 12 this Court held as under : (SCC p. 147) "12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. 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. The Government must have freedom of contract. In other words, 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 principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)"

The Court does not have the expertise to correct the administrative decision as held in Laxmikant v. Satyawan [Laxmikant v. Satyawan, (1996) 4 SCC 208], the

Government must have freedom of contract.

23. The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of the Tender Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender."

13. This Court in the aforesaid case has held that while exercising power of judicial review, the Court does not sit as an appellate Court over the decision of the government but merely reviews the manner in which the decision was made [Tata Cellular v. Union of India, (1994) 6 SCC 651]. In the considered opinion of this Court, the Division Bench should not have interfered in the matter and could not have gone to the extent of fixing the base price/modifying the offer made by respondent and, therefore, in light of the aforesaid judgment as the High Court has virtually passed an order sitting in appeal over the decision of the government in absence of any mala fide exercise of power by the IDA, the judgment passed by the Division Bench of the High Court deserves to be set aside and is, accordingly set aside. This Court in the case of Haryana Urban Development Authority v. Orchid Infrastructure Developers Pvt. Ltd. (supra) again dealing with the cancellation of a bid of the highest bidder, in paragraphs 12, 13, 14, 15, 16 and 30 has held as under:

"12. Firstly, we examine the question whether there being no concluded contract in the absence of acceptance of bid and issuance of allotment letter, the suit could be said to be maintainable for the declaratory relief and mandatory injunction sought by the plaintiff. The plaintiff has prayed for a declaration that rejection of the bid was illegal. Merely by that, the plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment. The court while exercising judicial review could not have accepted the bid. The bid had never been accepted by the authorities concerned. It was not a case of cancellation of bid after being accepted. Thus, even assuming as per the plaintiff's case that the Administrator was not equipped with the power and the Chief Administrator had the power to accept or refuse the bid, there had been no decision by the Chief Administrator. Thus, merely by declaration that rejection of the bid by the Administrator was illegal, the plaintiff could not have become entitled to consequential relief of issuance of allotment letter. Thus the suit, in the form it was filed, was not maintainable for relief sought in view of the fact that there was no concluded contract in the absence of allotment letter being issued to the plaintiff, which was a sine qua non for filing the civil suit.

13. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in

favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per Regulation 6(2) of the 1978 Regulations, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case, allotment letter has never been issued to the Petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus, there was no concluded contract. Regulation 6 of the 1978 Regulations is extracted hereunder:

"6. Sale of lease of land or building by auction.--(1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.

(2) 10 per cent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub-regulation (2) of Regulation

5. The successful bidder shall be issued allotment letter in Form CC or C-II by registered post and another 15 per cent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 per cent amount already deposited shall stand forfeited to the authority and the successful bidder shall have no claim to the land or building auctioned.

(3) The payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation 5.

(4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot."

14. We are fortified in our view by a decision of this Court in U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737], wherein the questions arose for its consideration that : whether there is any vested right upon the plaintiff bidder until the bid is accepted by the competent authority in relation to the property in question? Merely because the plaintiff is the highest bidder by depositing 20% of the bid amount without there being approval of the same by the competent authority and it amounts to a concluded contract in relation to the plot in question; and whether the plaintiff could have maintained the suit in the absence of a concluded contract? Considering the aforesaid questions, this Court has discussed the matter thus :

(SCC pp. 195-97, paras 30-31) "30. In support of the said proposition, the learned Senior Counsel for the defendant, Mr. Rakesh Dwivedi has also placed reliance upon another decision of this Court in State of U.P. v. Vijay Bahadur Singh [State of U.P. v. Vijay Bahadur Singh, (1982) 2 SCC 365]. The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in Rajasthan Housing Board case [Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477] which reads as under : (SCC p. 483, para 9) „9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court. In State of Orissa v. Harinarayan Jaiswal [State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36] case, relevant paragraph of which reads as under : (SCC pp.

