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Court : Karnataka

Decided On : Sep-08-2016

Judge : A.S. Bopanna

Appeal No. : Writ Petition No. 2243 of 2016 (GM-TEN)

Appellant : G. Shankar

Respondent : Krishna Bhagya Jala Nigam Limited and Others

Judgement :

(Prayer: This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, with a prayer to declare the bid of the petitioner as technically responsive and direct the respondents to open the financial bid of the petitioner submitted pursuant to the tender notification dtd. 11.11.2015 issued by the R-2 (Annx-A).)

1. The Petitioner initially has approached this Court in this writ petition praying that his bid be declared as responsive and direct the respondents to open the financial bid submitted pursuant to the tender notification dated 11.11.2015. During the pendency of the petition, in view of the subsequent developments, the petitioner has filed an application in No. 2/2016 seeking to amend the petition and that regard an additional prayer is sought for quashing the order/decision of the first respondent in rejecting the technical bid of the petitioner uploaded 28.01.2016 as also the communication dated 14.01.2016 at Annexures-R and X respectively. The said application for amendment has not been considered and disposed, as such it

is pending on file. Since the contentions urged therein have also been noticed by this court at the time of hearing, for the purpose of records, the application in IA No.2/2016 is allowed subject to the need arising for the court to advert to the contentions therein for the purpose of its decision, but the averments therein are treated as part of the pleading.

2. The respondents No.1 and 2 through the short term tender notification dated 11.11.2015 invited bids from class-I registered contractors enrolled with them. The work tendered is for the construction of aqueduct from km.53.41 to 55.81km of Bijapur Main Canal crossing Don river including approach embankment under Mulwad LIS stage-III (from km. 53.00 to 56.00 km) at the approximate cost of Rs.179.08 crores.

3. The prequalification criteria regarding which the rival contentions have arisen in the instant petition read as hereunder:

a) The intending bidder should have satisfactorily completed (not less than 90 percentage of contract value) as prime contractor, one similar type of work costing not less than 50 percentage of the amount put to tender in the last 5 financial years reckoned back from 2014-15. The certificate should be issued by an Officer not below the rank of executive Engineer of the concerned division/equivalent officer and Counter signed by the SE of the concerned Circle/next higher officer. The cost will be updated to the present value by giving weightage of 10% each year, if the work is completed prior to the year 2014-15.

Note 1 Similar work means Aqueduct/ Bridge/Bridge Cum Barrage/Flyover

Note 2 The intending bidders should upload the copies of RA Bills in support of their claim.

b) The intending bidder should have achieved a minimum financial turnover of not less than two times the estimated annual payments (amount put to tender $[(179.08/18) \times 12 \times 2 = \text{Rs.}238.77 \text{ Crore}]$) in at least two financial years during the last 5 financial years reckoned back from 2014-15 (work done during 2010-11 to 2014-15 only will be considered) duly updating the financial turnover at 10% per

annum. Audited balance sheet certified by a practicing Chartered Accountant along with copy of Income Tax returns filed for the two years indicated above shall be furnished.

c) The bidder should have executed a minimum quantity of 51473 Cum Concrete of the work (usually 80% of the peak annual rate of construction [i.e. $(0.80 \times 96512/18) \times 12$] in any one financial year, during the last five financial years reckoned back from 2014-15. The certificate should be issued by an officer not below the rank of Executive Engineer of the concerned Division/Equivalent office and countersigned by the SE of the concerned Circle/next higher officer.

