

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1263 of 2016

Judgment reserved on: 22/08/2016

Judgment delivered on: 05/09/2016

M/s Acer India Private Limited, a company incorporated under the relevant provisions of the Indian Companies Act, 1956 having its registered office at Embassy Heights, 6<sup>th</sup> Floor, No.13, Magrath Road, (Next To Hosmat Hospital), Bengaluru – 560 025 through its Managing Director.

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Skill Development Technical Education and Employment, Mahanadi Bhawan, Naya Raipur, District Raipur.
2. The Commissioner-cum-Secretary, Directorate of Technical Education, Department of Skill Development Technical Education and Employment, Mahanadi Bhawan, Raipur (C.G.).
3. M/s Hewlett Packard India Sales Pvt. Ltd., Pune (MS) through its Managing Director.
4. HCL Infosystems Ltd., through its Managing Director, Block No.526, 527 & 528, Phase-II, 5<sup>th</sup> Floor, Offizo, Magneto Mall, Raipur – 492 001.
5. Intel Technologies India Pvt. Ltd., 136 Old Airport Road, Bangalore – 560 017 India, Through its Managing Director.

---- Respondents

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For Petitioner:	Mr. Abhishek Sinha, Advocate.
For Respondents No.1 & 2:	Mr. J.K. Gilda, Advocate General with Mr. Prafull N. Bharat, Additional Advocate General.
For Respondent No.3:	Mr. Siddharth Seth, Advocate.

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**Hon'ble the Chief Justice and  
Hon'ble Shri Justice Sanjay K. Agrawal**

C.A.V. Judgment

Sanjay K. Agrawal, J: -

1. Invoking jurisdiction of this Court under Article 226 of the Constitution of India and impugning legality, validity and correctness of memo dated 10-3-2016 (Annexure P-1) issued by respondent No.1 whereby tech-commercial bid of the petitioner has been rejected assigning reasons, the petitioner herein, a company incorporated and registered under the provisions of the Indian Companies Act, 1956, has filed this writ petition. The petitioner herein also seeks to challenge memo dated 8-4-2016 (Annexure P-2) whereby the State Government has rejected the representation of the petitioner made pursuant to Annexure P-1 and the petitioner consequently seeks quashment of order Annexure P-11 whereby respondent No.1 has signed Rate Contract with respondent No.3 and issued purchase order dated 26-5-2016 directing supply of 16,819 quantity of Laptops Model No.HP 245 G4 and the net value of supply is ₹ 29,41,64,310.00 (Rupees twenty nine crores forty one lakhs sixty four thousand three hundred and ten only).

**Facts leading to petition**

2. Shorn of all paraphernalia, essential facts requisite to adjudicate the legal dispute brought before us in nutshell are as under: -

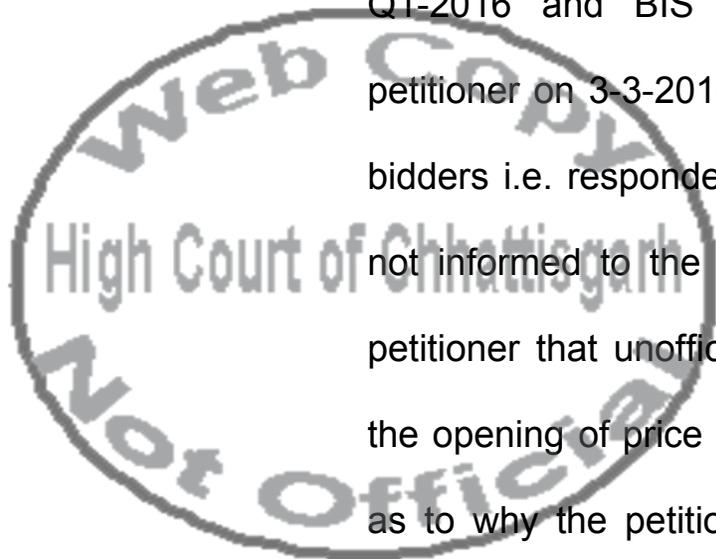
2.1) Respondent No.1 floated a global NIT / Request for Proposal inviting bid(s) from reputed bidders on 27-1-2016 (Annexure R-1) in which the subject matter in controversy relates to item No.2 – NIT 02/CYSKY/ DTE/LAPTOP/2016 with regard to empanelment of agency for supplying and commissioning of Laptops for students in the State of Chhattisgarh under the Chhattisgarh Yuva Soochana Kranti Yojana and a copy of Request for Proposal (RFP) has been filed as Annexure P-3. Clause 7 of the Request for Proposal – Bid Submission, states that the tech-commercial bid sealed in one envelope should be marked as “Tech-commercial Bid” and shall contain technical details of the items quoted and also provide full details of deviations, if any, from the technical specification mentioned. The bidder should fill-up the format given in Annexure-I of the tender documents. Thereafter, 3-2-2016 was fixed for pre-bid query and on the same day, later point of time, at 3 p.m., pre-bid conference was held and pre-bid response was published on 5-2-2016 on website and subsequent to issuance of RFP in relation to ANNEXURE 'A', a pre-bid clarification was issued on 12-2-2016 pursuant to pre-bid response from the Directorate of Technical Education and pre-bid meeting was held as stated on 3-2-2016. Technical bids for participating in the RFP were submitted on 25-2-2016 as per corrigendum dated 12-2-2016. In response to the NIT and subsequent corrigendum No.2, three bids in



response to the RFP and two bids in response to the corrigendum were received from the petitioner, respondent No.3 herein namely M/s. Hewlett Packard India Sales Pvt. Ltd., and respondent No.4 M/s. HCL Infosystems Ltd..

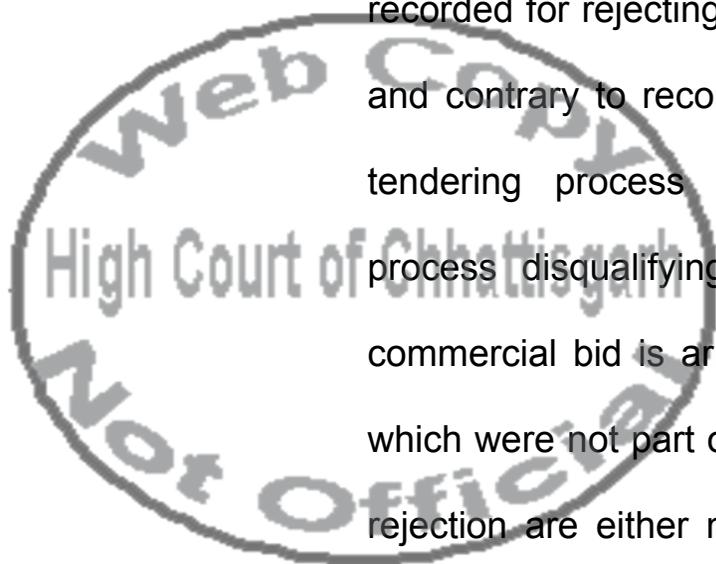
**2.2)** It is the case of the petitioner that on 25-2-2016, tech-commercial bid was opened and it was sent for evaluation to the specification committee and on 1-3-2016, respondent No.2 herein sought clarification about the launching of processor in Q1-2016 and BIS certificate which was replied by the petitioner on 3-3-2016, and on 8-3-2016, financial bids of two bidders i.e. respondents No.3 and 4 were opened which was not informed to the petitioner. It is the further case of the petitioner that unofficially, the petitioner came to know about the opening of price bid and sent e-mail seeking confirmation as to why the petitioner's bid was not considered as it was eligible, vide Annexure P-8 and in response to the e-mail dated 9-3-2016, for the first time, the petitioner was intimated the reasons, vide Annexure P-1, for rejection of its tech-commercial bid against which the petitioner made various representations including representations Annexures P-9 and P-10. Ultimately, the representations were rejected vide Annexure P-2 dated 8-4-2016 and communication was sent to the petitioner vide Annexure P-2 by respondents No.1 and 2.

**2.3)** Thereafter, the petitioner has filed the instant writ petition



questioning rejection of its tech-commercial bid as well as the order rejecting its representation vide Annexure P-2 and also the order Annexure P-11 dated 26-5-2016 by which purchase order has been issued to respondent No.3 for supply of Laptops.

**2.4)** The petitioner herein has filed this writ petition mainly on the ground that rejection of its tech-commercial bid is illegal, arbitrary and legally unsustainable in law as the five reasons recorded for rejecting its tech-commercial bid are non-existent and contrary to record. It has further been claimed that the tendering process and particularly the decision making process disqualifying the petitioner and rejecting its tech-commercial bid is arbitrary and illegal based on the grounds which were not part of the tender conditions. The reasons for rejection are either not the requirement of tender conditions and outcome of deviation by the tender committee to reject the petitioner's bid and thus, vitiates the tender process. It has further been pleaded that the tender committee without application of mind and without there being prior technical evaluation has in a mechanical manner rejected the petitioner's technical bid holding it to be technically inferior and the finding arrived at by the tender committee or specification laying committee is per se illegal and unsustainable in view of the certification given by the manufacturer i.e. Intel Technologies which manufactures the processor both N3540



and A1020. It has also been pleaded that non-supply or disclosure of the material on the basis of which it has been held that processor A1020 is not equivalent or higher than the benchmark processor, itself renders the process and decision vitiated. The clarification sought vide communication dated 1-3-2016 was not precise. The disqualification and rejection is on the ground for which there was no specific clarification and hence there has been violation of the principles of natural justice apart from deviation from the stipulated process of tendering. The action of respondent No.2 in rejecting the petitioner's tech-commercial bid is discriminatory and is violative of Article 14 of the Constitution of India, and rejection of bid of the petitioner on the ground of non-submission of BIS certificate, two DIMM is not sustainable as it is not part of the tender conditions and factually non-existent and thus, the petitioner has sought quashment of Annexures P-1, P-2 and P-11.

3. The State/respondents No.1 and 2 have filed their joint return stating *inter alia* that after pre-bid clarification, bids were submitted by the petitioner as well as respondents No.3 and 4. The bids were considered by the Specification Committee constituted for implementation of ambitious project of purchase and distribution of Laptop and Tablet. Thereafter, the recommendations were placed before the Tender Committee and in turn, before the Purchase Committee duly



constituted on 7-1-2016 and technical bids were opened on 25-2-2016 at 4 p.m. in presence of all the bidders. After opening of technical bids, technical bids of all the bidders in response to the RFP were sent to the Specification Committee along with technical bids of two other bidders. It is also pleaded that based upon evaluation and opinion of the Specification Committee after detailed analysis as per Annexure R-3, the Tender Committee recommended that the bid submitted by the petitioner is not meeting the requisite criteria therefore, the bid may be rejected and the Tender Committee also recommended that the price bid of two bidders namely respondents No.3 and 4 may be opened. It is also the case of respondents No.1 and 2 that meeting of the Purchase Committee was held on 4-3-2016 and based upon the opinion of the Specification Committee and the recommendation of the Tender Committee, the Purchase Committee in the meeting of the Inter Departmental Purchase Committee, recommended the opening of financial bids of technically short listed bidders namely M/s. HCL Infosystems Ltd., and M/s. Hewlett Packard India Sales Pvt. Ltd., Pune. It was also pleaded that based upon the recommendations of the Inter Departmental Purchase Committee, financial bids of technically short listed bidders, as mentioned above, were opened and in the price bid, respondent No.3 herein was found to be the lowest bidder. Thereafter, e-mail dated 9-3-

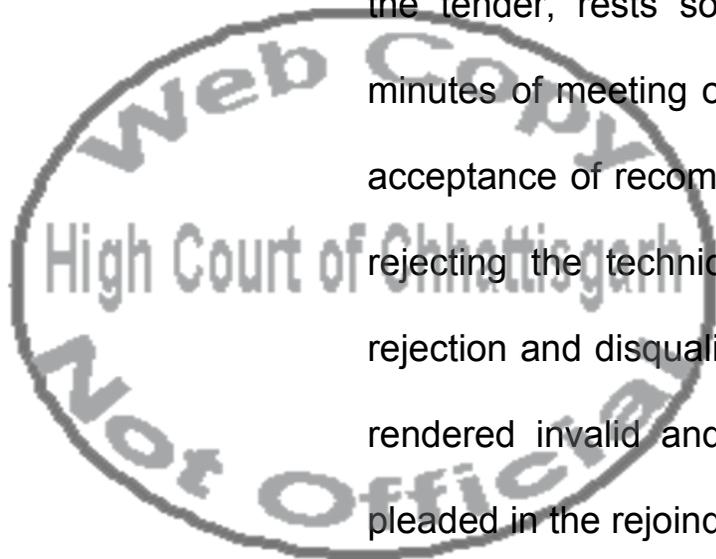


2016 was received from the petitioner Company seeking reasons for not considering and rejecting the tech-commercial bid. Though there is no condition in the RFP / tender documents with regard to intimation about non-qualification in technical bid, however, by the impugned e-mail dated 10-3-2016 (Annexure P-1), reasons for rejection of the petitioner's technical bid were communicated, but the petitioner remained unsatisfied and sent various e-mails dated 10-3-2016, 14-3-2016, letter dated 4-3-2016, and other three e-mails were sent by the Zonal Business Manager of the petitioner Company. All the e-mails received from the petitioner were referred to the Specification Committee for impartial evaluation and the Specification Committee considered the objections / representations of the petitioner and along with reasons a detailed communication was sent to the petitioner Company vide the impugned communication Annexure P-2. A point-wise observation on the ground of which the technical bid of the petitioner Company has been rejected, has been filed with the return as Annexure P-7. It has also been submitted that after opening of price bid from amongst the technically short listed parties, a rate contract has been entered into vide contract agreement Annexure R-8 and as such, the writ petition deserves to be dismissed.

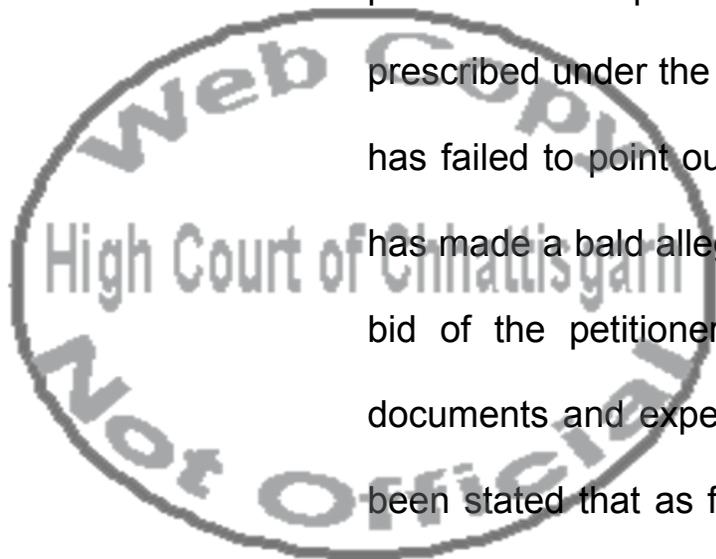
4. Respondent No.3 has also filed return supporting the State action particularly, stating that in the matter of prescribing

condition for tender, evaluation of technical bids and other process of scrutiny, the scope of interference is limited. It has been submitted that the petitioner's bid has rightly been rejected due to non-fulfillment of conditions prescribed in the tender documents.

