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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPC No. 2704 of 2024**

- K.L. Jute Products Pvt. Ltd., A Company Incorporated Under The Provisions Of The Companies Act 1956, Through Its Director Shri Kanhaiya Lal Agrawal, Office At - 205, Rabindra Sarani, Kolkata, West Bengal - 700007

---- Petitioner

**Versus**

1. C.G. Rajya Beej Evam Krishi Vikas Nigam Ltd., Through - The Managing Director, Beej-Bhawan, Ravigram, Telibandha, Raipur, Chhattisgarh Pin Code - 492006
2. Kamarhatty Company Ltd. A Company Incorporated Under The Provisions Of The Companies Act, 1956, Through Its Director Shri Harsh Nahata, Office At - 8, 16a, Brabourne Road, Dalhousie, Kolkata, West Bengal, Pin Code - 700001
3. State Of Chhattisgarh Through The Secretary, Department Of Agriculture, Directorate Of Agriculture, Block-Ii, 2nd Floor, Indrawati Bhawan, Atal Nagar, Raipur, Chhattisgarh - 492002

---- Respondents

(Cause Title taken from Case Information System)

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For Petitioner	:	Mr. Sunil Otwani, Ankit Singhal and Shri Arpit Agrawal, Advocates
For Respondent No.1	:	Mr. Prakash Tiwari, Advocate
For Respondent No.2	:	Mr. R.K.Kesharwani, Advocate
For State/Respondent No.3	:	Mr. Shashank Thakur, Dy.A.G.

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**  
**Hon'ble Mr. Sachin Singh Rajput, Judge**

**Order on Board**

**Per Ramesh Sinha, Chief Justice**

**24/06/2024**

The instant petition has been filed by the petitioner challenging the legality, validity and propriety of the Financial Bid Comparison dated 14/05/2024 (Annexure P/1) uploaded by the C.G. Rajya Beej evam Krishi Vikas Nigam Ltd/respondent No.1 through their tender portal, whereby respondent No.2 herein has been declared the L1 bidder (i.e. the lowest financial bidder) in pursuance of notice inviting tender (NIT)



No.43-B for supply of 40 KG DWT Jute Bags. Hence, this petition.

2. In this petition, the petitioner has sought for the following reliefs-

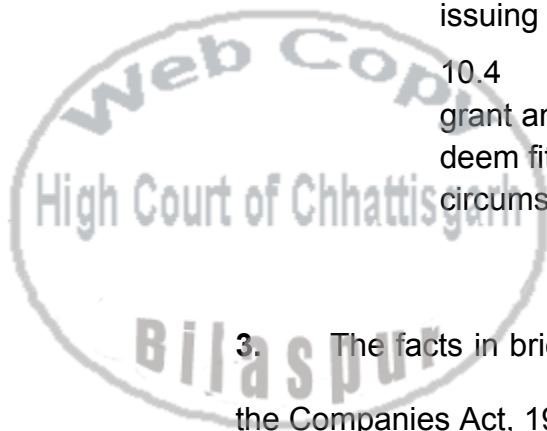
“10.1 That this Hon’ble Court may kindly be pleased to call for the entire records from the office of Respondent No.1 with regard to the bids submitted by the petitioner and respondent No.2 herein, in the interest of justice ;

10.2 That this Hon’ble Court may kindly be pleased to declare that the selection of Respondent No.2 as the L1 bidder in Tender No.43-B as arbitrary, illegal and bad in law and consequently quash and set aside the impugned Financial Bid Comparison dated 14/05/2024 (Annexure P/1), in the interest of justice ;

10.3 That, this Hon’ble Court may kindly be pleased to pass appropriate writ, order or direction to declare that the petitioner as the L1 bidder in Tender No.43-B and consequently, direct Respondent No.1 to open negotiations with the petitioner for the purpose of issuing work order to it ; and

10.4 That this Hon’ble Court may kindly be pleased to grant any other relief (s) which this Hon’ble Court may deem fit and proper in view of the facts and circumstances of the case.”

3. The facts in brief is that the petitioner is a company incorporated in 1985 under the Companies Act, 1956 and is engaged in the business of manufacture and supply of packaging products made of jute and other materials. The company also manufactures jute bags, hence it participated in the notice inviting tender No.43-B floated by respondent No.1 on 10/02/2024. The petitioner and respondent No.2 among others participated in the said tender process and submitted technical and financial bids as per the schedule provided in the NIT. After the technical bids were passed, four bidders were found to be qualified and were moved to the stage of financial bids. In the financial bids opened by the respondent No.1, present respondent No.2 has been declared the L1 (lowest) bidder and the petitioner has been found to be L2 bidder. The most important condition which has to be fulfilled by any bidder to be considered as successful is to submit three separate samples of tendered item for testing to ensure