4. The respondents No.1 and 2 on analyzing the technical bid of the petitioner herein have arrived at the conclusion that on taking into consideration the completion certificate relating to the work undertaken by the petitioner, providing price estimation and 10% weightage, the total value for which the work has been completed as per the prequalification criteria is assessed at Rs.88.66 crores which is less 50% of the amount put to tender and as such the petitioner is declared as not technically qualified. The petitioner making out a grievance that respondents No.1 and 2 have wrongly analysed the work certificate and have committed an error in providing the weightage is before this Court contending that if a proper analysis of the document submitted by the petitioner is made, the work completed in the last five financial years reckoned back from 2014-15 would be more than 50%; even otherwise, if the weightage is assigned correctly, the petitioner would qualify. Further contentions are also urged on behalf of the petitioner with regard to the inappropriate analysis of the document submitted by respondent No.3. According to the petitioner, though the third respondent does not satisfy the requirement, the respondents No.1 and 2 have erroneously come to the conclusion that the respondent No.3 qualified in the technical evaluation.

5. The respondents have filed the objection statement and at the first instance had contended that the writ petition is without cause of action and is therefore premature as no action had been taken at their end. In that regard, reference is made to Rule 24 of the Karnataka Transparency in Public Procurements Rules, 2000 (KTPP Rules for short) which provides for the assessment of the tenders

and it is stated that the evaluation was yet to be completed. Thereafter when the evaluation was made and when the technical bid of the petitioner was rejected and the petitioner has filed the application for amendment, objection is filed in that regard and it is contended that the petitioner, if aggrieved is to avail the remedy of appeal as provided under Section 16 of the Karnataka Transparency in Public Procurements Act, 1999 (KTPP Act for short) and that the writ petition is hit by the existence of alternate remedy. It is therefore contended that under any circumstance, the writ petition is premature and judicial review is not permissible at this stage. The manner of tender evaluation made by the Committee is also referred and the reason for which the petitioner was found not qualified in the technical evaluation is also sought to be justified.

6. Heard Sri Udaya Holla, learned senior counsel for the petitioner, Sri Shashikiran Shetty and Sri Jayakumar S. Patil, learned senior counsel for the respective respondents and perused the petition papers.

7. The learned senior counsel for the petitioner with reference to the internal communication dated 14.01.2016 of respondent No.1 and the details mentioned therein with regard to the technical evaluation report would contend that there is no fairness in the manner in which the evaluation is made. In that regard the learned senior counsel, at the outset, has referred to the decisions in the case of W.B. State Electricity Board vs- Patel Engineering Co. Ltd. and other [(2001) 2 SCC 451]; in the case of Meerut Development Authority vs- Association of Management Studies and another [(2009) 6 SCC 171]; in the case of Food Corporation of India vs- M/s. Kamdhenu Cattle Feed Industries [(1993) 1 SCC 71]; in the case of M/s. Recondo Ltd. vs- Board of Trustees (ILR 1985 Karn.3794) to contend that the tender process should indicate fairness. A cumulative perusal of all the above noticed decision will indicate that the party floating the tender, more particularly Government bodies should adhere to the Rules and instructions governing the tender process scrupulously so as to avoid discrimination, arbitrariness and favouritism. The bidders Participating in the tender process have right to equality and fair treatment. The contractual transactions of the State or its instrumentalities should indicate non-arbitrariness, fairness in action and due consideration of legitimate expectation of an affected party which are the essential

requisites for a valid State action. The State to its instrumentalities are bound to act in the matter of disposal of contracts in accordance with the principle embodied in Article 14 of the Constitution and is required to follow the procedure which is fair, reasonable and is free from taint of unreasonableness. If the consideration is not according to the standards set out, the tenderer is entitled to question the validity and legality of the proceeding relating to disposal of the contract.

8. On the above proposition of law, there need be hardly any discussion as there can be no disagreement with the position that the action, including the process of tender evaluation has to be fair and transparent. In fact, it is in order to ensure the same, the KTPP Act is enacted and the Rules thereunder is framed and a uniform procedure is contemplated in matters relating to the tenders invited by the State of Karnataka and its instrumentalities. The said Act also provides an appellate remedy to assail the order of the Tender Accepting Authority if the same is not in accordance with law, which thereafter will in any event be open for judicial review. It is in that background the respondents have raised the preliminary objection with regard to the maintainability of this writ petition at this stage before this Court and a question is raised as to whether it is permissible for this Court to exercise its discretion at a stage when the technical evaluation along is completed and the tender process as such is not completed through an order of the Tender Accepting Authority by award of contract, before which there is room for other contingencies to occur. Hence, the said aspect will have to be adverted to at the outset so as to determine the scope and extent of interference possible by this Court with regard to the tender process. Depending on the conclusion reached on that aspect, the need or otherwise to advert to the specifics of the contention relating to the merits of the technical evaluations as made will arise.

