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Court : Andhra Pradesh

Decided On : Dec-15-2000

Reported in : 2001(1)ALD219; 2001(1)ALT324

Judge : N.V. Ramana, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : WP No. 20943 of 2000

Appellant : Swapna Constructions, Hyd.

Respondent : Superintending Engineer, Srisailam and Another

Advocate for Def. : Government Pleader for Irrigation

Advocate for Pet/Ap. : Mr. R. Subhash Reddy, Adv.

Judgement :

ORDER

1.The petitioner claims to be a registered Firm having Special Class Registration for executing contracts in earth work fabrication and erection of steel structures etc. and claims to have successfully completed several high value contract works in the State Government and Government Corporations.

2. On 2-1-2000, in the first instance, the 1st respondent issued tender notice calling for tenders in respect of the work, viz., 'SLBC Lift Scheme, fabrication and erection of steel structures, such as gates, blockout, E.M. parts service gates etc., at their Akkampalli balancing reservoir, P.A. Pally Mandal, Nalgonda District'. The approximate value of the work is Rs.296 lakhs, EMD payable is Rs.2.96 lakhs and the period of completion of work is nine months. The petitioner and others filed their tenders and on 22-1-2000 when the tenders opened, the price of the bid of the petitioner was not opened. Ultimately, the respondents cancelled the tender notice dated 2-1-2000, on the ground that there is only one valid tender.

3. Again, on 8-2-2000, the first respondent issued a fresh tender notice No.10/OSE/SLBCCI/99-2000 calling tenders in respect of the same work. Petitioner states that the tender filed by him in response to the previous tender notice dated 2-1-2000 was not opened on the ground that the petitioner has not executed similar nature or work of not less than Rs.148 lakhs in the financial year as notified in the tender notice.

4. Condition No.19.02 of the Conditions appended to the Tender Notice relates to qualification criteria. According to it, to qualify for award of the contract, each tenderer in its name should satisfy the following criteria; (i) the tender should have satisfactorily completed as a prime contractor and similar works of value not less than Rs.148 lakhs in any one financial year during preceding five years (i.e., 1994-1995 to 1998-1999); and (ii) the tenderer should have executed the following minimum quantities of work in any one financial year during last five years.

5. According to the petitioner, the emphasis in the tender notice is on the words 'one financial year'. Petitioner claims that it has successfully completed the work similar to the notified work whose value is more than Rs.150 lakh during the period from 1-4-1999 to December, 1999, falling in the financial year of 1999-2000, prior to the date of tender notice. As its price bid was opened by the first respondent, earlier petitioner filed Writ Petition No.3384 of 2000 in this Court. The respondents herein filed counter in that writ petition stating that as the tender notice is dated 8-2-2000, the work done during the financial year 1999-2000 cannot be taken into consideration. Without going into the merits of the case, Writ Petition No.3384 of

2000 was disposed by this Court on 6-4-2000 directing the first respondent to forward all the papers to the 2nd respondent, allowing the petitioner to make a representation in support of its plea and directing the Commissionerate of Tenders to finalise the tenders in accordance with the procedure prescribed, considering the representation of the petitioner.

6. Challenging the action of the respondents, petitioner filed this writ petition seeking a writ of mandamus declaring the action of the respondents in seeking to award the work pursuant to Tender Notice dated 8-2-2000 in Tender Notice No.10/OSE/SLBC/C1/99-2000 on the file of the first respondent, without opening the price bid of the petitioner, as illegal and arbitrary and to direct the respondents either to open the price bid of the petitioner and to consider the same or in the alternative to renotify the works by issuing fresh tender notice.

7. When this writ petition came up for admission on 6-11-2000, this Court pending admission of the writ petition, ordered that status quo shall be maintained and the matter is being adjourned from time to time.

8. On behalf of the 2nd respondent an elaborate counter affidavit is filed stating inter alia, that the first tender notice dated 2-1-2000 was cancelled, invoking Condition No.17 of the Tender Conditions, because the premium quoted by the sole qualified tenderer was 14.13% excess over estimated contract value. It is stated that a fresh tender notice No.10 SE/SLBC/C.1/ 1999-2000 dated 8-2-2000 was issued by the 1st respondent, pursuant to which five bids have been received, including that of the petitioner, and as the petitioner did not satisfy the qualification criteria as required under condition 19.02 of the Conditions of Tender, the price bid of the petitioner was not opened and that the petitioner approached this Court by filing W.P. 3384 of 2000, seeking direction for opening its price bid, which was disposed of by this Court on 6-4-2000 with certain directions.