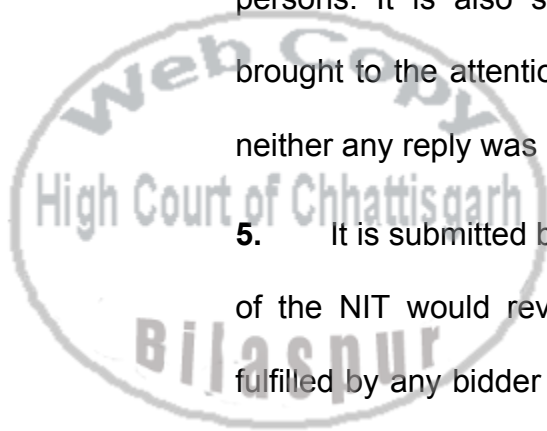


that they can deliver items of the required quality and specification.

4. Learned counsel for the petitioners would submit that despite clear non-compliance of several crucial conditions of the NIT including the submission of samples as per the general conditions of Tender, respondent No.2/ Kamarhatty Co. Ltd. has been declared to have qualified the technical bid stage by respondent No.1. It is submitted that perusal of documents submitted by respondent No.2 indicates that they have not submitted any sample in the first place and respondent No.1 ignored the essential requirements of qualification of the technical bid and selected respondent No.2 as L1 bidder which raises serious concerns about the fairness and impartiality of the entire evaluation process. It is further submitted that the documents which have been uploaded by respondent No.2 have been signed by different unauthorised persons. It is also submitted that though the ineligibility of respondent No.2 was brought to the attention of respondent No.1 authority vide letter dated 15/05/2024 but neither any reply was received nor any action was taken.

5. It is submitted by the counsel for the petitioner that a careful reading of the terms of the NIT would reveal several important requirements/conditions that have to be fulfilled by any bidder to be considered successful at the technical bid stage. He further submits that this includes the submission of certain forms and declaration in the format prescribed for the same, the self attestation of all documents to verify their contents and the submission of three samples of the tendered items to enable their testing against the pre-set quality and material specification. According to the counsel for the petitioner, the documents submitted by respondent No.2 would show that they have not uploaded any receipt to indicate the submission of samples, as required, which would in turn indicate that no such samples were submitted by them in the first place.

6. Mr. Prakash Tiwari, counsel for respondent No.1 submits that there were 4 out of 7 tenderers who were found eligible in technical bid held on 12/03/2024. It is submitted that looking to the basic price as mentioned by the respective tenderers,





respondent No.2 was declared as L1 (lowest bidder) and the petitioner has been found L2 (2<sup>nd</sup> lowest bidder). The meeting of members of tender committee was held on 16/05/2024 for tender No.43-B, wherein following online basic price for supply of 40 kg DWT Jute Bag was opened which is referred as below –

Sr. No.	Item Description	Name of Bidder	Unit	Item HSN Code	Basic Price	Rate of GDT %	GST Amount	Total Cost	Old Basic Rate	Rank
1	2	3	4	5	6	7	8	9	10	
1	DWT jute bags 40 kg, size – 86 x 56	M/S Kamarhatty Co. Ltd.	No.	NA	64.10	5	3.2050	67.3051	73.00	L1
2	DWT jute bags 40kg, Size 86x56cm	M/s K L Jute Products Pvt. Ltd	No	6305 1030	77.95	5	3.8975	81.8475		L2
3	DWT jute bags 40 kg, size – 86 x 56 cm	M/s Birla Corporation Limited	No	6305 1030	79.50	5	3.9750	83.4750		L3
4	DWT jute bags 40 kg, Size 86 x 56 cm	M/s Cheviot Company Limited	No	6305 1030	81.00	5	4.0500	85.0500		L4

7. It can be seen from the proceedings of technical committee that respondent No.2 quoted the basic price as Rs.64.10 as cost of each bag whereas the petitioner quoted basic price as Rs.77.95 and the other participants quoted had quoted higher basic price than respondent No.2. Thus, it clearly appears that there is no illegality or infirmity committed by respondent No.1. The next submission of counsel for the petitioner that respondent No.2 failed to submit three separate samples of the tendered item, is totally incorrect. Respondent No.2 had physically submitted three separate samples of the tendered item in the prescribed time period and the same was sent to the laboratory for testing and it was found to be satisfactory as per the requisite quality.



It is also submitted that submission of counsel for the petitioner that all the bid documents were signed by unauthorized persons is totally incorrect as all the bid documents were signed by the owner of the company of respondent No.2 and all the necessary documents were also notarized.

8. Learned counsel for respondent No.2 submits that on being published the tender No.43-B, respondent No.2 submitted all the requisite documents before the office of respondent No.1 digitally and physically as prescribed in the NIT. It is submitted that looking to the basic price, respondent No.2 was declared as L1 (Lowest bidder) and the petitioner has been found to be L2 (2<sup>nd</sup> lowest bidder). It is further submitted that respondent No.2 followed all the procedural obligations within time and upto the satisfaction of respondent No.1.