5. Rejoinder has been filed by the petitioner on 23-7-2016 after the return was filed by respondents No.1 and 2 stating *inter alia* that though jurisdiction and authority to take decision on the tender, rests solely with the Purchase Committee, the minutes of meeting of the Purchase Committee do not reflect acceptance of recommendations of the Tender Committee for rejecting the technical bid of the petitioner and therefore, rejection and disqualification of the petitioner's technical bid is rendered invalid and without jurisdiction. It has also been pleaded in the rejoinder that the grounds assigned for rejecting the petitioner's technical bid, as stated in the writ petition, to be not in accordance with the technical specifications provided in the tender documents, have not been rebutted by the respondents by filing any cogent material and the Tender Committee has taken into consideration the irrelevant facts which are not part of mandatory conditions expressed in the RFP or NIT and which clearly indicate arbitrariness, illegality and also demonstrated differential unfair treatment with a view to oust the petitioner in furtherance of premeditated decision.



6. Thereafter, on 5-8-2016, an additional return has been filed on behalf of the State/respondents No.1 and 2 and it has been submitted that the Tender Committee has only given recommendations by using the words "may be" for rejecting the bid of the petitioner and accepting the bids of private respondents. The Inter Departmental Purchase Committee has taken a decision and thereafter, financial bids of technically short listed bidders were opened. The whole process was impartial, transparent and as per the procedure prescribed under the law for evaluation of bids. The petitioner has failed to point out any flaw in the evaluation process and has made a bald allegation without any substantial basis. The bid of the petitioner was rejected on the basis of tender documents and experts had evaluated the same. It has also been stated that as far as comparison of processor category, BIS clarification and DIMM slot is concerned, all these facts have already been answered by respondents No.1 and 2 in the return filed. It has been specifically submitted that in the pre-bid clarification, it was specifically mentioned that two DIMM slots have to be provided and the petitioner instead of providing two DIMM slots was in an attempt to submit its tender without two DIMM slots and made communication also that it will provide one DIMM slot instead of two DIMM slots. This fact would show that the petitioner was not fulfilling the condition of two DIMM slots and therefore, his technical bid



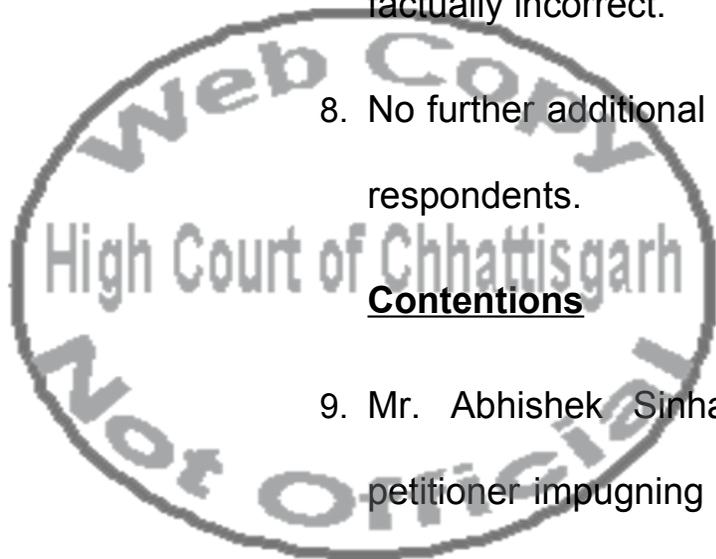
has rightly been rejected by respondents No.1 and 2.

7. Thereafter, on 22-8-2016, additional rejoinder has been filed on behalf of the petitioner stating therein that finding and conclusion arrived at by the Tender Committee in respect of Processor is also factually incorrect, arbitrary and illegal, as there was no clarification sought from the petitioner in respect of the Processor being shown in the Desktop category. The tabular comparison drawn by the Tender Committee is factually incorrect.

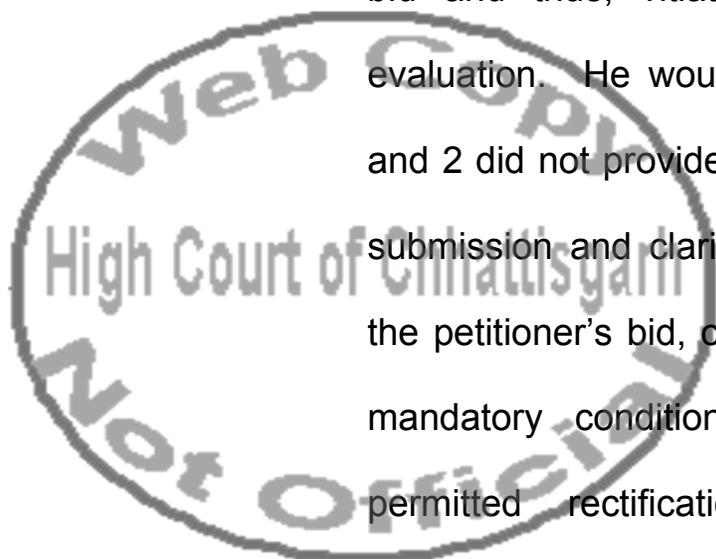
8. No further additional return was filed on behalf of either of the respondents.

**Contentions**

9. Mr. Abhishek Sinha, learned counsel appearing for the petitioner impugning the action of the State/respondents No.1 and 2 in rejecting the tech-commercial bid disqualifying the petitioner from further tender process, would submit that the action of respondents No.1 and 2 is totally arbitrary, illegal and factually incorrect and not based on record. He would further submit that the Purchase Committee, which is, according to the Government, competent to take decision on the bids in its meeting dated 4-3-2016 failed to take any decision with regard to the petitioner's technical bid, as no reasons have been recorded for rejecting the technical bid of the petitioner and has only recommended to open the financial and price bids of



respondents No.3 and 4 as such, the Purchase Committee has failed to perform its duty in accordance with law and rejection of the petitioner's bid without recording any reason and without passing any express order is bad and contrary to law. He would also submit that the five reasons which have been recorded for rejecting the petitioner's representations are either not the requirement of conditions of tender or outcome of deviation by the Tender Committee to reject the petitioner's bid and thus, vitiates the entire tender process and its evaluation. He would further submit that respondents No.1 and 2 did not provide an opportunity to the petitioner to make submission and clarify about the cause for which it rejected the petitioner's bid, on the other hand, it not only relaxed the mandatory conditions of tendering process, but it also permitted rectification and clarification of documents mandatorily required for establishing eligibility and specification, and thus extended unequal discriminatory treatment violating the doctrine of 'level playing field' and thereby vitiating the decision making process and the consequent decision. He also submits that the action of respondent No.2 is discriminatory and violative of Article 14 of the Constitution of India, as respondent No.2 has shown very liberal approach in respect of respondent No.4 in allowing time to rectify the defects and regularized the mandatory requirement. The representations filed by the petitioner were



arbitrarily rejected and respondents No.1 and 2 have illegally proceeded and qualified respondent No.3 and also issued rate contract and thereafter placed supply order Annexure P-11 to respondent No.3. He heavily relied upon the judgments of the Supreme Court in the matters of Tata Cellular v. Union of India<sup>1</sup>, Reliance Energy Ltd. & another v. Maharashtra State Road Development Corporation Ltd. & others<sup>2</sup> and Dutta Associates & others v. Indo Mercantiles Pvt. Ltd. & others<sup>3</sup>.

10. Countering and replying the contentions made on behalf of the petitioner, Mr. Prafull Bharat, learned Additional Advocate General appearing on behalf of the State/respondents No.1 and 2, would vehemently submit that the bids submitted by the petitioner as well as respondents No.3 and 4 were considered in just, fair and transparent manner by multi-layered committees. Firstly, technical bids of the petitioner as well as respondents No.3 and 4 were placed before the Specification Committee after opening it on 25-2-2016 at 3.30 p.m. and thereafter, taking into account the evaluation made by that Committee, the Tender Committee considered and recommended that the bid submitted by the petitioner is not meeting the requisite criteria therefore, the bid may be rejected and the Tender Committee also recommended the

1 (1994) 6 SCC 651

2 (2007) 8 SCC 1

3 (1997) 1 SCC 53

price bids of respondents No.3 and 4 to be opened. The recommendation made by the Tender Committee was accepted by the Purchase Committee and accordingly, financial bids of technically short listed bidders were opened and price of respondent No.3 was found to be lowest and thus, it was granted rate contract, as such, there is no procedural illegality in the entire evaluation process. Technical bids of eligible bidders were considered firstly by the Specification Committee and secondly by the Tender Committee, and ultimately, final decision was taken by the Purchase Committee which is a high level committee consisting of technical experts and as such, there is no technical / procedural violation in the entire decision making process and therefore, no interference is warranted in exercise of entire decision making process. The petitioner was supplied with the reasons for rejection of its bid and representation received thereafter was referred to the Specification Committee and the Specification Committee duly considered the point raised elaborately which was duly accepted by the State Government and thereafter, communicated to the petitioner as such, there is no infirmity in the decision making process of the tender proceedings and the writ petition deserves to be dismissed.

11. Mr. J.K. Gilda, learned Advocate General appearing on behalf of the State of Chhattisgarh, would additionally submit that the decision to reject the technical bid of the petitioner has been



taken by the multi-layered committees consisting of experts and no interference is required by in the decision of experts even if two views are possible.

12. We have heard learned counsel for the parties at considerable length and carefully considered their rival submissions made herein-above and gone through the record thoroughly and extensively.

**Bid proceedings and their evaluation**

13. In order to appreciate the subject matter in dispute and to judge the correctness of the pleas raised at the Bar it would be advantageous to notice the relevant facts relating to issuance of Request for Proposal and leading to award of contract to respondent No.3 which are as under:-

(i) "Chhattisgarh Yuva Soochana Kranti Yojana" is a project launched by the Department of Information and Technology, Government of Chhattisgarh for distribution of Laptop/Tablet (free of cost) to the eligible final year students undergoing studies in the technical colleges of State including Medical and Engineering colleges as well as the students of Commerce, Arts and Science, so that they may increase their knowledge and uplift their career and also to enhance the use of Computer and Internet in the State of Chhattisgarh and thereby contribute to the socio – economic development of the State.



(ii) In order to secure the Laptops for distribution under such a project, Global NIT request for proposal inviting bids from reputed bidders was issued on 27-1-2016 by the Government of Chhattisgarh through the Directorate of Technical Education with regard to agency for supply and commissioning of Laptops for students under the above-stated project. The request for proposal dated 27-1-2016, NIT No.2 which is subject matter of this writ petition states as under:-

**“Government of Chhattisgarh  
Directorate of Technical Education  
3rd Block, 3rd & 4th Floor, Indravati Bhawan, Naya Raipur\_**

**Request For Proposal**

Date 27/01/2016

Directorate of Technical Education, Government of Chhattisgarh (DTE)  
invites below Global Notice Inviting Tender (NIT) from reputed bidders:

SN	NIT No.	Description of Global NIT
1	----	----
2	02/CYSKY/DTE/LAPTOP/2016	Empanelment of Agency for supplying and commissioning of Laptops for students in the State of Chhattisgarh under Chhattisgarh Yuva Soochana Kranti Yojana.

The detailed scope of work, terms and conditions etc. are available in the Tender Document which can be downloaded from the Government website [www.cgstate.gov.in](http://www.cgstate.gov.in).

**Commissioner-cum-Director”**

(iii) Paragraph 7 of tender document, which is a part of RFP, provides for bid submission:-

**7. BID SUBMISSION**

The following section outlines the steps to be used for submission and processing of bids:

1. The bid shall be submitted in three parts, the EMD, Tech-Commercial Bid & the Price Bid. Tech-Commercial Bid & the Price Bid shall be submitted

in 3 copy (Original, Copy 1, and Copy 2 with CD).

i) Earnest money Deposit (EMD): Bidder has to submit EMD of Rs. 1,25,00,000/- (Rs. One crore Twenty Five Lac only) in the form of Bank Guarantee from any nationalized/scheduled bank. The EMD should be sealed in one envelope marked "EMD".

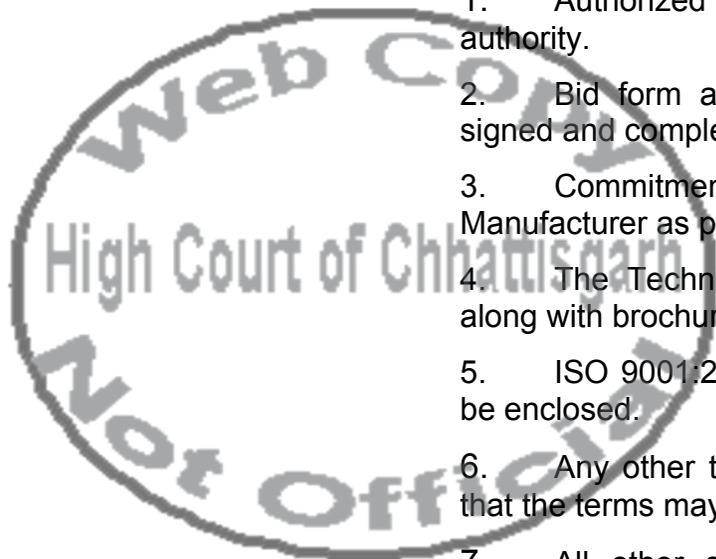
ii) a. the Tech-commercial bid sealed in one envelope marked "Tech-commercial Bid" and shall contain technical details of the item(s) quoted and also provide full details of deviations, if any from the technical specification mentioned. The bidder should fill-up the format given in ANNEXURE-I. No alternation/modification in the format shall be permitted. Make/Model of the equipment quoted should be clearly specified. The bidder should enclose relevant technical brochures/literatures for the item(s) quoted in support of the technical specification quoted.

b. The tech-commercial bid must contain-

1. Authorized signatory certificate from the appropriate authority.
2. Bid form as per ANNEXURE-II should be duly filled in, signed and complete in all respects.
3. Commitment letter for service support from the Laptop Manufacturer as per ANNEXURE-V.
4. The Technical information of the products being offered along with brochure/data sheet etc.
5. ISO 9001:2008 certificates for manufacturing process shall be enclosed.
6. Any other terms and conditions from bidder (Please, note that the terms may or may not be acceptable to DTE).
7. All other supporting document as per eligibility criteria mentioned in this RFP.
8. Original tender documents with all pages duly signed and stamped.
9. Valid VAT/CST Certificate copy of bidder.
10. Laptop test certificate as per the IS 14896:2001 from a notified testing agency.
11. The bidder should submit a proof for testing the proposed model laptop by Government agency namely STQC, EdCIL, ERTL, EDTC for testing of Laptop with bid and submit the test report within 10 days from financial bid opening.

iii) The Price bid shall be kept in one sealed envelope and Mark "Price Bid" as per format prescribed provided in ANNEXURE-III duly completed in all respects.

iv) The three separate envelopes containing EMD, Tech-commercial bid and price bid should be sealed in one envelope and should be addressed as per tender schedule. The envelope should bear the name of bidder, along with the tender number and the date of



opening of the tender.