9. On 10-4-2000, the 1st respondent opened the price bids of three tenderers, viz., (1) M/s. Sri Lakshmi Engineering Co., (2) M/s. Mahendra Kumar N. Shah and (3) Sri KVS N Raju. In the technical bid evaluation, the petitioner was disqualified, as he did not comply with the eligibility criteria prescribed in Condition No.19.02 of the Tender Conditions. It is averred that petitioner sent representations to the 1st

respondent alleging that the tenderers (M/s. Lakshmi Engineering Co., (2) M/s. Mahendra Kumar N. Shah and (3) M/s. K.V.S.N. Raju), who participated along with him, were not competitive and they formed as a ring and submitted the tenders with premium of marginal variation, and the 2nd respondent vide Memo No.COT/EE1/DEE2/T3/237/ 2000 dated 29-4-2000 forwarded the copies of the two representations of the petitioner to the Project Administrator and Superintending Engineer, SLBC Project conducting thorough probe into the matter and send a detailed report. The Project Administrator and Superintending Engineer has revaluated the Technical bids of the three tenderers and found that the allegations against M/s. Sri Lakshmi Engineering Company and M/s. K.V.S.N. Raju are correct and therefore both of them are disqualified. So far as M/s. Mahendra Kumar N. Shah is concerned, the experience certificates produced by him were found to be in order and confirmed by the concerned authorities. Hence, the Project Administrator vide his letter dated 6-10-2000 recommended the tender of M/s. Mahendra Kumar N. Shah at 10.8% excess over E.C.V, which is competitive and within permissible limits.

10. It is stated in the counter-affidavit that on 28-10-2000 the tenders were taken up for discussion in the Commissionerate of Tenders and the members of the committee have considered the representations of the petitioner and also the directions of this Court in Writ Petition No.3384 of 2000. The Committee considered all the representations of the petitioner and ultimately while confirming the evaluation made by the Project Administrator and Superintending Engineer, the Committee disqualified the petitioner on the ground that it has not fulfilled the eligibility criteria, and decided to accept the tender of M/s. Mahendra Kumar N. Shah at 10.80% excess over ECV of Rs.2,95,43,672/- priced with SSR 1999-2000.

11. According to the 2nd respondent, that the work executed by the petitioner during the financial year 1999-2000, is beyond the block period prescribed under Condition No.19.02 as per the Tender Schedule. It is stated that the completion of financial year is immaterial since the date of tender notice is relevant and the tender conditions are prescribed with reference to the date of tender notice. It is stated that the COT has issued working guidelines to all concerned for following the procedure laid down under G.O. Ms. No.23, dated 5-3-1999 and condition

No.19.02 of the tender conditions is very precise and there is no ambiguity regarding the words 'preceding years'. Finally, it is stated that if a fresh tender notice is to be issued the SSRs. of the year 2000-2001 shall have to be taken into consideration, resulting in alteration in entire estimate and also causing heavy loss to public exchequer, and prayed for dismissal of the writ petition.

12. I have heard the learned Counsel for the petitioner as well as the Government Pleader for Irrigation, appearing on behalf of the respondents. I have perused the records produced by the Government Pleader.

13. The first contention of the Counsel for the petitioner, relying on Para 3.02 of the guidelines issued by Government in G.O. Ms. No.23, dated 5-3-1999,-- 'to qualify for award of contract, each bidder in its name should during the last five years (specified financial years, i.e., they should be immediately preceding the financial year in which tenders are invited)'-- is that the words 'specified financial years' noted within brackets are meant only for the guidance of the Engineers/tendering authorities concerned, and not for prescribing any condition in the tender notice. He contends that the qualification criteria, as mentioned in Condition No.19.02 of the Tender Conditions, should be interpreted in the light of the Working Guidelines issued by the Commissionerate of Tenders pursuant to G.O. Ms. No.23, dated 5-3-1999 and therefore the work done by the petitioner in the financial year 1999-2000 (i.e., beyond 31-3-1999) should be taken into consideration while deciding whether the petitioner had fulfilled the eligibility criteria relating to the execution of similar nature of work.