9. This Court has heard the counsel for the respective parties and gone through the documents which are part of the petition.

10. The issue with regard to interference of the High Court in cases involving commercial contracts is no longer *res inetgra*. In the celebrated judgment of **Tata Cellular Vs. Union of India**, reported in (1994) 6 SCC 651, the Hon'ble Supreme Court observed 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 to prevent arbitrariness or favoritism. 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.*



71. *Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justifiable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.*

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, Wednesday 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, 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".*

11. In the case of **Jagdish Mandal Vs. State of Orissa**, reported in **(2007) 14 SCC 517**, Hon'ble Supreme Court observed as under:-



22. *Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. 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 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 black-listing 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.*

**12. In case of *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation and***



**another**, reported in **(2016) 16 SCC 818.**, the Hon'ble Supreme Court held as follows :

*13. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision.*

**13.** In case of **Silppi Constructions Contractors Vs. Union of India and others** reported in **(2020) 16 SCC 489** it has been held as under :-

*"20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity....."*

**14.** From the decisions referred to above, the following broad principles emerge with regard to power of judicial review on administrative action in contractual matters :-

- (i) Right to refuse the lowest bid is available with the state subject to article 14 of the Constitution of India.
- (ii) The decision making process can be interfered with if it is found to be biased, malafide, arbitrary and abuse of power by the authority.
- (iii) The Court will not act as an appellate authority on the decision taken by the expert authority.





15. Main thrust of the petitioner in this case is that successful bidder is respondent No.2 who was not qualified to be awarded the contract because it failed to comply with the conditions prescribed in the tender. The submission is with regard to the condition of supply of sample jute bags with respondent No.1 but the same was not done by the successful bidder/respondent No.2. He submits that permitting respondent No.2 to supply sample jute bags after submission of the tender is in colourable exercise of the power by respondent No.1 which smacks of malafides also, therefore if respondent No.2 was not fulfilling the mandatory conditions envisaged in the NIT, he could not be awarded the contract. Response was made by Shri Tiwari in this regard inviting the attention of this Court to the conditions mentioned in the tender document to suggest that Managing Director of respondent No.1 reserves all right to cancel/withdraw/modify, fully or partially the invitation for tender for to accept/reject one or more of the tender without assigning any reason and shall bear no liability whatsoever consequent upon such a decision.

16. The irregularities pointed out by the petitioner's counsel were subsequently allowed to be cured by respondent No.1. The question which is to be determined by this Court is whether permitting respondent No.2 to cure irregularities or defects if any by respondent No.1 would amount to malafide/arbitrariness/colourable exercise of power by managing director of respondent No.1. From perusal of the record it appears that financial bid of the petitioner was found to be L2 and that of respondent No.1 was found to be L1. Comparative chart quoted above indicates that the price quoted by respondent No.2 was far below than that of the petitioner. Now this Court has to see whether such a decision permitting respondent No.2 to cure the defect is against the public interest or public policy. The allegation of malafide against the respondent No.1 is on the ground that he could not have permitted to cure the defect. No such substantial document is available to show that because of the decision making process done by respondent No.1 which has caused any loss much less the great loss to the public exchequer. There is nothing to show that the decision taken by respondent No.1



is polluted on account of the malafides. The Supreme Court in the matter of **Ajit Kumar Nag v. General Manager (PJ) Indian Oil Corporation Ltd. Haldia and others** reported in **(2005) 7 SCC 764** has held as under:

“56. It is well-settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". [vide [E.P. Royappa v. State of Tamil Nadu & Anr.](#) (1974) 4 SCC 3]. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in [Gulam Mustafa & Others v. State of Maharashtra & Others](#) (1976) 1 SCC 800; "It (Mala fide) is the last refuge of a losing litigant

17. After due scrutiny of material available on record this Court is unable to accede to the submission of Shri Otwani that the process of award of tender impugned herein suffers from any arbitrariness or malafides.

18. As discussed earlier, this Court while exercising the power under Article 226 of the Constitution of India cannot sit as an appellate authority to judge the process of award of contract until and unless it is blatantly illegal, arbitrary, unreasonable and polluted by the malafides. Accordingly, in the light of the above discussion, we are of the considered opinion that the petitioner has not made out a case to pass the test as prescribed in the decision of the Supreme Court in *Tata Cellular (supra)*. Being this, the petition is liable to be and is hereby dismissed.

Sd/-  
(Sachin Singh Rajput)  
Judge

Sd/-  
(Ramesh Sinha)  
Chief Justice



**Head Note**

The High Court while exercising the extraordinary power under Article 226 of the Constitution of India cannot sit as an appellate authority to judge the process of award of contract until and unless it is blatantly illegal, arbitrary, unreasonable and polluted by the malafides.