44-45, para 13) „13. ... There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids (see Union of India v. Bhim Sen Walaiti Ram [Union of India v. Bhim Sen Walaiti Ram, (1969) 3 SCC 146]). [Ed. : The matter between two asterisks has been emphasised in Avam Evam Vikas Parishad case, (2013) 5 SCC 182.] By merely giving bids, the bidders had not acquired any vested rights [Ed. :

The matter between two asterisks has been emphasised in Avam Evam Vikas Parishad case, (2013) 5 SCC 182: (2013 AIR SCW 2484).]

31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr. Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount along with the earnest money with the Board. In the absence of acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff."

15. This Court in Om Prakash Sharma case [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737] has held that in the absence of a concluded contract which takes place by issuance of allotment letter, suit could not be said to be maintainable as there is no vested right in the plaintiff without approval of the bid by the competent authority. Thus, in the wake of the aforesaid decision, in the absence of a concluded contract, the suit could not have been

decreed for mandatory injunction. It amounted to enforcing of contract in the absence thereof.

16. In the light of the aforesaid discussion, it is evident that in the absence of a concluded contract i.e. in the absence of allotment letter and acceptance of highest bid, the suit filed by the plaintiff was wholly misconceived. Even if non-acceptance of the bid was by an incompetent authority, the court had no power to accept the bid and to direct the allotment letter to be issued. Merely on granting the declaration which was sought that rejection was illegal and arbitrary and by incompetent authority, further relief of mandatory injunction could not have been granted, on the basis of findings recorded, to issue the allotment letter, as it would then become necessary to forward the bid to competent authority--Chief Administrator--for its acceptance, if at all it was required.

30. In Meerut Development Authority v. Assn. of Management Studies [Meerut Development Authority v. Assn. of Management Studies, (2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803], this Court has laid down that a bidder has no right in the matter of bid except of fair treatment in the matter and cannot insist for further negotiation. The authority has a right to reject the highest bid. This Court has laid down thus : (SCC p. 182, paras 27 & 29) "27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."

14. Keeping in view of the aforesaid judgments, this Court is of the considered opinion that in the absence of allotment letter and acceptance of highest bid, no relief could have been granted in favour of respondent No. 1 as there was no concluded contract in the matter and the decision taken by the Tender Evaluation Committee to generate more revenues could not have been interfered with in the manner and method as has been done by the Division Bench of the High Court of Madhya Pradesh at Indore Bench. The bidder has no right in the matter of bid except of fair treatment and cannot insist for further negotiation as has been done in the present case. The terms and conditions of NIT, particularly condition No. 6, empowers the IDA to accept or reject any or all bids. In the present case, the bid was rejected for valid and cogent reasons and, therefore, the order passed by the Division Bench of the High Court of Madhya Pradesh is set aside."

54. In Laxmikant and Others, (supra), the Hon ble Supreme Court has held that the State or any of its instrumentalities is not bound to accept the highest bid or tender. Paragraph 4 of the judgment in Laxmikant and Others, (supra) is extracted herein below:

> "4. Apart from that the High Court overlooked the conditions of auction which had been notified and on basis of which the aforesaid public auction was held. Condition No. 3 clearly said that after the auction of the plot was over, the highest bidder had to remit 1/10 of the amount of the highest bid and the balance of the premium amount was to be remitted to the trust office within thirty days "from the date of the letter informing confirmation of the auction bid in the name of the person concerned". Admittedly, no such confirmation letter was issued to the respondent. Conditions Nos. 5, 6 and 7 are relevant:
>
> "5. The acceptance of the highest bid shall depend on the Board of Trustees.
>
> 6. The Trust shall reserve to itself the right to reject the highest or any bid.
>
> 7. The person making the highest bid shall have no right to take back his bid. The decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. Before taking the decision as above and informing the same to the individual concerned, if the said individual takes back his bid, the entire amount remitted as deposit towards the amount of bid shall be forfeited by the Trust."