9. Though a number of decisions of this court are relied on by the learned senior counsel for respondents No.1 and 2 wherein the petitioners have been relegated to the appeal remedy under Section 16 of the KTPP Act, those are cases where the tender process was completed and work was awarded and in that regard, there need be no detailed consideration as it is well established that the appeal remedy is to be availed wherever available though it does not take away the power of this Court to exercise its discretion and entertain a writ petition under Article 226

of the Constitution in appropriate cases. In that view, specific reference to the orders cited is made, as otherwise it would unnecessarily overburden this order without serving any useful purpose. However, the decision of this Court in the case of TATA Projects Ltd. vs- Karnataka Power Corporation Ltd. and others (W.P.No.2535/2013 c/w W.P.No.505/2013-GM-TEN dated 26.02.2013) which is very vehemently relied on by the learned senior counsel for the respondents will require in-depth consideration, since in the said case not only the contention relating to the existence of the appeal remedy, but the nature of consideration permissible prior to the completion of the tender process is also adverted to in the light of the power available to this Court under Article 226 of the Constitution qua the restraint to be exercised in certain circumstances was adverted to in detail.

10. Before adverted to the further details in that regard, it is necessary to notice that the learned senior counsel for the petitioner has however relied on the decision of the Hon ble Supreme Court, in the case of Ganpati RV-Talleres Alegria Track Private Ltd. -vs- Union of India and another [(2009) 1 SCC 589] to contend that in the said case, the Hon ble Supreme Court has decided the merits of the rival contentions in a matter relating to the eligibility criteria in a tender process and as such it would indicate that it is permissible for this Court to consider the rival contentions on the merits of the case.

11. Having taken note of the same, I however do not find the need to analyse with regard to the applicability of the same herein since in the process of analysing the rival contentions in the case of TATA Projects Ltd. (supra) the said decision of the Hon ble Supreme Court was also taken note and in the background of several other decisions of the Hon ble Supreme Court which had been cited, this Court had ultimately arrived at its conclusion. As such it would be appropriate to take note of the decision in TATA Projects Ltd. case itself in detail as it is an outcome of the analysis of the entire gambit of the precedents on this aspect and arrive at a conclusion herein. In that case also, the grievance was against tender evaluation process, before the work has been awarded to any one of the tenderers therein. The respondents therein also had in that light raised issues with regard to the maintainability of those petitions with reference to the provisions contained in the KTPP Act.

12. Like in the instant case, in the TATA Projects Ltd. case also, the stage of availing the alternate remedy of appeal had not arisen since the contract had not been awarded to any of the tenderers as already noticed. Yet, the nature of the issue that required consideration therein is, as articulated in paragraph -12 thereof. Thus a consideration in that regard was made and the opinion was expressed, which becomes relevant to be noticed herein. For better understanding the relevant portions are extracted as hereunder;

12. Therefore thought a statutory bar or an alternate remedy as contemplated in law does not arise at this stage, the question still would be as to whether the petitions are premature and/or as to whether this Court while considering the petition under Article 226 of the Constitution of India is expected to interfere at this stage when the contract has not been awarded nor any of the tenderers are expressly rejected.

