

**IN THE HIGH COURT OF MANIPUR**  
**AT IMPHAL**  
**W.P. (C) No. 848 of 2018**

***Yambem Sanjit Meetei***, aged about 33 years, s/o Y. Kulla Meetei, resident of Bamon Kampu Yambem Leikai, P.S. Iribung, District Imphal East, Manipur, Power of Attorney Holder and representing Shri Vicisy Shimray, First Class Contractor (Regd. No. CE/MID/E-R/2016/1), aged about 55 years, s/o Y.Y. Shimray of New Canaan Village, Ukhrul and a/p Yazing Cottage, Dewlahland, P.S. Porompat, District Imphal East, Manipur.

***... Petitioner***

***-Versus-***

1. The State of Manipur, represented by the Chief Secretary, Government of Manipur at Old Secretariat, Imphal, Manipur, Pin No. – 795001.
2. The Commissioner/Secretary (Planning Department), Government of Manipur at Babupara, Imphal, 795001, Manipur.
3. The Commissioner/Secretary (Water Resources Department), Government of Manipur at New Secretariat, North Block, Imphal, 795001, Manipur.
4. The Commissioner/Secretary (Youth Affairs & Sports), Government of Manipur at New Secretariat, North Block, Imphal, 795001, Manipur.
5. The Chief Engineer (WR-II), Water Resources Department, Manipur at Khuyathong, PWD Office, Pin – 795001.
6. Philips Lighting India Limited, a Public Incorporated Company having its registered address at Mangalam Business Center, Block B, 6<sup>th</sup> Floor, Camac Street, Kolkata – 700016, West Bengal, represented by its Managing Director, Mr. Sumit Padmakar Joshi.

***... Respondents***

7. Crompton Greaves Consumer Electricals Limited, an Indian Multinational Company having its registered address at 6<sup>th</sup> Floor, CG House, Dr. Annie Besant Road, Mumbai – 400070,

Maharashtra, represented by its CEO & Managing Director,  
Mr. K.N. Neelkant.

**... Proforma Respondents**

**(...vide order dated 05/10/2018, R-7 has been deleted  
from being arrayed as party in this writ case.)**

*With*

**W.P. (C) No. 186 of 2019**

**Gaikhonlung Panmei**, aged about 59 years, S/o Late Tariang Panmei of Langol Tarung near RNBA House, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004, Proprietor of M/S Gaikhonlung Panmei, Special Class Contractor, PWD, Manipur, Regd. No. 37/7/2011-W.

**... Petitioner**

**-Versus-**

1. The State of Manipur, represented by the Chief Secretary, Government of Manipur, office at Old Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. – 795001.
2. The Commissioner/Secretary (Planning Department), Government of Manipur, office at Old Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. – 795001.
3. The Commissioner/Secretary (Water Resources Department), Government of Manipur, office at New Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. – 795001.
4. The Commissioner/Secretary (Youth Affairs & Sports), Government of Manipur, office at New Secretariat, North Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. – 795001.
5. The Chief Engineer (WR-II), Water Resources Department, Manipur, Office at Khuyathong, PWD Office, P.O. Imphal & P.S. City Police Station, Imphal West District, Manipur – 795001.
6. Philips Lighting India Limited, a Public Incorporated Company having its registered address at Mangalam Business Center,

Block B, 6<sup>th</sup> Floor, Camac Street, Kolkata – 700016, West Bengal, represented by its Managing Director, Mr. Sumit Padmakar Joshi.

**... Respondents**

7. Crompton Greaves Consumer Electricals Limited, an Indian Multinational Company having its registered address at 6<sup>th</sup> Floor, CG House, Dr. Annie Besant Road, Mumbai – 400070, Maharashtra, represented by its CEO & Managing Director, Mr. K.N. Neelkant.