14. The second contention of petitioner is that he made certain allegations against the other three tenderers whose price bids are opened stating that they formed as a cartel and are not qualified to participate in the tenders. The figures showing the work done by them and the experience certificates produced by them are not genuine and it was accepted by the respondents. In fact, subsequently the respondents disqualified M/s. Lakshmi Engineering Company as well as M/s. K.V.S.N. Raju. That itself shows that the allegations made by the petitioner against them are genuine. Counsel submitted that insofar as the allegations against M/s. Mahendra Kumar N. Shah are concerned, still investigation is going on. In view of

that, there is no reason to award any work in favour of M/s. Mahendra Kumar N. Shah.

15. The third contention of the Counsel for petitioner is that the tender of M/s. Mahendra Kumar N. Shah, which is found to be the only single eligible and qualified tender, is also liable to be rejected and tender notice has to be issued afresh inasmuch the very-same authorities have issued the present tender notice dated 8-2-2000 by cancelling the earlier tender notice dated 2-1-2000 on the ground that there are only one valid tender received by them pursuant to the tender notice dated 2-1-2000. He submits that on the same analogy, the contract cannot be awarded to the sole tenderer M/s. Mahendra Kumar N. Shah and the respondents must renotify the tender once again. Petitioner submits that the price quoted by him in the tender documents is 6% less than the other tenderers and if the contract is awarded to him there will be a saving of more than 20 lakh rupees to the Government. Alternatively, the Counsel for petitioner seeks a direction to the authorities to renotify the tender.

16. On behalf of the respondents, learned Government Pleader for Irrigation contended that the Government is scrupulously following the provisions of G.O. Ms. No.23. She submits that the words noted within brackets are intended for the guidance of the Engineers/tendering authorities. She invited the attention of this Court to Guideline No.8.1 (Qualification Criteria) of the working Guidelines on Tenders issued by the Commissionerate of Tenders on 11-10-1999 (as per G.O. Ms. No.23, IRR and CAD Department, dated 5-3-1999). It reads thus:

'8.1: Qualification Criteria:

Para 3.02 of the Annexure to G.O. Ms. No.23, dated 5-3-1999 has provided guidelines for stipulating the qualification criteria, but while adopting them many a time, in majority cases, the Field Officers are, prescribing the conditions without appreciating the spirit of the guidelines.

In sub-para-A (a) as amended in G.O. Ms. No.407, dated 26-5-1999, it is stipulated that 'Satisfactorily completed as Prime Contractor, similar works of value not less than Rs.....@ (Usually not less than 50% Estimate value of Contract) in

any one financial year.

It is necessary to clarify about similar works. Similar works are those which are alike to the work in question. Normally to assess the similar works, first to see whether they belong to the same category of works for which tenders are invited. Secondly, the principal components involved in the work in question and their similarity in the experience produced by the tenderer must be examined.

It may be explicitly understood that the word 'Completion' means that a Contractor should have completed the work within the block period provided. In case a similar work as executed in two or more financial years, the value executed in any one year should be considered and after updating to the present price level, it should be compared to the required value. The words within the brackets are provided as guidance to the Engineer concerned to fix the value of the work to be executed, but not for the prescribing in the condition. The Engineer concerned responsible for finalising the tender document should workout 50% of the value of work for which tenders are invited and accordingly suitable amount to be mentioned. @ indicates the updation of the value of the work to price level of the financial during which the tenders are invited.....'(words in italics = emphasis dated)

17. The above-quoted Working Guideline No.8.1 shows that it is with reference to sub-para (a) of Para-3.02-A of G.O. Ms. No.23, dated 5-3-1999. Para 3.02 relates to satisfactory completion of work and it has nothing to do with the work completed in the specified financial years. Learned Government Pleader relied on Guideline No.8 of the working guidelines relating to qualification criteria. This guideline indicates as to how to follow the conditions of G.O. Ms. No.23. It relates to sub-para (a) of para 3-A only. This is a clarification given to the said para sub-para (a) of Para 3.02-A, and does not relate to Para 3.02-A. According to her, there is no need to interpret or clarify Para-3.02-A. In the said clause it is made very clear that the specified financial years means the preceding financial years in which the tender notice is issued. Admittedly in this case, according to the learned Government Pleader, the preceding five financial years are 1994-95 to 1998-99. There is no reason to take any other meaning other than the one mentioned in the conditions of Tender Notice. She further submitted that the qualification criteria,