From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in the cases of Trilochan Mishra v. State of Orissa [(1971) 3 SCC 153] , State of Orissa v. Harinarayan Jaiswal [(1972) 2 SCC 36] , Union of India v. Bhim Sen Walaiti Ram [(1969) 3 SCC 146 : (1970) 2 SCR 594] and State of U.P. v. Vijay Bahadur Singh [(1982) 2 SCC 365] . It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held."

55. The above discussion does not leave any room of doubt that the admitted legal position is that merely because a tenderer has been declared to be the highest (H-1) or the lowest (L-1) bidder, as the case may be, depending on the nature of tender, he will not acquire any vested right. The tendering authority should be given adequate room to play and take appropriate decisions in such a situation, which should, of course, be in conformity with the principles governing State actions emanating from Article 14 of the Constitution of India that is to say, such action should not be arbitrary or unfair or unreasonable and further it should be in public interest.

(iii) Scope of power of respondent Corporation to accept or reject a proposal without assigning any reasons.

56. One of the submissions made by learned counsel for the respondent Corporation placing reliance on Note (12) of the tender document (on page 145 of the writ petition) is that it is well within the right of the respondent corporation to reject any proposal without assigning any reason whatsoever and cancellation of the tender process by the respondent corporation is thus referrable to such condition of the tender document. It has been argued that exercising such a right, which was known to the Petitioner as one of the terms of the tender document, the tender process has been cancelled, that too in the public interest and hence, there is no illegality in the impugned decision.

57. No doubt such a right is available to the respondent Corporation, however, if such a right is exercised by the respondent Corporation without any plausible or cogent reason touching upon the public interest, such an action would be in complete breach of the legal principles discussed above. In our opinion, though such a right is available to the respondent Corporation, albeit, it is to be exercised for tenable reasons, and such power cannot be exercised arbitrarily or in an unfair manner.

58. Reference in this regard may be made to a Division Bench judgment of this Court in PKF Sridhar and Santhanam v. Airports Economic Regulatory Authority of India, 2022 SCC Online Del 122. In the said case, one of the conditions of the tender process was that "The issue of this RFP does not imply that AERA is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Consultancy. AERA reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever." However, this Court, considering the said condition, observed that the fact that the respondent in the said case was a public authority cannot be lost sight of and, further, that every public authority dealing with public funds discharges a public trust and that such authority is bound to act with financial prudence.The Court has further observed that the tender inviting authority cannot act arbitrarily or whimsically or out of mala fides in the matter of awarding or cancelling the tender. Further observation made in the judgment is that even the clause which stipulates that the tendering authority may not give reasons for not accepting any bid or rejecting the bid, does not mean that they should not have any valid reasons to justify their conduct. Paragraphs13 and 14 of the judgment in PKF Sridhar and Santhanam, (supra) are relevant to be noticed here, which read as under:

> "13. We cannot lose sight of the fact that the respondent is a public authority, and it is on the public exchequer that the burden would fall of the consultancy fee that the respondent would be required to defray in favour of the selected consultant. Every public authority dealing with public funds discharges a public trust, and is bound to act with financial prudence. There may be certain exceptions to their general rule - such as defence procurements, but the present case certainly does not fall in any such exception. To construe the language of Clause 1.5 to mean that the respondent is bound to accept the L-1 bidder, can lead to disastrous results in a situation where the lowest quoted prices are also found to be uncompetitive or very high.

> 14. No doubt, the tender-inviting authority cannot act arbitrarily or whimsically, or out of mala fides in the matter of awarding or cancelling the tendering process. Even the clause which stipulates that they may not assign reasons for not accepting any bid, or rejecting the bids, does not mean that they should not have any valid reasons to justify their conduct."

59. Thus, even if a clause in the tender conditions stipulating that the tendering authority may reject a bid without assigning any reasons is available, it would not mean that the tendering authority can do it without having any valid reason to justify cancellation of the bid.

-: CONCLUSION :-

60. Having discussed the law and the legal principles as evolved by the Hon ble Supreme Court in relation to the issue at hand in this matter, we now need to consider the facts of the case pleaded on behalf of the respective parties in light of these principles.