2. The Financial bid of only technically short listed bidders would be opened in presence of the authorized representatives of the bidder.
3. The language for bid submission is English.
4. All prices and other information in this regard having a bearing on the price shall be written both in figures and words in the prescribed offer form.
5. No bid can be modified subsequent to the deadline for submission.
6. The Bidders should note that Prices should not be indicated in the Tech-commercial and should be quoted only in the Price Bid. In case the prices are indicated in the Tech-commercial bid, the bid shall stand rejected.
7. EMD of amount of 1,25,00,000/- (Rs. One crore Twenty Five Lac only) shall be returned to unsuccessful bidder/s within 60 days after opening of Financial Bid and EMD of successful bidder will be returned after the submission of PBG and signing of Rate Contract with DTE.
8. The Performance Bank Guarantee (PBG) as per ANNEXURE-VI amounting to Rs. 2.50 Crore (Rupees two crore and fifty lakh only) has to be submitted prior to signing of Rate Contract. All charges whatsoever such as premium; commission etc with respect to the Performance bank guarantee shall be borne by the selected Bidder.
9. The Performance Bank Guarantee shall be valid for two years (2 years) period from signing of Rate Contract.”

(iv) Annexure-I of the RFP is about technical specification and compliance sheet, which also contains laptop specification and compliance sheet, which we are concerned, are as under: -

**“ANNEXURE-I**

**TECHNICAL SPECIFICATION AND COMPLIANCE SHEET**

ITEM NAME-Laptop-

Make -----

Model -----

Manufacturing Capacity per Month -----

**LAPTOP SPECIFICATION AND COMPLIANCE SHEET**

<b>Description</b>	<b>Specification</b>	<b>Compliance (Yes/No)</b>	<b>Remarks If Any</b>
Constructions and Externals	Metal/Alloy/reinforced hinges for display. The Casing ABS plastic of Black or Gray Color Display screen back with government approved designed Logo.		
Processor	Latest Generation Intel Pentium		

(Minimum)	Quad Core processor N 3540 or AMD Quad Core processor A8 7410 processor (clock speed of minimum 2.1 GHZ) 2 MB Cache.		
Memory	4 GB DDR 1333 MHz RAM expandable up to 8 GB		
Chipset	Compatible Chipset as per the processor		
Display	LED HD 14" with 1024x768 resolution or higher		
Hard Disk Drive	500 GB SATA 5400 RPM or Higher		
Audio	Dual Inbuilt Speakers		
Web Cam	Yes		
Graphics Card	Integrated Graphics Minimum 128 MB VRAM or Higher		
Ports	I/O Ports, Minimum 3 USB 2.0 Port, Microphone combo jack, 1 VGA, 1 HDMI, AC Power		
LAN	Ethernet Controller 10/100/1000 Mbps or Higher		
Wireless	Wireless 802.11 b/g/n or Higher and Standard Bluetooth		
Keyboard	Standard full size Keyboard with touch pad with Rupee symbol		
Operating System	Linux/Windows 8.1 Academic version/Windows 10 Home (value-Emerging Market) Shape the Future Sku		
AC Power	Input Voltage Range 110V-250V, 50 Hz AC power adapter with necessary cables		
Standard Accessories	Power cable, Power Adaptor and Charger, User Manuals and Laptop backpack etc.		
Operation Temperature	0-55 Degree Centigrade		
Battery Type	Standard Rechargeable Li-Ion battery with minimum 04 Hours backup or more		
Certifications	Energy Star®/BEE Version I, RoHS, Windows and Linux Compliance Certificate		
Warranty	Onsite one year comprehensive including battery and adaptor		
Others	Selected Bidder(s) should permanently burn the Logo of CG Government and other information like "Presented by- Hon'ble Chief Minister or Department Name" (as		

	desired by the State Government) in the BIOS/FIRMWARE; that should not be removed by any normal/usual techniques. Laptop must have operational capabilities in English and Hindi language.		
Contents	a) Hindi software complying with Unicode standard should be preloaded. b) Any other free educational contents that are useful for the students shall be preloaded in the Laptops.		
Cloud enabled	Device should be loaded cloud enabled software with the support of 1 year. Certificate from the cloud enabled software provider should be provided in the technical bid.		

Note: Any proprietary item/ specification needs to be ignored, equivalent or higher specifications are acceptable.

Device should comply with the guidelines for India Standard and other standard mentioned in the RFP.

Dated \_\_\_\_\_ day of \_\_\_\_\_ 2016

Signature and Seal of the Bidder”

(v) Subsequent to the issuance of RFP, the Global NIT Corrigendum-1 was issued on 29-1-2016 giving revised laptop specification with reference to ports and thereafter the Global NIT Corrigendum-2 was issued on 12-2-2016 giving revised specification for keyboard, cloud enabled operating system etc. and the last date for submission of bid was re-scheduled for 25-2-2016 up to 03:00 p.m. and date of opening of tech-commercial bid was re-scheduled for 25-2-2016 at 03:30 p.m. in place of earlier scheduled dates.

(vi) Pre-Bid meeting was held on 3-2-2016. Thereafter, pre-bid clarification was issued on 12-2-2016 pursuant to pre-bid response from the Directorate of Technical Education. The

following pre-bid clarification was issued by respondents No.1 & 2. The said pre-bid clarification Sl.Nos.14, 53 and 61, which we are concerned, are as under:-

**Pre Bid response from Directorate of Technical Education (DTE) for RFP No.: 02/CYSKY/DET/LAPTOP/2016 dated 28.01.2016 and Pre Bid Meeting on 03.02.2016**

SL No	Page No.	Section	Contents of RFP requiring Clarification(s)	Clarification Sought	Remarks	Response from DTE
SI No. 1 to 13 *** **						
14	27	Annexure I	Latest Generation Intel Pentium Quad Core processor N 3540 or AMD Quad Core processor A8 7410 processor (clock speed of minimum 2.1 GHZ) 2 MB Cache	Latest Generation Intel Pentium Quad Core processor A1020 or AMD Quad Core processor A8 7410 processor (clock speed of minimum 2.1 GHZ) 2 MB Cache. Since Ask Intel processor is 2 yrs old and most of the OEM is not having. The same has been migrated in A1020 with better clock speed		This is to clarify that the criteria for equivalent processor is as below: 1) The Processor should be launched after Q2, 2014 and launched under Laptop/Mobile processor. 2) Any equivalent/ Higher processor of Intel will be evaluated based on specification of N3540 & any equivalent/Higher processor of AMD will be evaluated based on specification of A8 7410
SI No. 15 to 52 *** **						
53	27	Annexure I, Processor	Latest Generation Intel Pentium Quad Core Processor N 3540 or AMD Quad Core processor A8 7410 processor (clock speed of minimum 2.1 GHZ) 2 MB Cache	The Processor should be exactly as per the processor number mentioned in the tender "or higher" should not be applicable on processor. The reason is that any change in processor will impact the		This is to clarify that the criteria for equivalent processor is as below: 1) The Processor should be launched after Q2, 2014 and launched under Laptop/Mobil



				platform. Also few processors like Intel's A1020 is not available with HP		e processor. 2) Any equivalent/ Higher processor of Intel will be evaluated based on specification of N3540 & any equivalent/ Higher processor of AMD will be evaluated based on specification of A8 7410
Sl. No. 54 to 60			***	***	***	***
61	27	Annexure - Technical Specification and Compliance Sheet	Memory-4 GB DDR 1333 MHz RAM expandable up to 8 GB	Request to please amend the same to "4 GB DDR 1333 MHz RAM expandable up to 8 GB with 2 DIMM Slots" because if the Students want to upgrade the Memory To 8GB they will have to procure 8 GB RAM Module and present 4 GB RAM Module which is originally supplied with Machine will be a waste for them but increase of 2 DIMM Slots students would be required to procure only one 4GB RAM Module to upgrade the Machine to 8GB Memory.		This is clarify that for expending from 4 GB DDR RAM to 8 GB RAM, 2 DIMM slots have to be provided.

(vii) In response to the RFP and subsequent pre-bid clarifications noted above, three bids were received from the petitioner and respondents No.3 and 4 on 25-2-2016 and same were opened on 25-2-2016 in presence of

representatives of bidders.

(viii) It is appropriate to note here that, the State Government by its order dated 7-1-2015 constituted Specification Committee for determination of specification of laptop and tablet under the above-stated scheme. The composition and duties of the Specification Committee are as under:-

**DIRECTORATE OF TECHNICAL EDUCATION, EMPLOYMENT AND TRAINING CHHATTISGARH**

संचालनालय तकनीकी शिक्षा, रोजगार एवं प्रशिक्षण, छत्तीसगढ़

Indravati Bhavan, Block-3 & 4, 1st, 3rd & 4th Floor, Naya Raipur (Chhattisgarh)

इन्द्रावती भवन, ब्लॉक-3 एवं 4, प्रथम, तृतीय एवं चतुर्थ तल, नया रायपुर (छत्तीसगढ़)

Phone & Fax : 0771- 2331331, 2331341, E-mail id –cgdtraipur@mail.com Website : http://www.cgdtraipur.ac.in

**आदेश**

मंत्री परिषद् द्वारा दिनांक 08.10.2015 को लिए गए निर्णय में छत्तीसगढ़ युवा सूचना क्रांति योजना के क्रियान्वयन के लिए लेपटॉप एवं टेबलेट क्रय तथा वितरण का दायित्व तकनीकी शिक्षा विभाग को सौंपा गया है।

छत्तीसगढ़ युवा सूचना क्रांति योजना के अन्तर्गत शैक्षणिक सत्र 2015-16 में अन्तिम वर्ष में अध्ययनरत पात्र विद्यार्थियों को लेपटॉप/टेबलेट क्रय कर वितरित किए जाने हैं। लेपटॉप एवं टेबलेट के स्पेसिफिकेशन निर्धारण हेतु निम्नानुसार समिति का गठन किया जाता है:-

1. डॉ. बी. एस. चावला, प्राचार्य, शासकीय इंजीनियरिंग महाविद्यालय, बिलासपुर –अध्यक्ष
2. श्री एस. डी. बर्मन, प्र. प्राचार्य, शासकीय कन्या पॉलीटेक्निक, रायपुर –सदस्य
3. चिप्स, रायपुर द्वारा नामित प्रतिनिधि –सदस्य
4. एन. आई.सी., रायपुर द्वारा नामित प्रतिनिधि –सदस्य
5. उच्च शिक्षा विभाग द्वारा नामित प्रतिनिधि –सदस्य
6. डॉ. हिमांशु अग्रवाल, संयुक्त संचालक, तकनीकी शिक्षा संचालनालय, रायपुर –सदस्य

उपरोक्तानुसार गठित समिति छत्तीसगढ़ युवा सूचना क्रांति योजना के अन्तर्गत शैक्षणिक सत्र 2015-16 में अन्तिम वर्ष में अध्ययनरत पात्र विद्यार्थियों को वितरित किए जाने वाले लेपटॉप तथा टेबलेट के स्पेसिफिकेशन का निर्धारण कर स्पष्ट अनुशंसा अधोहस्ताक्षरकर्ता को प्रस्तुत करेगी।

सही / -

आयुक्त-सह-संचालक

पृ.क्र./पीए/त.शि./छयूसूकायो/2016/04

दिनांक 07.01.2015

प्रतिलिपि :

1. प्रमुख सचिव, कौशल विकास, तकनीकी शिक्षा एवं रोजगार विभाग, मंत्रालय, नया रायपुर।
2. प्रमुख सचिव, उच्च शिक्षा विभाग, मंत्रालय, नया रायपुर।
3. मुख्य कार्यपालन अधिकारी, चिप्स, रायपुर।

4. एस.आई.ओ., एन.आई.सी., रायपुर।

5. सर्व सम्बन्धित अधिकारीगण की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु। कृपया दिनांक 08.01.2016 को बैठक आयोजित कर आवश्यक कार्यवाही सुनिश्चित करें।

(ix) At this stage, it would be appropriate to mention here that the State Government also by order dated 7-1-2016 constituted a Tender Committee under the Chairmanship of the Director, Technical Education and six others members for opening and evaluating the technical bids for making recommendation to the Purchase Committee for further needful action. The composition and responsibilities of the said Tender Committee are as under:-

छत्तीसगढ़ शासन  
कौशल विकास, तकनीकी शिक्षा  
एवं रोजगार विभाग  
मंत्रालय, महानदी भवन, नया रायपुर

// आदेश //

नया रायपुर, दिनांक 7/1/2016

क्रमांक एफ 9-2/2016/तक.शि./42 :: राज्य शासन एतद्वारा छत्तीसगढ़ युवा सूचना क्रांति योजना अंतर्गत राज्य के विद्यार्थियों को निःशुल्क लैपटॉप एवं टेबलेट प्रदाय योजना अंतर्गत लैपटॉप एवं टेबलेट क्रय करने हेतु टेंडर समिति का गठन निम्नानुसार किया जाता है:-

- |  |   |         |
|--|---|---------|
| 1. संचालक, तकनीकी शिक्षा                         | — | अध्यक्ष |
| 2. मुख्य कार्यपालन अधिकारी, चिप्स                | — | सदस्य   |
| 3. वित्त विभाग के प्रतिनिधि                      | — | सदस्य   |
| 4. उच्च शिक्षा विभाग के प्रतिनिधि                | — | सदस्य   |
| 5. वाणिज्य एवं उद्योग विभाग के प्रतिनिधि         | — | सदस्य   |
| 6. डॉ. बी. एस. चावला, प्राचार्य, जीईसी, बिलासपुर | — | सदस्य   |
| 7. लेखाधिकारी, तकनीकी शिक्षा                     | — | सदस्य   |
2. उक्त समिति के निम्नलिखित कार्य एवं दायित्व होंगे:-
1. तकनीकी तथा वित्तीय बिड को खोलना तथा मूल्यांकन करना।
  2. मूल्यांकन के आधार पर क्रय समिति को अनुशंसा प्रस्तुत करना।