16. A cumulative perusal of the decisions relied upon by both the sides would indicate that the overwhelming opinion is that the Court will not interfere unless the cause to do so has arisen i.e, until the decision one way or the other is taken by the competent authority who is required to take the decision and such decision is in favour of one and has effected the other. In the case of Siemens, though the Hon ble Supreme Court examined the matter, it did not interfere though on opening the bid, the petitioner therein who had quoted the lowest but was not treated as the L-1 after evaluation. The Hon ble Supreme Court has no doubt held that judicial review is possible when the decision making process is arbitrary or irrational. In the said case, the discussion with the petitioner was excluded. However, in the instant case, evaluation was made by the Committee itself taking note of the requirement and the bids made and thereafter the discussion has commenced with L-1 but the other tenderers have not been rejected. Therefore, on opening the bids, the evaluation procedure has been same for all, though there is serious dispute with regard to the method adopted in arriving at L-1 by applying different standards of discounting and loading for different tenderers. That aspect of the matter no doubt would arise for consideration only after all evaluations and negotiations are complete and a decision relating to acceptance of any tender is made. Any examination at this stage based on apprehension is only fishing for

discrepancies since the petitioners are also contending based on reliable information and not on concrete material. Further, unless this Court comes to a conclusion regarding the imminent necessity of probing the matter further, it would not be necessary for the KPCL to divulge any further details at this stage since the process is still under way. In the decision in the case of Ganapathi RV- Talleres, it was a case where the petitioner therein had been communicated that he had not met the eligibility criteria of the tender and therefore the commercial bid will not be considered. Hence, a cause had arisen to approach the Court due to rejection and the Court directed consideration along with the other tenderers but, in the instant case, there is neither rejection nor acceptance at this stage.

22. The combined reading of all the decisions on different points referred above would boil down to the position that as a rule, the Courts would not entertain the petitions when no decision has been taken by the competent authority effecting the right. The exception however would be when it is shown that the decision making process itself is so arbitrary and irrational, that no authority acting reasonably will take such decision to the extent it is taken. Even in such case, the Courts would only peruse the decisions taken by experts in the field to exclude arbitrariness or unreasonableness, if evident on the face of it, but would not substitute its opinion over the experts opinion and step beyond institutional capacity. Mere deviation or relaxation or price difference should not be the basis for interference should not be the basis for interference as the same are also permissible depending on its nature and interference should be only if there is substantial public interest. When that is the yardstick to be applied to examine the decisions even at a stage when the awarding of the contract is complete, the interference when the process is still going on should be with greater restraint and minimal.

25. Insofar as these aspects of the matter, there is no specific material available to come to a conclusion as to the extent and manner of deviation and whether such deviations have been accepted by KPCL without demur and as to whether the loading for deviation and discounts on other aspects has been done in a manner as alleged by L and T . The learned senior counsel would however contend that the KPCL is deliberately withholding the information by only filing the preliminary

objections instead of justifying their action on merits. The learned counsel for KPCL would however seek to rely on Rule 23 of the KTPP Rules, 2000, to point out that the Tender Inviting Authority should ensure confidentiality of the process of tender evaluation. Though the said provision cannot act as a bar to provide information to the Court, certainly in the evaluation process, such confidentiality requires to be maintained to prevent the tenderers from interfering with the process and manipulating the same. In the present circumstance, KPCL has indicated the nature of evaluation that has been made and procedure followed. Though as noticed it would be open for this Court to seek for information at any stage, the contention of L and T with regard to Alstom being favoured is based on certain assumptions relating to the inappropriate manner of loading and discounts being provided which stems from the basis that when the bids were opened, the price quoted by L and T was much lower, but presently Alstom has been treated as L1. Since the proceedings before this Court in these petitions is at a stage prior to award of contract, I am of the opinion that it is not a stage where this Court is expected to make a roving inquiry by seeking for information relating to the evaluation made by experts by throwing open the entire gambit at this stage and provide an opportunity to the rival tenderers to fish for evidence and pick holes, more particularly at a stage when KPCL is contending that the matter has not been finalized and such casual interference if entertained would become the order of the day since in every evaluation process, one or the other would have some grievance and no process could be finalised. Even assuming the contentions put forth by L and T is substantially true, the judicial review at the appropriate stage and forum would be available and it could be made in the matter subsequently instead of stalling the process by examining at every stage. This is so far the reason that even if all the materials are placed before this Court, considering the technical nature and volume of the project, there would be several aspects which would go into the evaluation of the bids for the proper completion of the work and the instant case is not a simple case of comparing the difference of price for supply of certain goods, the quality of which are held to be similar. Therefore, the exercise of sitting in judgment over the wisdom of the experts should be avoided at this stage.