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***(...vide order dated 05/10/2018, R-7 has been deleted from being arrayed as party in this writ case.)***

**B E F O R E**

**HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the petitioners	::	Shri I. Bikramjit, Advocate and Shri Ajoy Pebam, Advocate.
For the respondents	::	Shri N. Kumarjit, Advocate General; Shri Ng. Somorjit, Advocate.
Date of Hearing	::	<b>25-02-2020</b>
Date of Judgment & Order	::	<b>19-03-2020</b>

**JUDGMENT AND ORDER**

[1] Heard Shri I. Bikramjit, learned Advocate appearing for the petitioner in WP(C) No.848 of 2018 and Shri Ajoy Pebam, learned Advocate appearing for the petitioner in WP(C) No.186 of 2019; Shri N. Kumarjit, learned Advocate General for the State respondents and Shri Ng. Somorjit, learned Advocate appearing for the respondent No. 6.

[2] Since the above two writ petitions have arisen out of a similar set of facts, the same are being disposed of by this common judgment and order.

**WP(C) No. 848 of 2018:**

**[3.1]** By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to conduct the tender process of the work "**Installation of Flood Lighting at Main Stadium and Hockey Stadium of Khuman Lampak Sports Complex, Imphal, Manipur**" in a free and fair manner to ensure a healthy bidding process and also to direct the respondents to rectify the pre-qualification/ eligibility criteria of the tender notice of the said work. The petitioner who has been assured by the firm/ company of the respondent No.7, proforma respondent for backing and authorizing him to act on its behalf in the present tender process, is not in a position to participate in the said tender process due to the restrictive specifications imposed in the pre-qualification/ eligibility criteria. Though the respondent No.7 being a reputed company and having established a firm footing in the field of electrical in the country, it has been ousted from the tender process due to highly arbitrary and irrational eligibility criteria stipulated in the tender documents.

**[3.2]** According to the petitioner, he is the power of attorney holder representing Shri Vicisy Shimray, First Class Contractor and has been authorized by him to file the present writ petition.

**[3.3]** On 06/08/2018, the respondent No.5, the Chief Engineer (WR-II), Water Resources Department, Manipur floated an e-tender being NIT dated 06/08/2018 of the said work for an estimated amount of

Rs.26,39,98,528/- (Rupees twenty six crore thirty-nine lakh ninety-eight thousand five hundred and twenty-eight) only. The said NIT specified the commencement of downloading of tender documents from 1100 hours of 08/08/2018 and ending at 1100 hours of 04/09/2018. The bids were to be submitted on online with effect from 1100 hours of 10/08/2018 till 1500 hours of 04/09/2018 and the technical bids were planned to be opened at 1400 hours of 06/09/2018. The last date for submission of tender and the date for opening of the technical bids were extended till 1500 hours of 10/09/2018 and 1500 hours of 12/09/2018 respectively by way of a corrigendum notice dated 04/09/2018 issued by him.

**[3.4]** Clause 2.1 of the Instruction to Bidders (ITB) provides that the Planning Department, Government of Manipur approved the works for flood lighting of the Main Stadium, Hockey Stadium inside Khuman Lampak Sports Complex and Cricket Stadium at Luwangshangbam, Imphal, Manipur. The Department of Youth Affairs & Sports, Government of Manipur accorded administrative approval for it and entrusted the task of executing the work to the Water Resources Department, Government of Manipur as an implementing agency.

**[4.1]** Being aggrieved by the pre-qualifications/ eligibility criteria, the instant writ petition has been filed by the petitioner challenging the validity and correctness of the NIT on the inter-alia grounds that the pre-qualifications/ eligibility criteria were specifically designed to suit the needs of only a particular firm/ company, ie., the respondent No.6, Philips

Lighting India Limited. The pre-qualifications/ eligibility criteria contained in the Invitation for Bids (IFB) and elsewhere in the tender bid documents explicitly stipulated that the bidder should be Original Equipment Manufacturer (OEM) of luminaries, lamp and control gear of the same make as per the requirements in the tender documents or contractor specifically authorized by an OEM which is again repeated in the technical pre-qualifications/ criteria that the OEM should have their own manufacturing brand/ make for the luminaries, lamps & ballast/ control gear as per the requirements of the tender documents and that it should not be a brought out item for the OEM.