छत्तीसगढ़ के राज्यपाल के नाम से  
तथा आदेशानुसार  
सही/-

(जी. आर. मालवीय)  
उप सचिव  
दूरभाष 0771-2510783

(x) Likewise, the State Government has also constituted

inter-departmental purchase committee by order dated 7-1-2016 for making recommendation of the technically suitable bidder for purchase of laptop. The composition and responsibilities of said inter-departmental committee are as under:-

छत्तीसगढ़ शासन  
कौशल विकास, तकनीकी शिक्षा  
एवं रोजगार विभाग  
मंत्रालय, महानदी भवन, नया रायपुर

// आदेश //

नया रायपुर, दिनांक 7/1/2016

कमांक एफ 9-2/2016/तक.शि./42 :: राज्य शासन एतद्वारा छत्तीसगढ़ युवा सूचना क्रांति योजना अंतर्गत राज्य के विद्यार्थियों को निःशुल्क लैपटॉप एवं टेबलेट प्रदाय योजना अंतर्गत लैपटॉप एवं टेबलेट क्रय करने हेतु अंतर्विभागीय क्रय समिति का गठन निम्नानुसार किया जाता है:-

1. संचालक, तकनीकी शिक्षा	—	अध्यक्ष
2. उपाध्यक्ष, चिप्स	—	सदस्य
3. प्रबंध संचालक, सीएसआईडीसी	—	सदस्य
4. प्रबंध संचालक, सीआईडीसी	—	सदस्य
5. वित्त विभाग के प्रतिनिधि	—	सदस्य
6. कृषि विभाग के प्रतिनिधि	—	सदस्य
7. स्वास्थ्य शिक्षा विभाग के प्रतिनिधि	—	सदस्य
8. विधि विभाग के प्रतिनिधि	—	सदस्य
9. उच्च शिक्षा विभाग के प्रतिनिधि	—	सदस्य
10. तकनीकी शिक्षा विभाग, मंत्रालय के प्रतिनिधि	—	सदस्य
11. वाणिज्य एवं उद्योग विभाग के प्रतिनिधि	—	सदस्य

2. उक्त समिति के बिन्दु कमांक 5 से 11 के नामांकित प्रतिनिधि उप सचिव से अनिम्न स्तर के नहीं होंगे। तथा अंतर्विभागीय क्रय समिति के प्रमुख दायित्व निम्नानुसार होंगे:-

1. क्रय प्रक्रिया का पालन करना।
2. उच्च समिति से प्राप्त निर्देशों का पालन करना।
3. निविदा का अनुमोदन करना।
4. निविदा प्रबंधन एवं रेट कान्ट्रैक्ट का अनुमोदन करना।
5. निविदा संबंधी समस्त कार्यवाहियों का संपादन करना एवं उन पर निर्णय लेना।
6. विद्यार्थियों की आवश्यकता के अनुकूल एप्लीकेशन साफ्टवेयर का निर्धारण करना।
7. वित्तीय अनुशासन के अनुरूप निर्णय करना।
8. बैठक की कार्यवाही विवरण आदि जारी करने के लिए तकनीकी शिक्षा विभाग अधिकृत होगा।

3. इस कार्य हेतु आवश्यकतानुसार समय-समय पर क्रय के संबंध में यदि स्थापित नीति से विचलन की आवश्यकता हुई तो अंतर्विभागीय क्रय समिति का अध्यक्ष सक्षम अधिकारी से अनुमोदन प्राप्त करेगा।

छत्तीसगढ़ के राज्यपाल के नाम से  
तथा आदेशानुसार  
सही/-

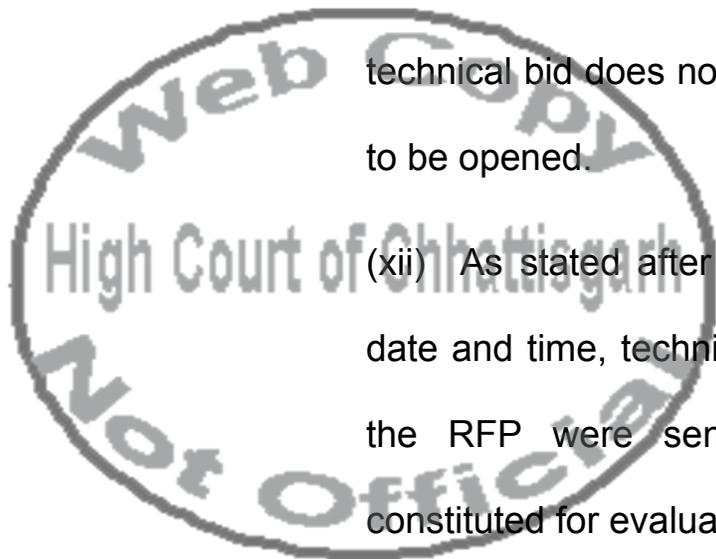
(जी. आर. मालवीय)  
उप सचिव

दूरभाष 0771-2510783

(xi) Thus, the procedure to be adopted after receiving technical bids is that the said bids are evaluated by the Specification Committee so constituted to the specification mentioned in the technical bids and would recommend the same to the Tender Committee which in turn, would evaluate the technical bid of all the bidders and thereafter recommend to the Purchase Committee with over all comments and opinion upon the technical bids received mentioning as to which of the bidders is technically qualified and which technical bid does not qualify or is ineligible for its financial bid to be opened.

(xii) As stated after opening of technical bids on scheduled date and time, technical bids of all the bidders in response to the RFP were sent to the Specification Committee so constituted for evaluation of specification.

(xiii) Based upon the evaluation and opinion of the Specification Committee, the Tender Committee recommended on 4-3-2016 that respondents No.3 and 4 were found conforming to the terms and conditions of RFP based on documents submitted with the bid and their subsequent clarifications. The Tender Committee has also evaluated the bid of M/s. ACER India Limited (petitioner herein) and found various deficiencies in its bid. The minutes of meeting of Tender Committee dated 4-3-2016 is as under:-



**Minutes of meeting of Tender Committee constituted  
under Chhattisgarh Yuva Suchana Kranti Yojana**

**Date 4<sup>th</sup> March, 2016**

**Ref: TENDER NO.02/CYSKY/DTE/LAPTOP/2016**

A meeting of Tender Committee, constituted for purchase and distribution of Laptops and Tablet Computers under Chhattisgarh Yuva Suchana Kranti Yojana, under the chairmanship of Additional Director, Directorate of Technical Education, Naya Raipur was convened in the Meeting Room, Block 3, 4th Floor, Room No. 19, Indrawati Bhawan, Naya Raipur on 4th March, 2016. The list of officers attended the meeting is enclosed as Annexure "A".

In Response to the RFP the following three bidders had submitted their proposals:

1. M/s HCL Infosystem Ltd. (Laptop OEM-Lenovo)
2. M/s HP India Pvt. Saes Ltd. (Laptop OEM-HP)
3. M/s Acer India Pvt. Ltd. (Laptop OEM-Acer)

The Techno-Commercial Envelop was opened on 28th February, 2016, in the presence of Tender committee member and representative of Bidders.

A meeting was held on 04.03.2016 for finalization of Technical Evaluation Report. The technical evaluation report was discussed by the committee members and finalized.

In continuation to the tender committee meeting dated 29<sup>th</sup> February, 2016 the clarification letter issued to all the bidders M/s Acer India Pvt. Ltd., Bengaluru, M/s. HCL Info Systems Ltd., Raipur, Hewlett-Packard India Sales Pvt. Ltd., Pune and last date for submission of clarification were 3<sup>rd</sup> March, 2016 by 03:00 PM. All the bidders submitted clarification response before the last date and time. The Tender committee has evaluated all the documents and clarification submitted by bidder.

The finalized Technical Report duly signed by the committee members is attached in Flag-'B'.

Following are the observations of Tender Committee after bid evaluation:

1. M/s. HP India Ltd. and M/s. HCL Infosystems Ltd. bids were found conforming to the terms and conditions of RFP based on

the documents submitted with bid and subsequent clarification.  
2. Tender committee has evaluated the bid of M/s. Acer India Ltd. And found following deficiencies in their bid.

√ It should be noted that Intel has not declared N3540 as end of life.

√ Products are available in the market with N3540 processor, and M/s. ACER India Ltd. is currently supplying model no. ES1-512 (with N3540 processor) to the students under C.G. Yuva Kranti Yojna in CHIPS rate contract.

√ Intel or any of the bidder's has not submitted any query regarding N3540 processor.

### **I. Processor Category**

“ As per the attached screenshot in ‘Annexure-C’: Screenshot from Intel website dated 04-02-2016’, it is clearly visible that the proposed processor ‘Intel Pentium Processor A1020’ falls into the ‘Desktop’ category. However as per the pre-bid response (Pre-Bid Response for RFP No: 02/CYSKY/DTE/LAPTOP/2016, Pg. No.2, S.No.14), it has been clarified that “The Processor should be launched after Q2, 2014 and launched under Laptop/ Mobile processor.

“ it should also be noted that the tender was floated on 28-01-2016. Consequently the pre-bid meeting was held on 03-02-2016 and the pre-bid response was released in website on 12-02-2016. However Intel changed the category of the proposed processor from ‘Desktop’ to ‘Mobile’ in their website as per ‘Annexure-D’: Screenshot from Intel website dated 03-03-2016’ compared to ‘Annex-C: Screenshot from Intel website dated 04-02-2016’. This ambiguity in Intel’s website results in confusion in categorizing the proposed processor.

### **II. Comparison of Proposed Processor A1020 with Base Processor N3540**

“ As per the pre-bid response (Pre-Bid Response for RFP No: 02/CYSKY/DTE/LAPTOP/2016, Pg. No. 2, S.No.14), it has been clarified that ‘Any equivalent/Higher processor of Intel will be evaluated based on specification of N3540 & any equivalent/Higher processor of AMD will be evaluated based on specification of A87410’. As per the comparison available in Intel’s website of the proposed processor ‘Intel Pentium Processor A1020’ and ‘Intel Pentium Processor N3540’ (at Annexure-E, from Intel’s website), the below table are the points where the Intel A1020 is lagging or information is

unavailable:

S.No.	Specification	Intel N3540	Intel A1020
1.	TDP	7.5 W	10W
2.	DirectX Support	11.2	-
3.	Intel Wireless Display	Yes	-
4.	No. of USB ports	5	-
5.	Total No. of SATA Ports	2	-
6.	Intel Smart Connect Technology	Yes	-
7.	Secure Key (Intel Data Protection Technology)	Yes	-

“ On the basis of above points it clearly establishes that the proposed processor ‘Intel Pentium Processor A1020’ is not equivalent or higher to the base processor ‘Intel Pentium Processor N 3540’ as per the tender.

“ As per Intel’s website (Annexure-C: List of Intel Pentium Processors with price, date of launch, etc.) the price of proposed processor A1020 is not available, while the price of base processor N3540 is available. Hence it cannot be established that price wise it is also equivalent or higher than the base processor mentioned in the RFP.

“ M/s. ACER India Ltd. could have quoted N3540 instead of A1020, as N3540 is not end of life and products are available with this processor in the ACER website (Annexure G).

### **III. BIS Certificate**

“ It is to be noted that the BIS certificate is provided to finished goods. The BIS certificate provided by M/s. ACER India Ltd. for their product ‘NE46RS’ (Annexure F-as per M/s ACER India Ltd. bid documents) is dated 30-12-2013 and renewed on 29-12-2015. However, as per the Intel’s website the proposed processor A1020 was launched in Q1’ 16. Hence, it is clear that the certificate produced by M/s. Acer India Ltd. is for old model which was launched in 2013. As BIS certificate is more than 2 years prior to the processor release date, so it clearly established that the produced BIS certificate is not for the quoted product with A1020 processor which is the mandatory requirement of RFP.

### **IV. DIMM Slots**

“ As per the pre-bid response (Pre-Bid Response for RFP No: 02/CYSKY/DTE/LAPTOP/2016, Pg. No. 16, S.No.61), it has been clarified that ‘This is to clarify that for expanding from 4 GB DDR RAM to 8 GB RAM, 2 DIMM slots have to be provided’. However as per specification provided (Compliance statement in M/s ACER India Ltd. bid documents) and declaration provided by M/s ACER India Ltd. (in M/s ACER India Ltd. bid documents, Declaration stating upgrading cost of 4 GB to 8 GB, additional cost of only 4 GB would be charged). M/s. Acer India Ltd. has submitted a letter on 19th Feb 2016 regarding removal of 2 DIMM slots from RFP. Hence based on the bid the product quoted with a single DIMM slot. This is clear deviation of tender specification and clarifications.

#### **V. Ambiguity in Product Models**

“ The various drivers for product NE46RS quoted by M/s ACER India Ltd. is available in market which means it is an old product. However the same product is not available in ACER India official website (Annexure-I).

#### **Recommendation by Tender Committee:-**

a. Tender Committee recommended that the bid submitted by M/s. Acer India Pvt. Ltd. is not meeting the requisite criteria, therefore the bid may be rejected.

b. Tender Committee has recommended that price bids of other two bidders M/s HCL Info Systems Ltd., and M/s. HP India Pvt. Ltd. may be opened.

Sd/-  
Abhijit Chakarvarty  
SC-TM  
CHiPS

Sd/-                      Sd/-  
Sanjay Sonwani      Pooja Shukla  
Account officer      Dy. Director-Finance  
Higher Education      DTE

Sd/-  
A.K. Singh  
Dy. Secretary-Finance  
Department of Finance

Sd/-  
M.F. Qureshi  
Addl. Director  
DTE

(xiv) Thereafter, a meeting of the Purchase Committee was convened on the same day (4-3-2016) and based upon the opinion of the Specification Committee and recommendations

of Tender Committee, the Purchase Committee in the meeting of inter-departmental purchase committee recommended for opening of the financial price bid of technically short listed bidders i.e. respondents No.2 and 3 herein. The following recommendation was made by the said committee:-

**Minutes of Meeting of Inter-departmental Purchase Committee constituted under Chhattisgarh Yuva Suchana Kranti Yojana**

Date 4<sup>th</sup> March, 2016

**Ref:-TENDER NO. 02/CYSKY/DTE/LAPTOP/2016**

A meeting of Inter-departmental Purchase Committee, constituted for purchase and distribution of Laptops and Tablet Computers under Chhattisgarh Yuva Suchana Kranti Yojana, under the Chairmanship of Commissioner-cum-Secretary, Directorate of Technical Education, Naya Raipur was convened in the Meeting Room, Block 3, 4th Floor, Room No. 19, Indrawati Bhawan, Naya Raipur on 4th March, 2016. The list of officers attended the meeting is enclosed as Annexure "A".

2. The Committee has gone through the Minutes of Meeting of Tender Committee dated 04th March, 2016, related to Tender No. 02/CYSKY/DTE/LAPTOP/2016, which is enclosed herewith enclosed as Annexure "B".