which are mentioned in the tender notice, cannot be deviated and that the petitioner has not completed required quantity of work before 31-3-1999. That is why the petitioner is seeking the relief from this Court that the work done by him subsequently (after 31-3-1999) should also be considered as a qualification criteria. Apart from that the petitioner has not questioned the validity of condition No.19.02 of the tender schedule, either in the previous writ petition or in this writ petition, and therefore, it cannot seek any relaxation of the tender conditions, contrary to the terms and conditions of the tender conditions. The prayer of the petitioner is to direct the respondents either to open its price bid or to renotify the tenders. The learned Government Pleader contends that the arguments of the petitioner cannot be beyond the prayer. Apart from that she submitted that no allegations of mala fide or arbitrariness is attributed to any of the officers by the petitioner and the writ petition is liable to be dismissed.

18. The other contention of the Government Pleader is that the tender conditions cannot be altered to suit the convenience of the petitioner. She submits that the words 'preceding financial years', as contended by the petitioner cannot be interpreted or construed as immediately preceding to the date of issue of tender notice, because the preceding five financial years, explicitly specified in the tender notice are 1994-95 to 1998-99. She contends that after considering the report of the SE, the COT has taken a final decision to award the contract to M/s. Mahendra Kumar N. Shah and because of status quo order granted by this Court, the contract could not be finalised.

19. In view of the above rival contentions, the points that arise for determination in this writ petitioner are:

(1) Whether interpretation of the words 'preceding five years' as mentioned in Condition No.19.02 of the Tender Conditions (which is in pari materia with sub-para (a) of para-3.02-A of G.O. Ms. No.23, dated 5-3-1999) relating to qualification criteria is final, or while interpreting the said clause any guidance or assistance is required to be taken from the Working Guidelines issued by the respondents?

(2) Whether cancellation of the first tender notice by the respondents is because of the single tender or for any other reason. If it is because of single tender, whether

it is permissible for this Court to permit the respondents to proceed with awarding of contract to the least bidder M/s. Mahendra Kumar N. Shah?

(3) Whether there are any valid reasons to order renotifying the tender?

It would be useful to notice condition No.19.02 of the tender notice, relating to qualification criteria, which reads thus:

'19.02. Qualification criteria:--(1) The tenderer should have satisfactorily completed (not less than 90% of contract value) as a prime contractor and similar works of value not less than Rs.148 lakhs in any one financial year during preceding five years (i.e., 1994-95 to 1998-99)'.

20. The Government of Andhra Pradesh have issued detailed guidelines, for streamlining of tender procedures in G.O. Ms. No.23, Irrigation and Command Area Development (PW-COD) Department, dated 5-3-1999. The detailed guidelines are mentioned in Annexure-I appended to the abovesaid G.O. Ms. No.23. Para 3.02, relating to 'qualification criteria' reads thus:

'3.02. Qualification Criteria:--A. To qualify for award of the contract, each bidder in its name should have, during the last five years (specified financial years i.e., they should be immediately preceding the financial year in which tenders are invited)

(a) Satisfactorily completed (not less than 90 per cent of Contract value) as a prime contractor, similar works of value not less than Rs./@ (usually not less than 50% of Estimated value of contract) in any one year.

(b) Executed in any one year, the following minimum quantities of works:

Cement concrete including RCC and PSC .. Cu.M

Earth work in both excavation and Embankment... Cu.M (relevant principal items be indicated) (usually 50 per cent of the expected peak quantities of construction per year)'.

Point No.1 :