28. In the above background, the statement filed by KPCL would disclose that on opening the price bids of all the four bidders, all of them have been evaluated and an evaluation report was prepared which was examined by Tender Scrutiny Committee and along with the report, it was put up to Technical Committee. Further, the evaluation made was also got verified by an independent firm of Chartered Accountant. All the evaluations and the reports have been placed before the Tender Accepting Authority which is the Board of Directors and the further procedure is under way. The learned senior counsel for the petitioners while referring to the averment in the objection statement and the recording in the Board meeting dated 04.12.2012 sought to contend that the discussions with regard to the technical and commercial deviations after evaluation of the tenders would not be sustainable. Despite the same, keeping in view the deviations being alleged against one another, and also taking note of the fact that all the tenders have been evaluated, if at all there are any errors in the manner of evaluation and if judicial review is necessary, the same could only be made in an appropriate proceedings at an appropriate stage and not when the process is not yet completed.

29. In the light of the above discussions, though at this stage this Court cannot come to a conclusion as to whether the bids submitted by any of the tenderers is contrary to the requirement under the instructions to the bidders and also with regard to the correctness or otherwise of the evaluation made, considering that a detailed procedure has been adopted by KPCL , any further examination of the matter would not arise at this stage. This conclusion shall not mean that the validity of the procedure or the evaluation of the bid is upheld. This Court has exercised restraint in undertaking a detailed examination at this stage since the grievance made in the petition is premature. The contentions are left open to be urged at the appropriate stage in appropriate proceedings.

30. In the result, the petitions being premature are disposed of accordingly. No costs .

13. The perusal of the consideration as made will indicate that in TATA Projects Ltd. case the process was at the stage of the financial bid evaluation being

concluded whereas in the instant case it is at the earlier stage of completion of the technical bid evaluation wherein three other tenderers including the third respondent who has come on record have qualified in the technical bid evaluation and two others who have qualified are not even before this Court as parties to this petition. The learned senior counsel for the petitioner no doubt contended that this Court has not chosen or rely on the decision in the case of Ganpathi RV-Talleres for the conclusion in TATA Projects Ltd. case since in that circumstance there was no rejection of the bid. Such hair splitting argument cannot be acceded to when the consideration therein was also the grievance relating to the improper evaluation, the result of which will end in rejection of the financial bid and also when this Court had referred to other decisions of the Hon ble Supreme Court and had bowed down to the overwhelming opinion of the highest Court. As such one of the many decisions that was considered therein also cannot be looked at in isolation to come to a different conclusion herein. In any event, the consideration made by the Hon ble Supreme Court Ganpathi RV-Talleres and by the Hon ble Division Bench of the Gujarat High Court in the case of Ashapura Enterprise vs-Central Warehousing Corporation (2010 SCC Online Guj 7811) relied on by learned senior counsel for the petitioner are not cases which were considered in the backdrop of the procedure contemplated and the statutory remedy ultimately available at the end of such process under the KTPP Act nor was any other similar statutory provisions the basic. Hence, the said decisions in any event does not persuade me to take a different view.