3. With reference to the MoM of Tender Committee dated 04th March, 2016, it is recommended to open the Financial/Price bid of Technically Short listed bidder/s 1. HCL Info Systems Ltd. Raipur, and 2. Hewlett-Packard India Sales Pvt. Ltd., Pune.

The meeting is concluded with the vote of thanks to all the members.

\*\*\*\*\*

**Annexure-A**

**LIST OF OFFICERS ATTENDED THE MEETING OF INTER-DEPARTMENTAL PURCHASE COMMITTEE, HELD ON 04TH MARCH, 2016**

1. Shri Kaushlendra Mishra, OSD, Govt. of Chhattisgarh,

Department of Agriculture, Raipur.

2. Dr. Sumeet Tripathi, Dy. Director, Directorate of Medical Education, Raipur.

3. Sh. M. R. Chouhan, Senior Account Officer, Govt. of Chhattisgarh, Law Department, Mantralay, Mahanadi Bhawan, Raipur.

4. Shri A. K. Singh, Dy. Secretary, Govt. of Chhattisgarh, Department of Finance, Mantralay, Mahanadi Bhawan, Raipur.

5. Sh. S. S. Bajaj, Commissioner-cu-Secretary, Directorate of Technical Education, Indrawati Bhawan, Naya Raipur.

6. Sh. Sanjay Sonwani, Account Officer, Department of Higher Education, Indrawati Bhawan, Naya Raipur.

7. Sh. Anil Sharma, Assistant Manager, CSIDC, Raipur.

8. Sh. Neelkanth Tekam, Dy. Secretary, Govt. of Chhattisgarh, Department of Skill Development, Technical Education, & Employment, Mantralay, Mahanadi Bhawan, Naya Raipur.

(xv) Acting upon the recommendation made by the Tender Committee, price bids of respondents No.3 and 4, who were technically short listed bidders, were opened and price bid of respondent No.3 was found to be lowest and ultimately, the Competent Authority/State Government accepted the price bid of respondent No.3 and entered into rate contract with respondent No.3 vide Annexure P-11 and issued necessary purchase order for supply of Laptops in his favour on 25-6-2016, which is the subject matter of challenge in this writ petition (Annexure P-11).

(xvi) The State/respondents No.1 and 2 by e-mail dated March 10, 2016 informed the petitioner the reasons for rejection of its bid, which states as under:-

From : jd-techeducg@gov.in on behalf of Himanshu Gupta

<jd- techedu.cg@gov.in >

Dt : Thursday, March 10, 2016 5:41 PM

To : Singh, Harjinder

CC : bajaj\_shyam

Subject: Re: Acer – Request for rejection reason of proposal against your tender for Laptop.

Dear Sir,

The following are the reasons for rejection of the bid submitted by M/s. Acer India Pvt. Ltd.

1. As per the clarification published on the website for RFP NO. 02/CYSKY/DTE/LAPTOP/2016), It has been clarified that “The Processor should be launched after Q2. 2014 and launched under Laptop/Mobile Processor.” The Processor quoted in the bid before publishing the corrigendum and after submission of bid is different.

2. After comparison of processor quoted in the Bid with benchmarked processor of Intel N 3540, the quoted processor is not found equivalent or higher with respect to benchmarked processor mentioned in the RFP.

3. The BIS certificate provided for model no. NE46RS is dated 30/12/2013 and renewed on 29/12/2015. As BIS certificate is more than 2 years prior to the processor release date, so it clearly established that the produced BIS certificate is not for the quoted product with A 1020 processor which is the mandatory requirement of RFP.

4. As per the clarification published on the website for RFP No. 02/CYSKY/DTE/LAPTOP/2016), it has been clarified that “This is to clarify that for expanding from 4 GB DDR RAM to 8 GB RAM, 2 DIMM slots have to be provided”. In the compliance statement submitted by M/s. Acer is not mentioned that they are providing the 2 DIMM slots or not, submitted a undertaking letter to upgrade the 4GB DDR RAM to 8 GB RAM with extra cost of 4 GB RAM.

5. The quoted model NE46RS is not available in the M/s. Acer official Website, where other models are available in the website.

Regards

Directorate of Technical Education

Chhattisgarh, Naya Raipur

(xvii) After receipt of reasons for rejection of its bid, the petitioner sent e-mail dated 10-3-2016, 14-3-2016 and letter dated 4-3-2016 and not satisfied with reasons for rejection of its technical bid, three e-mails were also sent by the Zonal Business Manager of the petitioner company dated 11-3-2016 and 18-3-2016 and all the letters and e-mails received from the petitioner company were referred to the Specification Committee for fair evaluation. The Specification Committee

gave its detailed recommendation covering the queries/complaints/objections raised by the petitioner company in detail. The recommendations are as under:-

**Recommendations based on above observation**

In view of the above observation for point no. 1 to 5, following points are quite clear:-

1. The state of the category of processor A1020, whether it is Desktop or Laptop category was not initially clear. However, given the fact that Intel website categorized the processor A1020 as of Laptop category, it may be assumed that the processor A 1020 falls in the Laptop category.

2. From the available documents and information, Intel Pentium Quad Core Processor A1020 is not found equivalent or higher to N3540, by the committee.

3. As per available records, the BIS certificate produced by M/s. Acer for the Model No. NE46Rs predates the said processor's launching date by 2 years. The claim of the said company, therefore, appears to be dubious.

4. Once again M/s Acer India (Pvt.) Ltd have failed to clarify its stand on the issue of DIMM slots in a convincing manner. Whereas in reply to the query made in this matter it has stated that "Acer will upgrade from 4 GB to 8 GB RAM at the differential cost of 4 GB RAM as an advantageous option for student." It was obfuscating on this issue.

5. On the basis of available information and records the Quoted Product, "Acer-Gateway NE46Rs, with processor A1020 as on date is not found to be available in the market.

It may thus be concluded that the Tender Committee has evaluated the technical aspects of the bids in a transparent and impartial manner, without prejudice.

(xviii) The above-stated recommendation was accepted by the State Government by order Annexure P-2 and representations of the petitioner were rejected by order dated 7-4-2016 and the result of consideration by the Specification Committee and the

rejection of the representations was communicated to the petitioner by memo dated 8-4-2016 which is also subject matter of challenge in this writ petition as Annexure P-2. The memo dated 08.04.2016 states as under:-

**DIRECTORATE OF TECHNICAL EDUCATION, CHHATTISGARH**

**संचालनालय तकनीकी शिक्षा, छत्तीसगढ़**

Block-3, 3<sup>rd</sup>-4<sup>th</sup> Floor, Indravati Bhavan, Naya Raipur – 492 002

ब्लाक-3, तृतीय-चतुर्थ तल, इन्द्रावती भवन, नया रायपुर दृ 492 002

Phone : 0771-2421376, Fax : 2331331, Website : <http://www.cgdteraiipur.ac.in>

क्रमांक/तक.शि./छयुसूकायो/26/2016/1384  
प्रति,

नया रायपुर, दिनांक 08/04/2016

मेसर्स एसर इंडिया प्राइवेट लिमिटेड,  
एम्बेसी हाईटस, छठवीं मंजिल-क्रमांक 13,  
मगरथ रोड, बेंगलोर, -560 025

विषय- छत्तीसगढ़ युवा सूचना क्रांति योजना के अंतर्गत लेपटॉप क्रय हेतु प्रकाशित निविदा 02/CYSKY/DTE/LAPTOP/2016 के तकनीकी मूल्यांकन के विषय में प्रस्तुत अभ्यावेदन।

संदर्भ:-1. श्री लिंगन जोसेफ, निदेशक, शासन एवं शिक्षा, इन्टेल टेक्नालॉजी इंडिया प्राइवेट लिमिटेड, 136, पुराना एयरपोर्ट रोड, बेंगलोर-560 017, द्वारा प्रेषित ईमेल (1) दिनांक 10 मार्च, 2016, अपरान्ह 02:05 एवं (2) दिनांक 14 मार्च, 2016, पूर्वान्ह 11:06.

2. आपका पत्र क्रमांक Acer/DTET-CG/Mar/2016/02, Date 11<sup>th</sup> March 2016.

3. श्री हरजिंदर सिंह, जोनल बिजनेस मैनेजर, एसर इंडिया प्राइवेट लिमिटेड, द्वारा प्रेषित ईमेल दिनांक (1) दिनांक 11 मार्च, 2016, अपरान्ह 11:28 एवं (2) दिनांक 14 मार्च, 2016, पूर्वान्ह 01:17 एवं (3) 18 मार्च, 2016 अपरान्ह 12:23.

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विषयांतर्गत आपके तथा इन्टेल टेक्नालॉजी इंडिया प्राइवेट लिमिटेड द्वारा सरल क्रमांक 01 से 03 में वर्णित संदर्भित पत्रों के माध्यम से छत्तीसगढ़ युवा सूचना क्रांति योजना के अंतर्गत लेपटॉप क्रय हेतु प्रकाशित निविदा क्रमांक 02/CYSKY/DTE/LAPTOP/2016 के अनुक्रम में तकनीकी शिक्षा संचालनालय, छत्तीसगढ़ में प्राप्त निविदाओं के तकनीकी मूल्यांकन प्रक्रिया के संबंध में आपत्तियों दर्ज करते हुए विभिन्न विषय वस्तुओं के संबंध में अभ्यावेदन प्रस्तुत किया गया है।

2. आपके द्वारा प्रस्तुत अभ्यावेदन का विधिवत परीक्षण कर उक्त के संबंध में प्रतिवेदन प्राप्त किए जाने हेतु प्रकरण लेपटॉप एवं टेबलेट कम्प्यूटर क्रय हेतु निर्धारित स्पेशिफिकेशन समिति को परीक्षण कर प्रतिवेदन प्रस्तुत करने हेतु अंतरित की गयी। समिति द्वारा अभ्यावेदन के विस्तृत परीक्षण उपरांत यह पाया गया कि पूर्व में टेण्डर समिति द्वारा किया गया मूल्यांकन नियमानुसार एवं सही है। समिति द्वारा यह भी पाया गया कि आपको पर्याप्त अवसर प्रदान किये जाने के उपरांत भी आप ठोस तरीके से अपना पक्ष रखने में असफल रहे। स्पेशिफिकेशन समिति द्वारा प्रस्तुत प्रतिवेदन की छायाप्रति संलग्न प्रेषित है।

(संलग्न क्रमांक-01)

3. स्पेशिफिकेशन समिति की अनुशंसा उपरांत संपूर्ण तथ्यों पर सूक्ष्मतापूर्वक विचारोपरांत राज्य शासन द्वारा आपके संदर्भित अभ्यावेदन को पत्र क्रमांक एफ 5-12/2016/तक.शि./42, दिनांक 07.04.2016 के माध्यम से अमान्य किया गया है। तदनुसार आपके द्वारा प्रस्तुत अभ्यावेदन को अमान्य किया जाकर आपको एतद् द्वारा संसूचित किया जात है।

संलग्न:- उपरोक्तानुसार

सही / -

(एस.एस.बजाज)  
आयुक्त-सह-सचिव

क्रमांक/तक.शि./छयूसूकायो/26/2016.....  
प्रतिलिनि- निम्नांकित को सादर सूचनार्थ:-

नया रायपुर, दिनांक 08/04/2016

1. प्रमुख सचिव, छत्तीसगढ़ शासन, कौशल विकास, तकनीकी शिक्षा, रोजगार एवं प्रशिक्षण विभाग, मंत्रालय, महानदी भवन, नया रायपुर।

सही/-  
आयुक्त-सह-सचिव

### **Scope of judicial review in contractual matter(s)**

14. Taking note of above-noted tender proceeding(s) would bring us to the scope of judicial review in contractual matters which is very well settled. However, it would be apposite to notice some of judgments of the Supreme Court delineating the scope of the judicial review in contractual matters profitably and usefully herein.

(1) In the matter of **Ramana Dayaram Shetty v. International Airport Authority of India**<sup>4</sup>, way back in the year 1979, their Lordships of the Supreme Court judicially reviewed the process of allotment of contracts by an instrumentally of State and declared that such process was amenable to judicial review. The Court held as follows:-

“10. ....It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli v. Saton*<sup>5</sup> where the learned judge said:-

An executive agency must be rigorously held to the standards

4 (1979) 3 SCC 489

5 359 U.S. 535 : Law Ed (Second series) 1012

by which it professes its action to be judged ..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed .... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword. ....”

(2) In the matter of **Sterling Computers Ltd. v. M & N Publication Ltd.**<sup>6</sup>, Their Lordships of the Supreme Court have held that while exercising the power of judicial review, in respect of contract entered into on behalf of the State, the Court is concerned primarily as to whether there has been infirmity in the decision making process, the Court can certainly examine, whether decision making process was reasonable, rational and not arbitrary and violative of Article 14 of the Constitution of India.

(3) In the matter of **Tata Cellular v. Union of India** (supra) the Supreme Court once again considered and held that judicial review would apply even to the exercise of contractual powers by the government and government institution in order to arrest arbitrariness and laid down the limitation for exercise of power in contractual matter. It was held as under:-

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order

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6 (1993) 1 SCC 445

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.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

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 fulfillment 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<sup>5</sup>, 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”.

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.”

(4) In **Dutta Associates Pvt. Ltd. v. Indo Mercantiles Pvt.**

**Ltd.** (supra), Their Lordships of the Supreme Court have held

that the manner and procedure for consideration of tender should be fair. It was observed as under: -

“7. ... The consideration of the tenders received and the procedure to be followed in the matter of acceptance of tender should be transparent, fair and open. While a bona fide error or error of judgment would not certainly matter, any abuse of power for extraneous reasons, it is obvious, would expose the authorities concerned.”

(5) In the matter of **Raunaq International Ltd. v. I.V.R. Construction Ltd.**<sup>7</sup>, the Supreme Court held that the writ petition challenging the award of contract should be entertained only when there is some public interest is involved in entertaining the writ petition. It was held as under:-

“10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfillment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied

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7 (1999) 1 SCC 492

that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.

(6) In the matter of **Air India Ltd. v. Cochin International Airport Ltd.**<sup>8</sup>, the Supreme Court laid down the principles as to how the discretionary jurisdiction under Article 226 should be cautiously exercised in the matter of awarding contract keeping in view the public interest. It has held as under:-

“7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India*, *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India*, *CCE v. Dunlop India Ltd.*, *Tata Cellular v. Union of India*, *Ramniklal N. Bhutta v. State of Maharashtra* and *Raunaq International Ltd. v. I.V.R. Construction Ltd.* The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its

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8 (2000) 2 SCC 617

own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”

(7) In the matter of Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. and another<sup>9</sup>, their Lordships of the Supreme Court have held that fair play in joints is necessary concomitant for an administrative body. It was held as under:-

“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

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9 (2005) 6 SCC 138

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.”