61. Admittedly, Petitioner no.1 was declared to be „H-1 bidder pursuant to the tender process initiated by issuing the NIT dated 07.02.2024. However, no Letter of Award has been issued in favour of the Petitioner no.1, nor has any contract to perform the tender work has been constituted between the parties.

62. Thus, this Court has been called upon to judicially scrutinize the action on behalf of the respondent/Corporation at a stage prior to the award of the contract. Hon ble Supreme Court in M.P. Power Management Co. Ltd. (supra), which has been quoted with approval in Subodh Kumar Singh Rathour(supra), has already held that an action to judicially review such a decision taken at the stage prior to award of contract will lie, however such judicial scrutiny has to be undertaken within the nature of judicial review as declared by the Hon ble Supreme Court in its decision in Tata Cellular (supra).

63. In Tata Cellular (supra), Hon ble Supreme Court, after discussing the law relating to judicial scrutiny of such matters in detail, has concluded that the duty of the Court in such matters is confined to the question of legality and further that the concern of the Court should be, whether the decision making authority has exceeded its powers, whether decision making authority has committed an error or committed a breach of rules of natural justice or has reached the decision which no reasonable Tribunal would have reached, or it has abused its powers. Paragraphs 76 and 77 of Tata Cellular (supra) are extracted below:

> "76. In R. v. Panel on Take-overs and Mergers, ex p in Guinness plc [(1990) 1 QB 146 : (1989) 1 All ER 509] , Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or „longstop jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

> 77. The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> 1. Whether a decision-making authority exceeded its powers?
>
> 2. Committed an error of law,
>
> 3. committed a breach of the rules of natural justice,
>
> 4. reached a decision which no reasonable tribunal would have reached or,
>
> 5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

> (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision- making power and must give effect to it.
>
> (ii) Irrationality, namely, Wednesbury unreasonableness.
>
> (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention"."

64. The Apex Court in Tata Cellular (supra) has deduced the legal principles governing judicial review of contractual actions, where one of the parties is the State or its instrumentality, in paragraph 94 of the report, which is also extracted herein below:

> 94. The principles deducible from the above are:
>
> (1) The modern trend points to judicial restraint in administrative action.
>
> (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will

be substituting its own decision, without the necessary expertise which itself may be fallible.

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

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere.

However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

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

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

65. As already discussed above, the respondent/Corporation, under the terms of the tender, as can be found in the tender document itself, has been vested with the authority to either accept or reject any or all of the proposals or even to cancel the engagement process. However, such an authority by the respondent/Corporation cannot be exercised without any plausible and legally tenable reason. It also cannot be exercised arbitrarily, and the respondent/Corporation is bound to observe the principle of fairness even while cancelling the proposal submitted by the Petitioner no.1, which was adjudged as „H-1 .

66. Thus, though the respondent/Corporation was not bereft of its authority of cancelling the bid submitted by the Petitioner no.1, which was adjudged „H-1 , however, the cancellation needs to be justified by the respondent/Corporation as non-arbitrary and in the public interest, if, the impugned has to be sustained. It is also noticeable that the State or its instrumentality must have freedom of contract and fair play in the joints, which is necessary for an administrative body, however, such an administrative decision must be tested on Wednesbury principle of reasonableness, and further, it must be free from arbitrariness not affected by bias or actuated by mala fides. In this regard, we may note the reasons given by the respondent/Corporation for cancelling the bid of the Petitioner no.1, which are as follows: -

a. A period of more than one year has elapsed from the date of issuance of NIT and the decision could not be taken at an earlier stage for the reason that Standing Committee of the respondent/Corporation was not available/functioning due to some litigation in Hon ble Supreme Court;

b. By making interim arrangements, which shall continue till the new tender is finalized, no loss to revenue will occur; c. The recommendation made by the Commissioner of the respondent/Corporation in his letter dated 19.08.2024 was not binding on the House of the respondent/Corporation, which has taken the impugned decision in the public interest; d. As a result of the impugned decision, public revenue of the respondent/Corporation shall increase which is a valid consideration for cancelling the tender process; e. The tentative base price in the fresh tender is likely to be fixed at more than Rs.900 Crores, and on market research, the tender is expected to fetch Rs.1000 Crores, which is an amount more than what would have been gained by awarding the tender to the Petitioner no.1 pursuant to the NIT dated 07.02.2024; and f. The reasons as aforesaid constitute valid grounds for taking the impugned decision, which is in the public interest, and as such, the same cannot be said to be unreasonable or arbitrary.