14. Therefore, to place the matter in its correct perspective, it is reiterated that a writ petition under Article 226 of the Constitution cannot be treated as the only remedy for all ills, more particularly in matter of contract where the tender process is still under progress and is regulated by statutory provisions. The technical evaluation of the bids is in fact the first stage of evaluation which will normally be done by a Committee of experts in the field based on the tender conditions and after evaluation of the materials produced to satisfy the conditions. In the view, in every tender process there will be at least one aggrieved tenderer if they are found to be not qualified, unless it is a rare situation that all of them qualify in the technical bid evaluation. No tender process will conclude if this Court begins to interfere at every stage without restraint, to undertake the exercise of judicial

review unmindful of the circumstance. The aggrieved party in any event is not without remedy since such party is provided a remedy of appeal under the statute to be availed at the appropriate stage. In the instant case itself it is noticed that the stipulated period for completion of work under the short tender notification dated 11.11.2015 is 18 months and half of that period is already spent before this Court in this petition without further progress in the tender process and such delay is also going to escalate the cost of the project as the quoted rates will lose its relevance by the time the tender is finalised and work is awarded, due to which public interest is not served either.

15. Having said so, it is not suggested that this Court has role at all to play in matters relating to tender process under any circumstance. On the other hand even during the process of evaluation, there may be cases which requires the minimal interference of this Court to the extent of ironing out the creases so as to correct the blatant and apparent errors committed by the Tender Inviting Authority, Tender Scrutiny Committee or the Tender Accepting Authority so as to make the process more meaningful and to prevent derailment of the bid evaluation process, but such interference should not be in the nature of adjudicating the correctness or otherwise of the evaluation made on re-appreciation of the materials taken into consideration by the Tender Scrutiny Committee as permissible to be done in an appeal nor should it be in the nature of monitoring the tender process at every step. For instance, if the pre qualification requirement is that the tenderer should produce/ upload a certificate from the manufacturer of the product or equipment, undertaking to ensure supply or it may be the requirement to produce the work experience certificate as in the instant case and if the tenderer has produced such certificate but the Tender Scrutiny Committee without taking into consideration such certificate or by ignoring the same holds the bid to be ineligible or not qualified for that reason and in such case, if the tenderer is before this Court making out a grievance, certainly interference is possible in that circumstance so as to direct consideration of the document already submitted and analyse the technical bid by re-doing the process at that stage itself without waiting for the process to be completed and avail the remedy of appeal. On the other hand if the Tender Scrutiny Committee has taken into consideration such document/certificate also along with the other materials, but on analysis does not find it to satisfy the

requirement of the tender conditions for the reasons recorded and therefore holds the technical bid as not qualified, in such event, this Court should decline interference in a writ petition and halt the entire process. In such event, the aggrieved party should avail the remedy of appeal after the process is complete.

16. In that background, if the issue involved in the case on hand is noticed, it is seen that the pre qualification criteria provides that the tenderer should have undertaken one similar type of work costing not less than 50 percentage of the amount put to tender in the last 5 financial years reckoned back from 2014-15, as a prime contractor. Weightage of 10% per year is given if the work was completed prior to 2014-2015. The examples of similar work is also specified therein. The petitioner has produced the work done certificate including the similar earlier work done for the respondent No.1- Nigam itself. In the process of evaluation, the respondent No.1 has secured the confirmation with regard to the validity or otherwise of such documents produced. In respect of the construction of Bridge cum Barrage across Soupernika river, in the clarification letter dated 04.01.2016 issued to respondents No.1 and 2, it is stated that the value is only Rs.28.35 crores. In respect of the construction of aqueduct for which the work done certificate dated 11.11.2015 was submitted and the period of completion of the works was mentioned therein as March 2013, on clarification, through the communication dated 06.01.2016 it has been informed to the respondents No.1 and 2 that it was an error, but the actual completion was during February 2014. In that light, the appropriate weightage to be provided to the completed work is also a disputed issue as the petitioner claims it to be 30% which is disputed by the respondents No.1 and 2.