**[4.2]** Respondent No.6, Philips Lighting India Limited is the only firm/ company who fulfill the stipulated criteria. However, since the respondent No.6 is not a manufacturer of high masts or sports lighting towers, which are mandatory requirement for installation of such sport flood lightings, the item is not included among the specified OEM items of the same make. If at all the State respondents required the components with OEM of the same make, it should have specified all the requisite components like luminaries, lamp, ballast/ control gear, high masts/ sports lighting towers, light fittings, cables, etc and should not have specified only select items/ components like luminaries, lamps and control gear as in the present case. The specification of only select items only for having the same make, instead of specifying all the requisite items for having the same make, is highly indicative of an arbitrary "pick & choose" policy. The rationale behind such a stipulation of having different components of the

same make, without any regard to factors like reliability or better product at lower costs, etc., is highly irrational and illogical as all other reputed firms/ companies would be effectively terminated from participating in the competitive bidding process.

**[4.3]** Consequent to the said tender notice, many representations were submitted by various reputed companies protesting mostly against the unfair, arbitrary and restrictive pre-qualification/ eligibility criteria which was designed to favour the qualification of only respondent No.6 and that it is against the fair tendering process. The representation were, in effect mostly, for removing or altering or modifying the offending words or phrases or clauses in the tender bid documents in order to ensure the participation of more reputed companies or firms in the tender process and promote a more healthy, competitive and fair bidding process. Taking note of these serious irregularities, a Joint Redressal Council, a conglomerate of hill and valley CSO leaders of Manipur preferred a representation dated 01/09/2018 addressed to the Hon'ble Governor, Manipur seeking her kind intervention in the tender process by highlighting the serious irregularities perpetrated by the government officials in collusion with the respondent No.6. The representation stressed upon the fact that the pre-qualifications/ eligibility criteria stipulated in the said NIT is a tailor-made to suit the qualifications of only a particular firm, respondent No.6 by intentionally ousting the eligibility criteria of all other firms who are at par or even more reputed than the said firm. Even at the risk of appearing biased, it is submitted that the

respondent No.6 has a questionable track record in the state owing to the CCTV scam, Solar Lamp installation, known history for flouting rules, etc, as a result of which a number of proceedings are pending in the courts of the State. The said representation also highlighted, amongst others, that in the event of allowing the tender process to prevail despite the defective eligibility criteria and ultimately results in the selection of the respondent No.6 as the single qualifying firm/ company, the option of choosing the lowest bidder would no longer be available thereby encouraging the respondent No.6 to create an unbridled monopoly on the rates of the prescribed items and resulting in huge losses to the State exchequer and public money.

**[4.4]** The fact that the pre-qualifications/ eligibility criteria have been manipulated and tailor-made to make only one respondent No.6 qualify in the tender process in exclusion all other firms/ companies who are at par or even more reputed than the respondent No.6, becomes clearly apparent upon a cursory perusal of the proposal for the said work submitted by the Quality Control and Monitoring Division, Irrigation & Flood Control Department, Government of Manipur, now Water Resources Department to the Department of Youth Affairs & Sports, Government of Manipur, months before granting approval to the works by the respondent No.2 and 4. Right from the very beginning when the project proposal was submitted as stated above, it is seen that the Design Basis, Technical Specifications, Mounting Instruction, etc. enclosed in the said proposal are only those of Philips in exclusion of all other firms. This



is a clear indication that the respondent No.6 has been conniving with the State authorities right from the very initial stages to unduly influence and acquire the said contract work by employing unfair tactics and unethical means.

**[4.5]** Beside the irregularities mentioned above, the pre-qualifications/ eligibility criteria of the said work have also many other restrictive conditions. The rationale behind such a stipulation of having different components of the same make, without any regard to factors like reliability or better product at lower costs, etc., is highly irrational and illogical as all other reputed firms/ companies would be effectively terminated from participating in the competitive bidding process. The normal and more effective means of ensuring and maintaining quality of work by obtaining good or better products at lower costs by the concerned authorities is to specify a list of approved make for the requisite items by firms/ companies of known repute. In this manner, excellence in quality of the products and reliability would be ensured whereas specifying products of the same make by a particular firm or company may or may not maintain the same degree of quality or reliability. Moreover, the specification of such a list of approved make would also allow the participation of more firms/ companies thereby ensuring a free, fair and healthy tender bidding process. Such a process would also ensure the selection of the lowest bidding firm/ company and would negate the possibility of exerting monopoly by a particular firm/ company. In order to have a proper understanding and appreciate the

nature of the present contract work, a graphical representation is enclosed among the annexure.