67. While dealing with the aforementioned reasons as argued on behalf of the respondent/Corporation for cancelling the tender process and not accepting the bid of the Petitioner no.1, what we find is that the impugned decision has been taken by the House of the respondent/Corporation which seems to be the final decision making body on behalf of the respondent/Corporation. The submission of the learned Senior counsel appearing for the Petitioners that the delay of one year in taking the final decision has occurred on account of procrastination on the part of the respondent/Corporation merits rejection for the reason that earlier the Standing Committee was not available on account of certain litigation and the same was not in function.

68. In a period of one year from the date of issuance of the NIT on 07.02.2024, much water has flown down the river Yamuna and accordingly, in our considered opinion, on account of the changed situation and circumstances, if the decision by the House of the respondent/Corporation has been taken to go for inviting fresh tender, the same cannot be faulted with.

69. It is also to be noticed that it is not that during the intervening period i.e. till the new tender process is finalized, the respondent/Corporation shall suffer any loss of revenue as during the interregnum, the Toll is to be collected by the existing contractor at the rate offered by the Petitioner no.1 („H-1) pursuant to the subject NIT dated 07.02.2024.

70. In case, on the basis of market research by floating the new tender the respondent/Corporation is likely to fetch more revenue, the decision to cancel the earlier tender process seems to be in consonance with the financial prudence exercised by the respondent/Corporation.

71. Further, as laid down by the Hon ble Supreme Court in Tata Cellular (supra), the respondent/Corporation must be given freedom of contract, and the respondent/Corporation also needs to be given ample space for fair play in the joints, which is a necessary concomitant for an administrative authority functioning in an administrative sphere, as laid down in Tata Cellular (supra).

72. As held in Tata Cellular (supra), impugned decision has also to be tested on the principles of Wednesbury unreasonableness. Tata Cellular (supra) explains that the principles of Wednesbury unreasonableness applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person, who had applied his mind to the question to be decided, could have arrived at.

73. In our opinion, if the impugned decision is tested on the principles of Wednesbury unreasonableness, the same cannot be termed to be either irrational or unreasonable for the reason that the decision has been taken on valid considerations by the respondent/Corporation. The relevant aspects which were taken into account by the respondent/Corporation for arriving at the impugned decision cancelling the bid submitted by the Petitioner no.1 have already been discussed above, that include:- (i) after a lapse of a period of one year, which might have brought changes in the circumstances, there is a possibility of fetching more public revenue by floating the new tender, and (ii) there being no loss to the public revenue of the respondent/Corporation as during the interregnum an arrangement has been made to realise the Toll at the rate offered by the Petitioner no.1 („H-1) pursuant to the subject NIT dated 07.02.2024, that is to be collected by the existing contractor.

74. For the aforesaid reasons, we may observe that the impugned decision cannot be said to be outrageous in its defiance of logic. It also cannot in any manner be said that the impugned decision could not have been arrived at by any sensible person of common prudence. In this view, the impugned decision does not appear to be hit by the principle of Wednesbury unreasonableness.

75. In view of the discussion made and reasons given above, we find ourselves unable to agree with the submissions made by the learned Senior counsel representing the Petitioners that the impugned decision suffers from the vice of unreasonableness, unfairness or arbitrariness. The impugned decision also, in our opinion, does not suffers from any proved mala fide as well on the part of the respondent/Corporation.

76. Resultantly, the Writ Petition, along with the application(s), if any, is dismissed.

77. However, there will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA) CHIEF JUSTICE (TUSHAR RAO GEDELA) JUDGE APRIL 08, 2025 "shailndra"/N.Khanna