(8) In the matter of **Jagdish Mandal v. State of Orissa**<sup>10</sup>, the Supreme Court noticed earlier pronouncement in Sterling Computer (supra), Tata Cellular (supra), Air India (supra) and indicated the relevant factors to be kept in mind before interfering in tender or contractual matter in exercise of power of judicial review. It was held as under:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is

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10 (2007) 14 SCC 517

made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

(9) The High Court of Himachal Pradesh, in the matter of **Reliance Infrastructure Limited v. State of Himanchal Pradesh and others**<sup>11</sup>, after considering the entire law and the

principles laid down in Tata Cellular (supra) and **Reliance Airport Developers Pvt. Ltd. v. Airport Authority of India**<sup>12</sup>, the Division Bench speaking through one of us (Deepak Gupta, CJ) (as then his Lordship was Hon'ble Judge of Himachal Pradesh High Court) held as under:-

“31. There can be no manner of doubt that while taking administrative decisions relating to contractual matters, the Government cannot be put into a straitjacket. It must have the power to negotiate and to ensure that the best deal is available to it. In contractual matters the State is like any other contracting party and therefore, must ensure that in case it is purchasing goods it purchases the best quality goods at the cheapest price and if it is distributing the assets of the State then it gets the highest price for the same. The State, therefore, has to have some leeway and ‘play in the joints’ to negotiate in a business like fashion. However, this power of ‘paly in the joints’ must be exercised reasonably and fairly and not in an arbitrary or biased manner. Furthermore, decision of the arbitrator should not be irrational and must be based on the material on record. What this Court has to decide is not whether the decision is right or wrong but whether there is any infirmity in the decision making process. ....”

(10) In **Reliance Energy Ltd.** (supra), the Supreme Court emphasized the need that terms and conditions must be certain and it should not be vague, and observed as under: -

**38.** When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This “legal certainty” is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of “level playing field”.

39. In *Reliance Airport Developers (P) Ltd. v. Airports Authority of India*<sup>13</sup> the Division Bench of this Court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision-maker must understand correctly the law that regulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of “judicial review” cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, *however, such difference of opinion must be based on specified norms*. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of the rule of law will not arise. The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above “certainty” is an important aspect of the rule of law. In *Reliance Airport Developers* the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks at different stages. Objectivity was thus provided.

(11) In the matter of **Heinz India (P) Ltd. v. State of U.P.**<sup>14</sup>,

Their Lordships of the Supreme Court have held, that power of judicial review doesn't allow the court of review to examine the

13 (2006) 10 SCC 1

14 (2012) 5 SCC 443

evidence with a view to forming its own opinion about the substantial merits of the case, it was observed as under:-

“60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of “judicial review” one is instantly reminded of the classic and oft-quoted passage from Council of Civil Service Unions v. Minister for the Civil Service<sup>13</sup>, where Lord Diplock summed up the permissible grounds of judicial review thus: (AC pp. 410 D, F-H and 411 A-B)

“... Judicial review has I think developed to a stage today `when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. ...

By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By ‘irrationality’ I mean what can by now be succinctly referred to as ‘Wednesbury<sup>15</sup> unreasonableness’. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to

<sup>15</sup> Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (1948) 1 KB 223

answer, or else there would be something badly wrong with our judicial system. ...

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

68. We may while parting with the discussion on the legal dimensions of judicial review refer to the following passage from *Reid v. Secy. of State for Scotland*<sup>16</sup> which succinctly sums up the legal proposition that judicial review does not allow the court of review to examine the evidence with a view to forming its own opinion about the substantial merits of the case. (AC pp. 541 F-H and 542 A)

"Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse, or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see

if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence.”

(12) In the matter of **Michigan Rubber (India) Limited v. State of Karnataka and others**<sup>17</sup>, Their Lordships of the Supreme Court restated the nature and scope of judicial review in contractual matter and held that the court's interference is very restricted and limited and interference is not warranted unless action of tendering authority is malafide and is a misuse of statutory authority and culled out following proposition of law as under:-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226."

(13) In the matter of **Kalinga Mining Corpn. v. Union of India**<sup>18</sup>, the Supreme Court noticed the judgment of **Tata Cellular** (supra) and held that court doesn't exercise power of an appellate court in exercise of powers of judicial review. It

<sup>18</sup> (2013) 5 SCC 252

was pertinently held as under:-

“62. It is by now well settled that judicial review of the administrative action/quasi-judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be reappreciated by the Court in exercise of its powers of judicial review. The Court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi-judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the Court would be justified to interfere with the decision. The scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be erroneous.”

(14) In the matter Sanjay Kumar Shukla v. Bharat Petroleum Corpn. Ltd.<sup>19</sup>, Their Lordships of the Supreme Court struck a note of caution against the entertainment of writ petition in contractual matter unless justified by public interest and held as under:-

“19. We have felt it necessary to reiterate the need of caution sounded by this Court in the decisions referred to hereinabove in view of the serious consequences that the entertainment of a writ petition in contractual matters, unless justified by public interest, can entail. Delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast-changing economic/market scenario are some of

the pitfalls that may occur.”

(15) In the matter of **Siemens Aktiengesellschaft and Siemens Limited v. Delhi Metro Rail Corporation Limited and others**<sup>20</sup> again Their Lordships of the Supreme Court reiterated the principles of law laid down in **Ramana Dayaram Shetty** (supra), **Tata Cellular** (supra), **Jagdish Mandal** (supra) and **Heinz India** (supra) and held as under:-

“18. The principles governing the judicial review of administrative decisions are now fairly well settled by a long line of decisions rendered by this Court since the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* (supra) which is one of the earliest cases in which this Court judicially reviewed the process of allotment of contracts by an instrumentality of the State and declared that such process was amenable to judicial review. Several subsequent decisions followed and applied the law to varied situations but among the latter decisions one that reviewed the law on the subject comprehensively was delivered by this Court in *Tata Cellular* case (supra) wherein this Court once again reiterated that judicial review would apply even to the exercise of contractual powers by the Government and government instrumentalities in order to prevent arbitrariness or favouritism. Having said that this Court noted the inherent limitations in the exercise of that power and declared that the State was free to protect its interest as the guardian of its finances. This Court held that there could be no infringement of Article 14 if the Government tried to get the best person or the best quotation for the right to choose cannot be considered to be an arbitrary power unless the power is exercised for any collateral purpose. The scope of judicial review, observed this Court, was confined to the following three distinct aspects:

- (i) Whether there was any illegality in the decision which would imply whether the decision-making authority has understood

correctly the law that regulates his decision-making power and whether it has given effect to it;

(ii) Whether there was any irrationality in the decision taken by the authority implying thereby whether the decision 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 the same; and

(iii) Whether there was any procedural impropriety committed by the decision-making authority while arriving at the decision.

It was very pertinently observed by their Lordships qua the scope of interference in such an matter:-

“21. ....What the court has to constantly keep in mind is that it doesn't sit in appeal over the soundness of decision. The court can only examine, whether the decision making process, was fair, reasonable and transparent. In cases involving award of contract, the courts ought to exercise, judicial restraint, where decision is bonafide with no perceptible injury to public interest.”

(16) In the matter of **Elektron Lighting System Pvt. Ltd. and Ors. v. Shah Investments Financial Developments and Consultants Pvt. Ltd. and others**<sup>21</sup>, the Supreme Court followed with approval the principles of law laid down in **Tata Cellular** (supra), **AIR India Ltd.** (supra) and **Jagdish Mandal** (supra).

(17) In an extremely recent judgment delivered by Their Lordships of the Supreme Court in the matter of **State of**

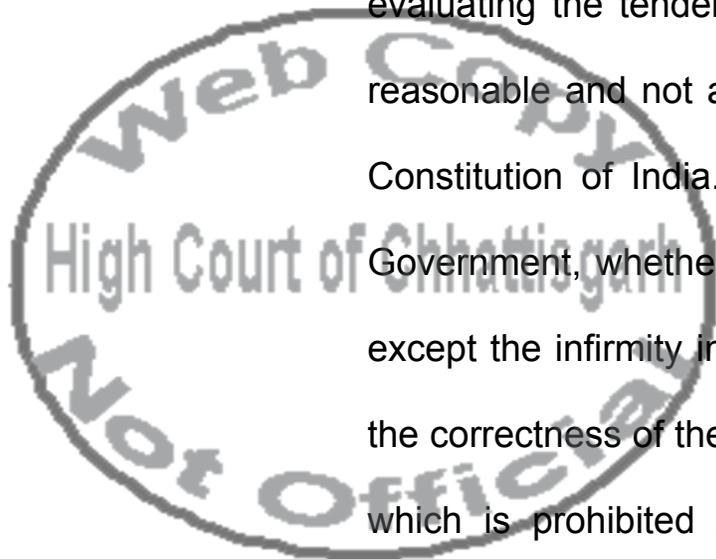
**Jharkhand and others v. CWE-SOMA Consortium**<sup>22</sup>, in which competent authority cancelled the tender due to lack of adequate competition and decided to invite fresh tender, which was set-aside by the High Court exercising the power of judicial review, Their Lordships of Supreme Court did not approve the judgment of the High Court and held that while exercising power of judicial review, court doesn't sit as appellate court over the decision of government but merely reviews the manner in which decision was made following the decision of **Tata Cellular** (supra) and **Master Merine Service Pvt. Ltd.** (supra). It was held as under:-

“18. ....While so, the high Court was not justified to sit in judgment over the decision of tender Committee and substitute its opinion on the cancellation of tender. Decision of the State issuing tender notice to cancel the tender and invite fresh tenders could not have been interfered with by the High Court unless found to be mala fide or arbitrary. When the authority took a decision to cancel the tender due to lack of adequate competition and in order to make it more competitive, it decided to invite fresh tenders, it cannot be said that there is any mala fide or want of bona fide in such decision. While exercising judicial review in the matter of Government contracts, the primary concern of the Court is to see whether there is any infirmity in the decision-making process or whether it is vitiated by mala fide, unreasonableness or arbitrariness.”

21. 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 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.”

15. On a conspectus of above-quoted judgments of the Supreme Court, it is quite vivid that the scope of judicial review of this Court in contractual matters is extremely limited. It is neither unlimited nor unrestricted power. Scope of judicial review is confined to decision making process of the Government in evaluating the tender process, whether the process was fair, reasonable and not arbitrary and violative of Article 14 of the Constitution of India. Correctness of decision taken by the Government, whether it is right or wrong cannot be gone into except the infirmity in decision making process. Interfering in the correctness of the decision would be entering into the area which is prohibited and restricted but the decision making process can certainly be interfered with, if it is found to be arbitrary or irrational or mala fide exercise of power. This Court does not sit in appeal over the decision of the Government taken in this regard, but it must be based on record. While entertaining the writ petition, the Court has to look into the involvement of public interest in the matter, as the delay in judicial process would deprive the benefit flowing from the contract and it is likely to escalate cost burdening the public exchequer. While exercising this power of judicial review, this Court cannot substitute its own decision.



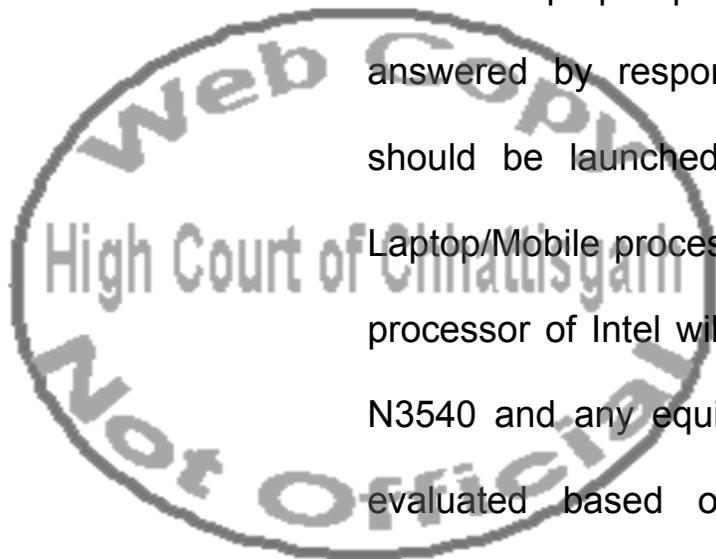
However, in case selection or rejection is arbitrary, certainly, power of judicial review is available to the Court.

### **Consideration and Discussion**

16. Now, we proceed to examine the matter in hand keeping in view the principles of law so laid down by the Supreme Court qua the scope of judicial review in award of contract in the above-noted judgments. The Chhattisgarh Yuva Soochana Kranti Yojana was launched by the State of Chhattisgarh for providing free of cost laptops and tablets to last year students of technical courses including Engineering, Medical and other technical institutions and for which global NIT was floated for empanelment of agency for supply and commissioning of laptop inviting Request for Proposal (RFP). The RFP was in three bid system, Earnest Money Deposit (EMD), tech-commercial bid and price bid. After the issuance of RFP, two corrigendums relating to Revised Laptop Specifications with reference to Keyboard, Cloud enabled, Operating System, Last Date for Submission of Bids and Date of Opening of Tech-commercial Bids, were issued. Last date for submission of bids was extended from 18-2-2016 to 25-2-2016 up to 3 p.m. and date of opening of tech-commercial bids was extended up to 25-2-2016 at 3.30 p.m.. In the meanwhile, pre-bid conference was held on 3-2-2016 and pre-bid clarification was issued on 12-2-2016 by respondent No.2 herein. As per



the RFP (Annexure-I), the Laptop Specification – Processor was required to be Latest Generation Intel Pentium Quad Core processor N 3540 or AMD Quad Core processor A8 7410 processor (clock speed of minimum 2.1 GHZ) 2 MB Cache. Likewise, Memory was required to be of 4GB DDR 1333 MHz RAM expandable up to 8 GB. Pursuant to the pre-bid query and response, pre-bid clarification was issued on 12-2-2016 by respondent No.2. With regard to the Processor mentioned in the Laptop Specification requiring clarification, it was answered by respondent No.2 stating that the Processor should be launched after Q2, 2014 and launched under Laptop/Mobile processor and secondly, any equivalent/Higher processor of Intel will be evaluated based on specification of N3540 and any equivalent/Higher processor of AMD will be evaluated based on specification of A87410. Similar clarification was given pursuant to the clarification sought at serial No.73 of pre-bid clarification issued by respondents No.1 and 2. With regard to Laptop Specification requiring clarification it has been clarified vide serial No.61 that for expanding from 4 GB DDR RAM to 8 GB RAM, 2 DIMM slots have to be provided. Thus, with regard to the Laptop Specification particularly, Processor and Memory specification as prescribed in the RFP was clarified pursuant to the pre-bid response issued from the intending bidders by respondents No.1 and 2 and further, no such query was raised.