**[4.6]** The petitioner is not against any policy decision of the State Government for activities taken up for the welfare of the public and greater good. However, the present attempt of the concerned authorities of the State Government to favour only a particular firm or company by manipulating the pre-qualification/ eligibility criteria to oust all other reputed firms/ companies reeks of collusion, partiality, favouritism, arbitrariness and undue influence exerted by a certain group with vested interests.

**[5.1]** An affidavit has been filed on behalf of respondent No.3 denying the averments made in the writ petition. An issue as regards the maintainability of the writ petition has been raised on the ground that the petitioner does not have a locus standi to file the instant writ petition and in addition thereto, it has been stated that the present petitioner is a government employee and a power of attorney holder. In para 8 of the writ petition, the petitioner has stated that he was assured by the firm/ company of the respondent No.7 authorizing him to act on their behalf in the present tender process while he is alleged to have been authorized by Shri Vicisy Shimray as stated in para 1 of the writ petition but it is nowhere mentioned in any of the documents to show that he has been authorized by the respondent No.7 or by Shri Vicisy Shimray for carrying out the tender process. Moreover, on 05/10/2018, this Court, on the

prayer made by the counsel appearing for the petitioner, was pleased to allow the deletion of paragraph 8 of the writ petition and since the paragraph 8 having been deleted, the question of authorizing the petitioner by the respondent No.7 for taking part in the present tender process will no longer arise.

**[5.2]** The pre-qualifications/ eligibility criteria have been prescribed with the sole purpose of achieving the object for which the tender was issued. The paramount interest of the State was to ensure that the work is duly executed and that the same is effectively maintained thereafter during the maintenance period also. The main part of the stadium lighting are luminaries, lamps and ballast/ control gear because of which the OEM ought to be the manufacturer so that the OEM takes the full responsibility for supply of these items as per the tender requirements. The mere fact that in India there are limited OEM who qualifies the pre-qualification/ eligibility criteria mentioned above, could not be a yardstick and/ or a basis to allege that the pre-qualifications/ eligibility criteria were specifically designed to suit the needs of only one particular firm/ company for which the instant tender was being issued. Since it is highly technical and specialized nature of work requiring expertise, no infirmities can be attributed for prescribing the stringent pre-qualification/ eligibility criteria. In the recent past, the prestigious stadium like Salt Stadium, Kolkata also had the similar pre-qualifications/ eligibility criteria while procurement of stadium flood lighting system. In such specialized work of this nature, there would be only few or even singular who may be

qualified to execute the work. The purported presumption of the petitioner is wholly incorrect and misconceived and the same is a resultant of the ignorance on the part of the petitioner who has no experience in execution of this nature of work. As regard the representation preferred by the Joint Redressal Council, it has no background/ technical knowledge of such stadium flood lighting and is nowhere related to the execution of the prestigious project nor are they OEM or contractor. Respondent No.6 has never in the history ever manufactured CCTV and therefore, the question of litigation against the respondent No.6 does not arise at all. No infirmities ought to be attributed to the respondent No.6 while seeking technical details and data from respondent No.6 as the stadium flood lighting system is not a conventional lighting and execution of the same requires a lot of expertise. There is not a single Engineering Department not only in the State but also in the whole country who could design the sports lighting for various stadium in the country and therefore, the Departments need to get few details from the experts who are best known and have proven experience record in the country. What has been prescribed in the tender and technical specification, is that the bidder has to deliver the performance/ lighting lux level as per FIFA standard and the requirement of the bidder to provide guarantee/ warrantee. The tender was opened on 12/09/2018 and 3 (three) bidders were found to be eligible and the technical bids were under detailed evaluation by the Technical Evaluation Committee.