A careful perusal of para-3.02 relating to qualification criteria, as stated in G.O. Ms. No.23, Annexure-I, and also condition No.19.02 of the tender conditions would disclose that -- to qualify for award of the contract the bidder should have executed similar nature of work during the last five years immediately preceding the financial year in which tenders are invited. In this case, admittedly tender notice is dated 8-2-2000. The immediate preceding financial year prior to the tender notice dated 8-2-2000 is 1998-99. That means the immediate preceding five financial years to the tender notice are from 1998-99 backwards, i.e., 1998-99, 1997-98, 1996-97, 1995-96, and 1994-95. To put it clearly, the five-years period shall be computed from 1994-95 to 1998-99. During that period the tenderer must have executed works of similar nature with rupees 148 lakhs. To interpret such a provision, no assistance or guidance is required to be taken from the guidelines. It is the admitted case of the petitioner that it has not executed a quantity of work of similar nature as notified in the tender notice prior to 31-3-1999, i.e., before the closure of the immediate preceding financial year in which the tender notice is issued. Of course, the petitioner claims to have executed the required quantum of work between the period from 1-4-1999 to 8-2-2000. The contention of the petitioner is that while deciding whether the petitioner has executed similar nature of the work, the work executed by the petitioner beyond 31-3-1999 and prior to 8-2-2000, (the date of tender notice), has also to be taken into consideration. To put it precisely, the petitioner contends that the immediate preceding financial year (1998-99), which is stated in para-3.02, shall be construed to have been completed by 8-2-2000 instead of 31st March, 1999.

21. Admittedly, the petitioner does not satisfy the qualification criteria on the date when the tender notification was issued inasmuch as he did not execute similar nature of work by 31-3-1999, i.e., before the end of the financial year 1998-99. Even in Guideline No.8.2 of the Working Guidelines, which relates to 'bid capacity', it is clearly stated, giving examples, that that 'last five years' means last five financial years. It is stated in the following words:

'Last five years means last five financial years. If the tenders are invited in 1999-2000, last five financial years will be 1994-95 to 1998-99. In case, any certificate indicates the value of the works from 12/1997 to 12/1998, it cannot be considered

as a financial year, but value of work done from 4/1998 to 12/1998 need be considered'.

22. As could be seen from the above Guideline No.8.2, the commencement and closure of 'year' shall be construed as the 'financial year'. Financial year commences on the 1st of April of a particular year and ends by the 31st March of the succeeding year. In the case on hand, the qualification criteria lays down that the tenderer should have satisfactorily completed similar works of value not less than Rs.148 lakhs in any one financial year during preceding five years (i.e., 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99). In this case, the last year would be 1998-99. It means that the financial year 1998-99 commenced on 1-4-1998 and completed by 31-3-1999. The tender notice is dated 8-2-2000. The immediate preceding financial year to the year (2000) in which tenders are invited is specified as 1998-99, because by that time the financial year 1999-2000 is still in progress and has not completed. Even on its own showing, the petitioner has not executed the required quantity of work of similar nature before 31-3-1999. On the other hand, petitioner claims that it has successfully completed work of similar nature work worth more than Rs.150 lakhs during the period from 1-4-1999 to December, 1999, which is admittedly beyond the financial year 1998-99. In effect, the petitioner is seeking extension of the financial year 1998-99 beyond 31-3-1999. Such extension of financial year beyond 31st March is not at all contemplated either in the Working Guidelines or in the tender conditions or in para-3.02 of G.O. Ms. No.23, Irrigation and Command Area Development (PW:COD) Department, dated 5-3-1999. For the above reasons, no guidance or assistance is required to be taken from the working guidelines for interpreting the words 'preceding five years' as stated in para 3.02 of G.O. Ms. No.23 or Condition No.19.02, relating to qualification criteria, mentioned in the tender conditions. Point No.1 is answered accordingly.

Point No.2 :

The second contention raised by the Counsel for the petitioner is that the first tender notice was cancelled because there is only a single valid tender and he contended that the record produced shows that there is sufficient reason to order

renotification of the present tender also because there is only one valid tender of Mahendra Kumar N. Shah.

23. A perusal of the record produced by the learned Government Pleader shows that the Superintending Engineer has mentioned three reasons for cancelling the first tender notice, viz.; (i) there is no competition due to single valid tender; (ii) the tender quoted, by the single tenderer is 14.13% excess over the estimated contract value and (iii) there is formation of a ring by the contractors. The above said recommendation of the Superintending Engineer was accepted by the higher authorities.

24. In this case, already, second time tender notification is issued and four contractors have participated in the bid, including the petitioner. Because of the representations given by the petitioner, the tenders of two other contractors (M/s. Lakshmi Engineering Company and M/s. K.V.S.N. Raju) were disqualified and ultimately the tender of M/s Mahendra Kumar N. Shah was only found to be eligible for consideration for awarding the contract. Even though the petitioner made certain allegations against M/s. Mahendra Kumar N. Shah also, there is nothing on record to show that the said firm M/s. Mahendra Kumar N. Shah was disqualified or found to be ineligible for awarding the contract. On the other hand, the learned Government Pleader submitted at the time of arguments that after verification of the facts, no case is made out against the said firm M/s. Mahendra Kumar N. Shah.