17. In that regard, the learned senior counsel for the petitioner has no doubt taken me through the voluminous documents to contend that such reliance placed by the respondents on the clarification is not justified and even otherwise, the documents which has been produced by the petitioner will establish the previous work experience and the manner in which the weightage is to be reckoned and provided. The learned senior counsel for the respondents on other hand has referred to the uniform procedure followed to secure the confirmation from the certificate issuing authorities in respect of all the tenders and the manner of

evaluation made and to justify the same, relevant documents were referred. Though I have taken note of the documents on elaborately hearing the learned senior counsel on both sides, I do not find it necessary to refer to each of them since the very nature of contention will disclose that disputed questions of fact leading to the technical bid evaluation is being raised with regard to the documents which were evaluated and a conclusion was reached by the Technical Scrutiny Committee on analysis of the documents that were available before it. The dispute raised herein seeking judicial review at this stage is with regard to the mode and method adopted for evaluation and the decision based on the documents evaluated. The very nature of the contentions urged will indicate that it will fall outside the parameter indicated above to entertain a writ petition at this stage and examine such contention. Hence it is not necessary to advert to further details of the rival contentions on merits. In addition to the contention that the petitioner is qualified, the petitioner is also seeking to contend that the evaluation of the bid of respondent No.3, the work performed and it is contended that respondent No 3 cannot be considered as technically qualified.

18. The learned senior counsel for the petitioner has in that regard relied on the decision of the Hon ble Division Bench of this Court in the case of The Karnataka Power Corporation Ltd. vs- SICAL Logistics Ltd. and others (ILR 2007 Karn.226) wherein the order of the learned single Judge was set aside and the Tender Accepting Authority was directed to redo the process from the stage where the flaw was noticed and in that view seeks a similar consideration in this case. Having perused the same it is seen that in the cited case the Tender Scrutiny Committee had found the petitioner therein also qualified but another Technical Committee which is not a part of the process provided under Rule 28 of the KTPP Rules nor was vested with the duty of evaluation, had recommended the elimination of the petitioner therein which was accepted by the Tender Accepting Authority. The learned single Judge had therefore found fault with the procedure adopted, but instead of directing rectification of the error and to proceed from that stage, had directed re-tendering. It is in that circumstance the Hon ble Division Bench also agreed with the flaw noticed but instead of re-tendering directed reconsideration of the same tender process from the stage that flaw had occurred. In my opinion, it is a case which fell within the parameter indicated above where

only a procedural flaw had occurred, which was noticed and on ironing out the crease it was put back on rail. It is not a case which required judicial review of the bid evaluation nor is any other contrary position declared in that case.

19. The learned senior counsel for the petitioner has also relied on the decision of this Court in the case of Revanna Nagaraj vs- State of Karnataka and others (MANU/KA/1876/2013) wherein this Court on examination of the contentions had directed the technical bid of both the tenderers to be accepted and evaluate their financial bids. Hence, a similar consideration is sought herein by treating it as a precedent. The very facts narrated as had arisen in that case will disclose that the consideration therein was entirely in a different circumstance. The appeal remedy, though prematurely, was exhausted in one case, while in the other the issue of tender notification was assailed and in that regard the peculiar circumstance arising therein was noticed. Hence, the said case will not be of assistance for deciding the proposition considered herein. On the other hand, the decision of the Hon ble Supreme Court in the case of State of Kerala and others vs- M.K. Jose [(2015) 9 SCC 433] cited by the learned senior counsel for the third respondent is more apt to the situation on hand to refuse the exercise of discretion under Article 226 of the Constitution in a matter of the present nature.

20. Further the decision of this Court in the case of M/s. South India Corporation Pvt. Ltd. vs- The Karnataka Power Corporation Ltd. and another (W.P.No.572-573/ 2015 GM-TEN dated 30.10.2015) relied on by the learned senior counsel for respondents No.1 and 2 is also relevant. In that case, this Court with reference to the order passed in TATA Projects Ltd had kept in view the procedure contemplated under Rules 25, 26 and 28 of KTPP Rules and in that context has arrived at the conclusion that the tender process cannot be considered as concluded till the Tender Accepting Authority takes a final decision in the matter and interference at any earlier stage will amount to prejudging the issue. If all the above aspects are kept in view, I find that there is no cause made out for this Court to exercise its discretion under Article 226 of the Constitution and intervene in the matter at this stage.

Hence, the petition being premature is disposed of accordingly without order as to costs.

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