17. Thus, from the above-stated narration of facts, it is quite vivid that Laptop Specifications as mentioned in the RFP particularly, with regard to the Laptop Specification qua Processor and Memory was made clear to the respective bidders including the petitioner by issuance of pre-bid clarifications. Therefore, the petitioner as well as respondents No.3 and 4 were well aware of and have accepted the tender conditions as clarified particularly, the specification required which were free from any uncertainty or vagueness and all bidders including the petitioner proceeded for submission of their bids in light of the Laptop Specifications mentioned in the tender documents attached with the RFP as well as pre-bid clarifications made by respondents No.1 and 2 and duly accepted by the aforesaid bidders, and they cannot be allowed to raise any grievance at this stage, after they have participated in bidding process with full information.

18. Not only this, on 1-3-2016, respondents No.1 and 2, after the bid was submitted by the petitioner, by their memo Annexure P-6 dated 1-3-2016 sought following clarifications for evaluation of Laptop tender: -

- a) BIS certificate submitted is Dated 30/12/2013 for 4250S, Gateway **NE46RS**. Other supporting documents are also attached for the same year. The processor quoted is launched in Q1 16 where as BIS certification submitted is for the year 2013. Please clarify whether BIS certificate has been obtained for the processor

quoted along with the supporting document.

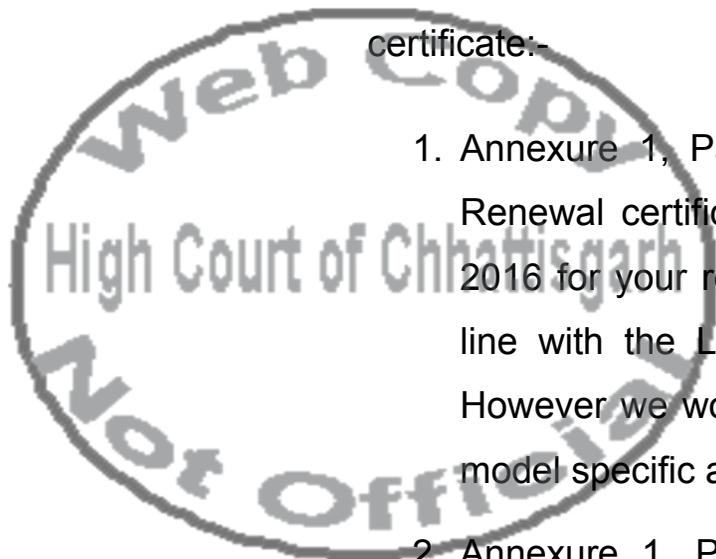
- b) Brochure and Data sheet for proposed product is not available. Which was mandatory document as per Page no.12 heading The tech-commercial bid must contain point no.4. Please clarify.

Technical Specification required in compliance Column provided in Annexure-1 as per RFP to check the exact specifications w.r.t. RFP.

19. The said clarifications were replied by the petitioner on 3-3-2016 as under and the petitioner also submitted the certificate:-

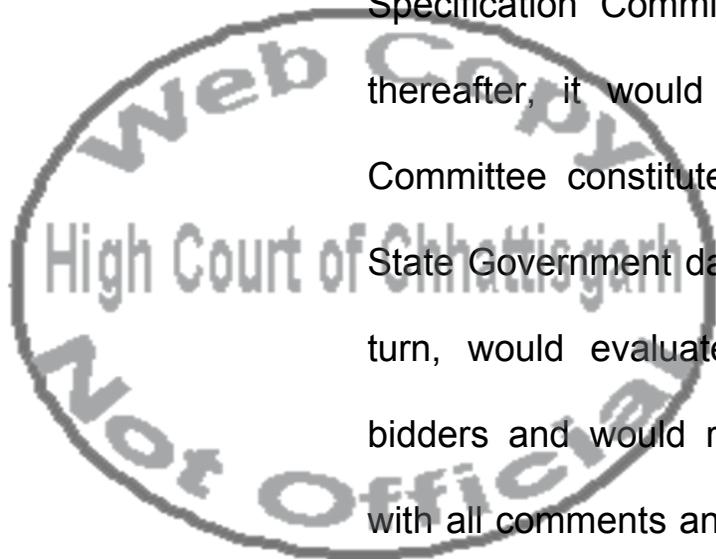
1. Annexure 1, Page 2, Point a): Please find enclosed Renewal certificate which is issued by BIS in January, 2016 for your records for Gateway NE46RS which is in line with the Launch Period of the current processor. However we would like to clarify that BIS certification is model specific and not Processor specific.
2. Annexure 1, Page 2, Point b): Datasheet we have already submitted with the bid, however we are submitting Datasheet and E-Brochure again for your reference and necessary action.
3. Annexure 1, Page 2, Point c): Exact Technical Specification against Annexure I of RFP and subsequent corrigendum I & II has been attached.

20. Thus, the petitioner as well as respondent No.3 submitted their bids in light of the Laptop Specifications / technical specifications made in the RFP read with the pre-bid clarifications issued on 12-2-2016 and the tech-commercial bid was opened on 25-2-2016 at 3.30 p.m.. Immediately the tech-

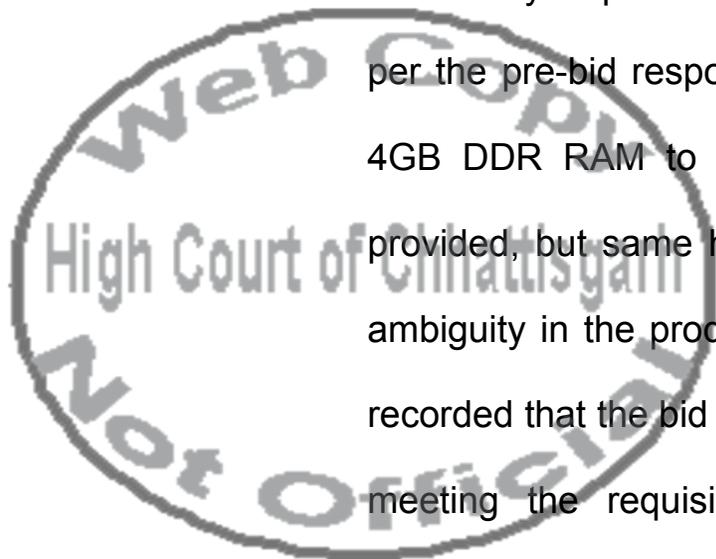


commercial bids were opened in presence of various representatives of the parties as per clause 7.2 of the RFP and as such, the terms and conditions for bidding by all the bidders were clear and suffer from no uncertainty or vagueness.

21. The procedure to be followed in evaluation of bids has been specified by the State Government in three-tier system firstly, the specifications mentioned are evaluation by the Specification Committee by making comparative chart and thereafter, it would recommend the same to the Tender Committee constituted in accordance with the order of the State Government dated 7-1-2016 and the said Committee in turn, would evaluate the tech-commercial bids of all the bidders and would recommend to the Purchase Committee with all comments and opinions upon the tech-commercial bid received recommending as to which of the bidders is technically qualified and which does not qualify or is ineligible for technical bid to be opened as per the direction dated 7-1-2016. Accordingly, after opening of bids, technical bids of all the bidders in response to the RFP were sent to the Specification Committee. The Specification Committee considered the matter and sent its evaluation / comparative statement to the Tender Committee. The Tender Committee in its meeting dated 4-3-2016 found respondents No.3 and 4 conforming to the terms and conditions of the RFP based on



documents submitted with the bid and subsequent clarification, but found the bid of the petitioner deficient in certain aspects particularly, with regard to the Processor category and the proposed Processor of the petitioner 'Intel Pentium Processor A1020' is not equivalent or higher to the base processor 'Intel Pentium Processor N3540' as per the tender and also found that the produced BIS certificate is not for the quoted product with A1020 processor which is the mandatory requirement of the RFP, and further found that as per the pre-bid response with clarification for expanding from 4GB DDR RAM to 8 GB RAM, 2 DIMM slots have to be provided, but same has not been complied with and there is ambiguity in the product model and therefore, the Committee recorded that the bid submitted by M/s. ACER India Ltd., is not meeting the requisite criteria, therefore the bid may be rejected and further recommended that the price bids of other two bidders i.e. M/s. HCL Infosystems Ltd. – respondent No.4 herein and M/s. Hewlett Packard India Sales Pvt. Ltd. – respondent No.3 herein may be opened. On the same day, the multimembered Inter Departmental Purchase Committee met and considered the matter threadbare and after considering the minutes of meeting of the Tender Committee, the said Inter Departmental Purchase Committee decided to recommend opening of the financial bid / price bid of technically short listed bidders i.e. respondents No.3 and 4



herein. Accordingly, based upon the recommendations of the Inter Departmental Purchase Committee, financial bids of technically short listed bidders were opened and in the price bid, respondent No.3 was found to be the lowest bidder and its bid was accepted and vide Annexure P-11, Rate Contract was signed and purchase order for Laptop under the said Yojana was issued on 26-5-2016. Not only this, replying the petitioner's request, reasons for rejecting its bid was communicated vide Annexure P-1 and thereafter, series of representations submitted by the petitioner were referred to the Specification Committee and the Specification Committee after consideration held that the Tender Committee has evaluated the technical aspects of the bids in a transparent and impartial manner, without prejudice.

22. The first and foremost objection is with regard to the Processor. As already indicated in Annexure-I attached to the RFP – Laptop Specification, the Processor was required to be of latest generation Intel Premium Quad Core Processor N3540 or AMD Quad Core Processor A8 7410 Processor (clock speed of minimum 2.1 GHZ) 2 MB Cache, which was duly clarified by the pre-bid clarification dated 12-2-2106 clearly stating that the Processor should be launched after Q2, 2014 and launched under Laptop / Mobile Processor; and any equivalent / higher processor of Intel will be evaluated based on specification of N3540 and any equivalent / higher



processor of AMD will be evaluated based on specification of A87410.

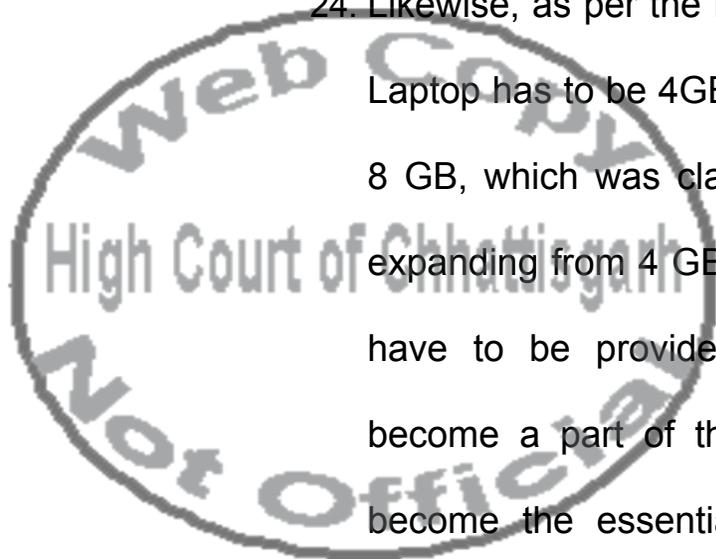
23. The Tender Committee which is a high powered committee presided over by the Director, Technical Education with seven other members, scrutinized and evaluated the Processor specified in the RFP read with pre-bid clarification and thereafter clearly evaluated the tenders based on specification of N3540 and found that the proposed Processor of the petitioner is lacking and the proposed Processor 'Intel Pentium Processor A1020' is not equivalent or higher to the base Processor 'Intel Pentium Processor N3540' as per the RFP specification. Once the high powered committee consisting of technical experts has considered the matter and found that the proposed Processor is not up to the specification required by respondents No.1 and 2 in its tender specification giving clear and valid reasons for holding that the proposed Processor is not equivalent to the Processor as per specification mentioned in the tender documents, this Court cannot enter into the correctness of the decision of experts and say that the proposed Processor of the petitioner is as per the specification required, sitting over the decision taken by experts. It is for technical experts to decide which Processor is as per the tender specification. As held by Their Lordships of the Supreme Court in afore-noted judgments (supra), this Court cannot enter into prohibited area and decide whether the



decision of the Government is right or wrong, this Court can only examine the decision making process. Once the process is found to be fair and reasonable, this Court is not required to step in further and to declare no interference in the decision of the Government to enter into contract with eligible bidder as the process of evaluation made by the Government in evaluating the bids is just, proper and fair, it is neither mala fide nor irrational.

24. Likewise, as per the RFP Laptop Specification, the Memory in Laptop has to be 4GB DDR 1333 MHz RAM expandable up to 8 GB, which was clarified by the pre-bid clarification that for expanding from 4 GB DDR RAM to 8 GB RAM, 2 DIMM slots have to be provided. Thus, the clarification issued has become a part of the tender documents / RFP and it has become the essential condition which was required to be fulfilled by the petitioner in the proposed Laptop to be supplied while bidding.

25. The Tender Committee has noted that instead of providing two DIMM slots as required by the RFP / tender specification read with pre-bid clarification, the compliance statement has been by the petitioner in bid documents and a declaration has been made by it stating, upgrading cost of 4 GB to 8GB and additional cost of only 4 GB would be charged, which has been held to be clear deviation of tender specification and



clarification issued therein.

26. A DIMM or dual in-line memory module comprises a series of dynamic random-access memory integrated circuits. In computer world, most computers now-a-days, use “dual channel” memory architecture that benefits from having RAM spread across multiple DIMMs. So having eight gigabytes (GB) of RAM spread across two four-gigabyte DIMMs will usually lead to better performance than eight gigabytes of RAM all in one DIMM. Even most modern laptops are able to use two DIMM slots at the same time, resulting in an average performance increase to some extent and according to the respondent-State, two DIMM slots will be best suitable to the requirement of students to whom the laptops are to be distributed.