25. Already, in this matter, there is considerable delay in finalizing the tenders. The Hon'ble Supreme Court in *Air India Limited v. Cochin International Air Port Limited*, : [2000]1SCR505 , has explained when the Court can exercise in its discretionary power under Article 226 of the [Constitution of India](#) while scrutinising the matters like the one on hand. The Supreme Court held that the Court cannot interfere with the decision of the authorities in awarding the tenders, but the Court can scrutinize the decision-making process to find out whether there are any mala fides or arbitrariness or illegality in arriving at the conclusion to award the contract. The Supreme Court held that the Court should exercise its discretionary power under Article 226 of the Constitution 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 held that the State or its instrumentalities while taking decisions in matters relating to award of contracts, even if there are some defects in the decision-making, the Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not, and that the Court should interfere only when it comes to the conclusion that overwhelming public interest requires such interference.

26. In this writ petition, admittedly, the petitioner is found not qualified for awarding the contract, as on the date of issue of tender notice. Already, the Project is considerably delayed because of non-finalisation of the tenders. The Government Pleader contended that if a fresh tender notice is to be issued, the SSR relating to the year 2000-2001 shall have to be taken into consideration, which results in alteration of the entire estimates and heavy loss to the State exchequer. As held by the Hon'ble Supreme Court in *Air India's case* (supra), while considering contractual matters under Article 226, the Court should always keep in mind the larger interests of the public in order to decide whether its intervention is called for or not. In matters relating to development projects, time factor is of crucial importance. Judicial intervention, on such occasions, has caused delay in execution and resultant multifold increase in the cost of the project. Interference in matters relating to award of contracts should only be when the Court is satisfied that the public interest involved in holding up the project far outweighs the public interest in carrying it out within a reasonable time.

27. A Division Bench of this Court, in *Giridharilal Constructions v. Union of India*, : 2000(4)ALD510 , held that when a writ petition is tiled challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a writ petition. The Court must also take into account the higher cost involved in interfering with the award of the contract due to escalation in the price of inputs and whether the public would stand to benefit by incurring such higher cost.

28. The learned Counsel for the petitioner contended that the price quoted by the petitioner is the least one when compared to the other bidders and if the contract

is awarded to the petitioner, the exchequer of the Government will be benefited by twenty lakh rupees. This contention cannot be accepted because when once the petitioner is found disqualified and ineligible for awarding the contract, as per the tender conditions, even if the price bid of the petitioner is the lowest, it is not proper for this Court to direct the authorities to award the contract in favour of the petitioner. There are no grounds to order renotification of the tender notice afresh.

29. In this context, it is relevant to mention the observations of the Supreme Court in *Raunaq International Ltd. v. IVR Construction Ltd.*, : AIR 1999 SC393 . In that case, the Supreme Court held that 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. The Court held that in arriving at a commercial decision, considerations which are of paramount importance are commercial considerations., viz., (1) the price at which the other side is willing to do the work; (2) whether the goods or services offered are of the requisite specifications; (3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important,; (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality; (5) past experience of the tenderer and whether he has successfully completed similar work earlier; (6) time which will be taken to deliver the goods or services; and often (7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services. The Supreme Court held that even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction. The Hon'ble Supreme Court held that price alone should not be the consideration for awarding the contract in favour of a particular party and that the other conditions prescribed must also be satisfied by the party quoting the least price.

30. In this particular case on hand, as already mentioned by me supra, the petitioner has not executed required quantity of similar nature of work before 31-3-1999 and has not even qualified to participate in the bid as per the tender conditions. The authorities cannot, therefore, be faulted for not opening the price bid of the petitioner. There are no reasons either to direct the respondents to open the price bid of the petitioner or to renotify the tender afresh. This is not a fit case for interference under Article 226 of the [Constitution of India](#). Therefore, the respondents can proceed with the finalisation of the contract/tender and the status quo order is liable to be vacated. Point No.2 is answered accordingly.

Point No.3 :

For the above reasons, I hold on point No.3 that there are no reasons to order renotification of the tender notice afresh.

31. In the result, the writ petition fails and is accordingly dismissed. The status quo order granted earlier is hereby vacated. No costs.

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