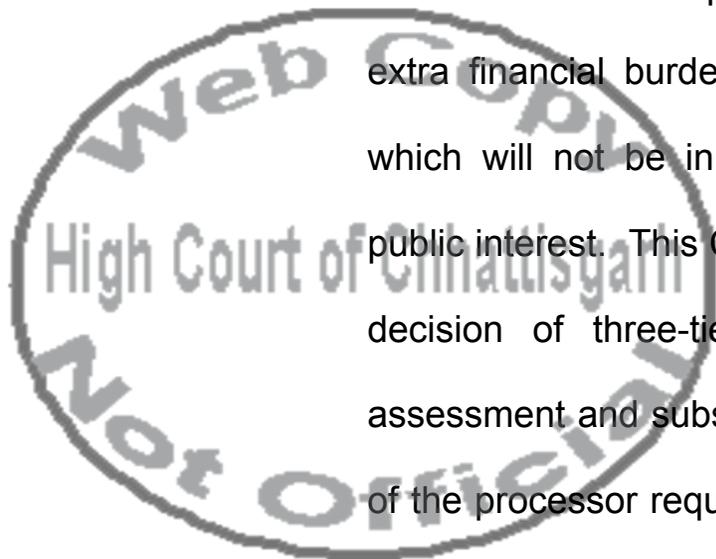
27. Whatever the advantages may be of using two DIMM slots, but once the RFP / tender specifications read with pre-bid clarifications provide for two DIMM slots specification to be provided by the bidder, it becomes an essential condition of eligibility and it has to be scrupulously and religiously followed by the bidder while bidding and the petitioner cannot put a clause or caveat while submitting his bid claiming up-gradation by taking additional cost to upgrade from 4 GB to 8 GB RAM. It is for the petitioner – bidder who has to comply with the specifications specified in the bid documents to make its bid

responsive as per specification required and the bid has to be submitted, otherwise, the bidder has to be held to be ineligible for bidding and in the present case, the petitioner's bid has rightly been held to be not responsive for not providing the required two DIMM slots specification. Likewise, BIS certificate was submitted by the petitioner which was of 30-12-2013 and after evaluating the said certificate, the Tender Committee has clearly found that the BIS certificate is more than 2 years prior to the processor release date as such, the produced BIS certificate is not for the quoted product with A1020 processor which is the mandatory requirement of the RFP. Likewise, in respect of the proposed Processor by the petitioner 'Intel Pentium Processor A1020', the Tender Committee after due evaluation has reached to the conclusion of desktop category holding that its category has been changed from desktop to laptop by the said company to meet the tender specification assigning reasons. However, the Specification Committee has considered the issue of category of Processor in its subsequent recommendation differently.

28. In light of above analysis, we are of the view that this Court cannot sit in judgment over the decision of the Specification Committee which has made comparative technical assessment and which has been further evaluated by the Tender Committee and accepted by the Inter Departmental Purchase Committee holding the proposed processor of the



petitioner not equivalent to the processor as required by the RFP specification read with pre-bid clarification issued by the State/respondents No.1 and 2 and accepted by the accepting authority. Likewise, the provision for two DIMM slots is provided in the tender documents duly clarified by pre-bid clarification issued by respondents No.1 and 2 and this Court cannot hold the decision of the Government irrational or arbitrary i.e. asking for two DIMM slots and compelling the Government to accept laptop with one DIMM slot and to incur extra financial burden for up-gradation from 4 GB to 8 GB which will not be in public interest and will be against the public interest. This Court also cannot sit in judgment over the decision of three-tier committee constituted for technical assessment and substitute its own opinion on the equivalence of the processor required by the RFP / tender documents and submitted by the petitioner, and it cannot be interfered with as it has neither to be shown to be suffering from mala fide or arbitrariness while exercising judicial review in the matter of Government contracts where the only concern of the Government is to see whether there is infirmity in the decision making process or whether it is vitiated by mala fide or unreasonableness or arbitrariness. The Court does not have the expertise to correct administrative decisions. The Courts are not concerned with the ultimate decision but only concerned with the fairness of decision making process and



the Government must have the freedom of contract once it is found to be fair, reasonable and consistent with the provision contained in Article 14 of the Constitution of India.

29. Mr. J.K. Gilda, learned Advocate General, has contended that bids of bidders have been evaluated by the Specification Committee and thereafter, further evaluated by the Tender Committee and ultimately, recommendation has been made by the Tender Committee to the Inter Departmental Purchase Committee which has finally recommended the opening of price bids or financial bids of respondents No.3 and 4 as such, these bodies are high level technical assessment committees including technical experts in technical matters like specification of laptop and therefore, the decision taken by the experts' committee is not to be interfered with.

30. The Supreme Court in the matter of **Federation of Railway Officers Assn. v. Union of India**<sup>23</sup> laid down the principle applicable with regard to the decision taken by experts and observed as under: - (SCC p. 302, para 18)

“18. ... Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should re-examine to interfere with the same. The wholesome rule in regard to judicial interference in

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23 (2003) 4 SCC 289 : (2003) 2 SCR 1085

administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same.”

31. Similar is the decision laid down by the Supreme Court in the matter of **N.D. Jayal v. Union of India**<sup>24</sup> which reads thus:

(SCC p. 380, para 20)

“20. This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may themselves differ in their opinions while taking decisions on matters related to safety and allied aspects. The opposing viewpoints of the experts will also have to be given due consideration after full application of mind. When the Government or the authorities concerned after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the court to interfere.”

32. In a recently pronounced judgment of the Supreme Court in the matter of **Siemens Aktiengesellschaft and Siemens Limited** (supra), the Supreme Court took note of the decisions of **Federation of Railway Officers Assn.** (supra) and **N.D. Jayal** (supra), and held that so long as the view taken by the experts of the authority competent to take a final decision is a possible view, the Court should not interfere and observed as under in paragraph 30 of its report: -

“30. It was contended by Mr. Lalit that the report submitted by the Committee appointed by the Government ought to be taken as expert opinion on the subject and given due weight. That position was disputed by Mr. Andhyarujina appearing for DMRC and Mr. Venugopal appearing for HR. That

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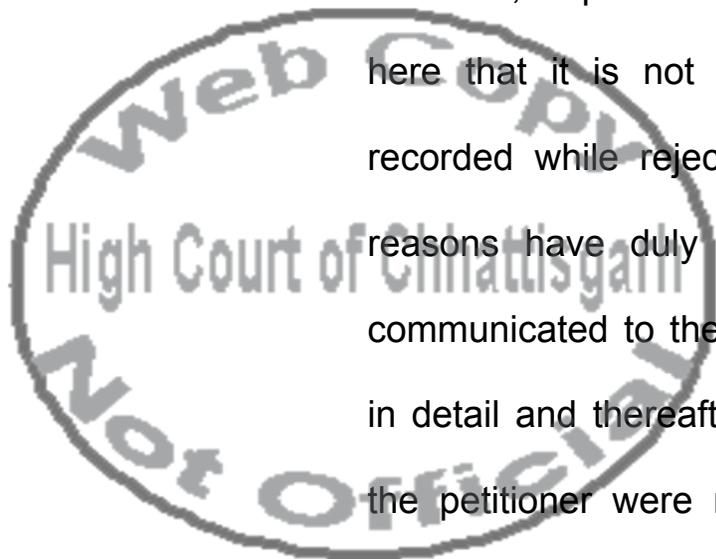
24 (2004) 9 SCC 362

the Committee comprised a former Finance Secretary to the Government of India and a Civil Engineer, none of whom could claim to be the expert in the field relevant to the achievability of the GEC values, was not disputed by Mr. Parasaran who urged that the Committee may have taken the opinion of some experts on the subject. Even assuming that the Committee has taken expert advice regarding the tenability of the GEC values offered by HR, it would simply mean that there is a conflict between the views taken by the experts of DMRC and those consulted by the Committee. Any such conflict cannot be resolved by this Court in exercise of its powers of judicial review. So long as the view taken by the experts of the authority competent to take a final decision is a possible view the very fact that some other experts have expressed doubts about the sustainability of the GEC values will not be enough for us to declare that the values offered by HR are indeed unachievable.”

33. In his ancillary argument, Mr. Sinha has also submitted that the Inter Departmental Purchase Committee which is a committee competent to finally assess the tenders of the bidders has in its minutes of meeting dated 4-3-2016 has not expressly rejected the technical bid of the petitioner and has also not assigned any reason for rejecting the technical bid of the petitioner therefore, rejection of tech-commercial bid of the petitioner is bad in law.

34. We may mention here at the cost of repetition to consider the plea of the petitioner that firstly, bids of the bidders were evaluated by the Specification Committee and thereafter, the Tender Committee has considered the matter threadbare, as it appears from the report of the Committee placed before this Court, and the Tender Committee has recorded detailed

minutes of meeting with regard to technical bids of the three bidders namely the petitioner, respondent No.3 and respondent No.4, and which was considered by the high power Inter Departmental Purchase Committee which took a conscious decision to recommend to open the technical/price bids of technically shortlisted bidders i.e. respondents No.3 and 4, and thereafter, financial bids of respondents No.3 and 4 were opened and respondent No.3 was found to be lowest and thus, its price bid was accepted. It is pertinent to mention here that it is not the case that reasons have not been recorded while rejecting the technical bid of the petitioner, reasons have duly been recorded and which have been communicated to the petitioner vide Annexure P-1 which are in detail and thereafter, various representations submitted by the petitioner were referred to the Specification Committee and the Specification Committee considered the representations of the petitioner in detail and found that the evaluation made by the Tender Committee with respect to technical aspect of bid is in transparent and impartial manner and the entire consideration of the Specification Committee was communicated to the petitioner along with memo Annexure P-2 by the State/ respondents No.1 and 2 and the representations were rejected vide Annexure P-2 which was sought to be challenged in the instant writ petition. So, reasons have been recorded by the State Government while



rejecting the petitioner's tech-commercial bid and it has duly been communicated to the petitioner also. The committees are constituted to assist the final authority in taking final decision.

35. However, to answer the argument raised on behalf of the petitioner, the judgment of the Supreme Court in **Reliance Airport Developers Pvt. Ltd.** (supra) may be referred herein fruitfully. The Supreme Court was dealing with a case relating to disinvestment and privatization of Delhi and Mumbai airports. The selection process laid down certain criteria to be followed by the State. The final decision was to be taken by the Empowered Group of Ministers (EGOM). The Empowered Group of Ministers constituted various Committees and considered their recommendations. The Supreme Court held that it was within the powers of Empowered Group of Ministers to decide what inputs it can take note of and from which sources these inputs should be obtained. Thereafter, the Court went on to hold as follows:

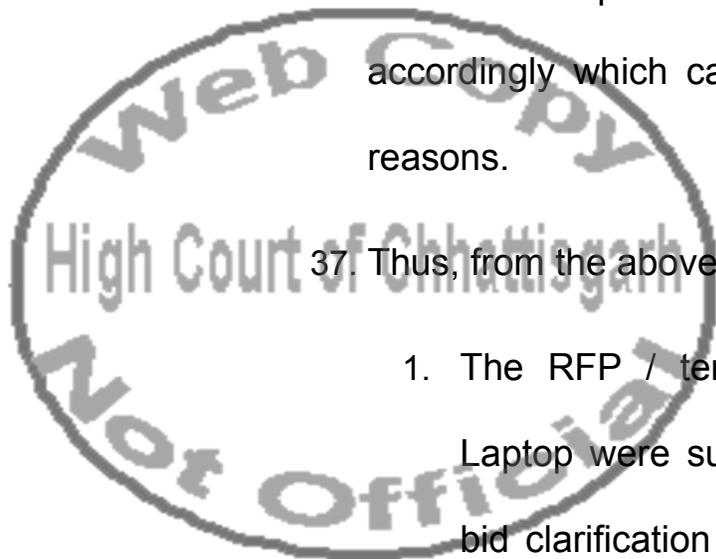
“25. In the multi-tier system in the decision-making process the authority empowered to take a decision can accept the view expressed by one committee in preference to another for plausible reasons. It is not bound to accept the view of any committee. These committees, it needs no emphasis, are constituted to assist the decision-making authority in arriving at the proper decision. It is a matter of discretion of the authority to modify the norms. It is not a case of absolute discretion.”



36. The State Government has constituted three-layer multi-membered committee consisting of experts to evaluate the tender process in a fair and transparent manner and it has considered the bids of bidders in accordance with the prescribed procedure in a most fair manner. The recommendations of the Purchase Committee is based upon the recommendations of the Tender Committee. Taking into consideration, the recommendations of the Tender Committee, the State/respondents No.1 and 2 have taken decision accordingly which cannot be dubbed as arbitrary or without reasons.

37. Thus, from the above-stated analysis, we find that,

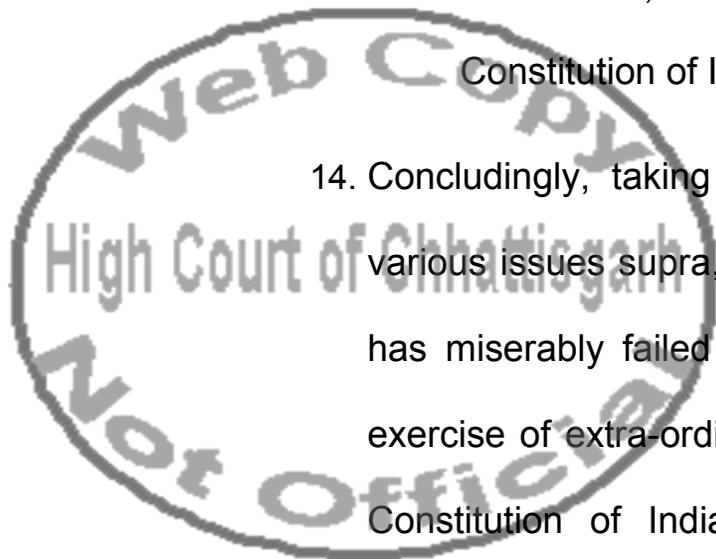
1. The RFP / tender documents specifications qua the Laptop were subsequently clarified by issuance of pre-bid clarification which was accepted by the parties and thereafter, they proceeded for bidding fully accepting the laptop specifications with pre-bid clarifications which was free from vagueness or uncertainty.
2. The process of evaluation of bids received from the petitioner as well as respondents No.3 and 4 culminated into award of contract in favour of respondent No.3, was fair and transparent, as it has been considered by the Specification Committee and thereafter, by the Tender Committee and finally, recommendation has been made



by the Inter Departmental (high power) Committee which has been duly accepted by the State Government and in which we do not find any illegality, irregularity or perversity warranting interference and the procedure adopted for consideration of bids was open, transparent and fair and there is no element of public interest involved and the decision-making process – that is evaluation of technical bid leading to award of contract is reasonable, rational and not violative of Article 14 of the Constitution of India.

14. Concludingly, taking into account the findings recorded on various issues supra, in our considered opinion, the petitioner has miserably failed to make out a case for interference in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India within the four corners of law and yardsticks set out by Their Lordships of the Supreme Court in the above-quoted judgments (supra) qua interference in contractual matter. We accordingly, hold that there is no reason to exercise the power of judicial review in this instant matter, as the petitioner has not been able to demonstrate arbitrariness, unfairness, illegality, irrationality or unreasonableness in the impugned decision of rejecting its technical bid and awarding rate contract to respondent No.3.

15. As a fallout and upshot of the above-stated legal discussion,



the writ petition is devoid of merit and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-  
(Deepak Gupta)  
Chief Justice

Sd/-  
(Sanjay K. Agrawal)  
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1263 of 2016

M/s Acer India Private Limited

Versus

State of Chhattisgarh and four others

HEAD NOTE

Scope of judicial review in contractual matter by the Court under Article 226 of the Constitution of India restated.

संविदा मामलों में न्यायालय द्वारा भारतीय संविधान के अनुच्छेद 226 के अंतर्गत न्यायिक पुनर्विलोकन के दायरे का पुनर्वक्तव्य।