**W.P. (C) No. 186 of 2019**

**[6.1]** By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to conduct the tender process of the work "Installation of Flood Lighting at Main Stadium and Hockey Stadium of Khuman Lampak Sports Complex, Imphal, Manipur" in a free and fair manner to ensure a healthy bidding process and also to direct the respondents to rectify the pre-qualification/ eligibility criteria of the tender notice of the said work. The petitioner who has been assured by the firm/ company of the respondent No.7, proforma respondent for backing and authorizing him to act on their behalf in the present tender bid process, is not in a position to participate in the said tender process due to the restrictive specifications imposed in the pre-qualifications/ eligibility criteria. Though the respondent No.7 is a reputed company having established a firm footing in the field of electrical in the country, it has been ousted from the tender process due to highly arbitrary and irrational eligibility criteria stipulated in the tender bid documents.

**[6.2]** The facts and circumstances as narrated in this writ petition, are similar to that of the facts and circumstances as narrated in WP(C) No. 848 of 2018 and therefore, the same are not repeated here for the sake of brevity.

**[7]** Before going into the issue involved herein, this Court deems it appropriate to re-visit the principles laid down by the Hon'ble Supreme

Court in matters relating to award of contract. In ***Tata Cellular Vs. Union of India, (1994) 6 SCC 651*** wherein two main issues-one, relating to the scope of judicial review and two, relating to selection being vitiated by arbitrariness were considered and decided by the Hon<sup>ble</sup> Supreme Court. In matters relating to contracts wherein one of the parties is the public authority, the question to be asked is, have the guidelines been laid down, if so laid down, have they been observed? The Hon<sup>ble</sup> Supreme Court, after referring to its earlier decisions, summarized the principles which are the broad grounds subject to addition of further grounds in course of time. The Hon<sup>ble</sup> Supreme Court held:

*“69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:*

- 1. It must be unconditional.*
- 2. Must be made at the proper place.*
- 3. Must conform to the terms of obligation.*
- 4. Must be made at the proper time.*
- 5. Must be made in the proper form.*
- 6. The person by whom the tender is made must be able and willing to perform his obligations.*
- 7. There must be reasonable opportunity for inspection.*
- 8. Tender must be made to the proper person.*
- 9. It must be of full amount.*

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

*bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down.*

**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 justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.*

**88.** *We may now look at some of the pronouncements of this Court including the authorities cited by Mr Ashoke Sen. Fasih Chaudhary v. Director General, Doordarshan was a case in which the Court was concerned with the award of a contract for show of sponsored TV serial. At p. 92 in paragraphs 5 and 6 it was held thus:*

*“It is well settled that there should be fair play in action in a situation like the present one, as was observed by this Court in Ram & Shyam Co. v. State of Haryana. It is also well settled that the authorities like Doordarshan should act fairly and their action should be legitimate and fair and*

*transaction should be without any aversion, malice or affection. Nothing should be done which gives the impression of favouritism or nepotism. See the observations of this Court in Haji T.M. Hassan Rawther v. Kerala Financial Corpn. While, as mentioned hereinbefore, fair play in action in matters like the present one is an essential requirement, similarly, however, "free play in the joints" is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere as the present one. Judged from that standpoint of view, though all the proposals might not have been considered strictly in accordance with order of precedence, it appears that these were considered fairly, reasonably, objectively and without any malice or ill-will."*

**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”.*

In ***Air India Ltd. Vs. Cochin International Airport Ltd. & ors.***, reported in **(2000) 2 SCC 617** wherein it has been held that the law relating to award of a contract has been settled by the Hon<sup>ble</sup> Supreme Court, the relevant para 7 of which is 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 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.”*

In **Jagdish Mandal Vs. State of Orissa**, reported in (2007) **14 SCC 517**, the decision in Tata Cellular case (supra) was referred to and relied upon with the following observations:

*“This Court also noted that there are inherent limitations in the exercise of power of judicial review of contractual powers. This Court also observed that the duty to act fairly will vary in extent, depending upon the nature of cases, to which the said principle is sought to be applied. This Court held that the State has the right to refuse the lowest or any other tender, provided it tries to get the best person or the best quotation,*

*and the power to choose is not exercised for any collateral purpose or in infringement of Article 14.”*

In ***Maa Binda Express Carrier Vs. North-East Frontier Railway***, reported in **(2014) 3 SCC 760**, the Hon“ble Supreme Court has held that the submission of tender is no more than making an offer which the State or its agencies are under no obligation to accept and the bidders in the tender cannot insist that their tenders should be accepted simply because a given tender is the highest or the lowest. It has further been held that the only enforceable right that a bidder has, is to examine by the court whether the aggrieved party has been treated unfairly or discriminated against to the detriment of the public interest. In ***Rishi Kiran Logistics Private Ltd. Vs. Board of Trustees of Kandla Port Trust & anr.***, reported in **(2015) 13 SCC 233**, the decision of the Hon“ble Supreme Court in Tata Cellular Case (supra), has been followed with the observation that a lucid enunciation on the scope of judicial review of administrative action, that too in tender matters can be found therein.

In ***Reliance Energy Ltd. & anr. Vs. Maharashtra State Road Development Corporation Ltd. & ors.***, **(2007) 8 SCC 1**, the Hon“ble Supreme Court held:

*“36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of “non-discrimination”. However, it is not a free-*

*standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to “right to life”. It includes “opportunity”. In our view, as held in the latest judgment of the Constitution Bench of nine Judges in I.R. Coelho v. State of T.N., Articles 21/14 are the heart of the chapter on fundamental rights. They cover various aspects of life. “Level playing field” is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of “level playing field”. We may clarify that this doctrine is, however, subject to public interest. In the world of globalization, competition is an important factor to be kept in mind. The doctrine of “level playing field” is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equality placed competitors are allowed to bid so as to subserve the large public interest. “Globalisation”, in essence, is liberalization of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of “globalization”. Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of “level playing field” embodied in Article 19(1)(g). Time has come, therefore, to say that Article 13 which refers to the principle of “equality” should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of “level playing field”. According to Lord Goldsmith, commitment to the “rule of law” is the heart of*

*parliamentary democracy. One of the important elements of the “rule of law” is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of “reasonableness”, then such an act or decision would be unconstitutional.”*

In ***Meerut Development Authority Vs. Association of Management Studies & anr.***, (2009) 6 SCC 171, the Hon’ble Supreme Court held:

*“26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.”*

[8] From the aforesaid decisions, it is seen that the law, as regards the matters relating to award of contracts involving a public authority, is no longer res-integra. There is no need of multiplying the decisions rendered by the Hon’ble Supreme Court in this regard and suffice it to say that the court’s power of judicial review of administrative action is limited to the extent indicated in the decisions mentioned hereinabove. But an exception has been carved out that though a decision relating a

matter of contract is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness. The principles of judicial review would apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favouritism. In other words, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. Article 14 of the Constitution being anathema to any malafide, unreasonable and arbitrary action of the Government or its instrumentalists, strikes at their roots.

[9] It has been submitted by the counsels appearing for the petitioners that the pre-qualifications/ eligibility criteria have been prescribed by the State Government with a view to favour only a particular firm or company by ousting all other reputed firms/ companies and the action of the State Government in doing so, is unfair, unreasonable and arbitrary being violative of Article 14 of the Constitution of India. Combating their contention, it has been submitted by the learned Advocate General vehemently that the writ petitions are not maintainable for the reason that the petitioners have no locus standi at all to question the process of tender including the stipulation of the terms and conditions in the invitation to tender. It has further been submitted by him that there was nothing wrong in the pre-qualifications/ eligibility criteria because they have been prescribed keeping in mind the nature of the works to be executed and the requirement of a follow up maintenance in respect

thereof. The contention of the learned Advocate General appears to have merit and substance. The petitioners are the local contractors who are/ have been executing works like construction of roads, bridges, buildings etc. and there is no material on record to show that they have executed any such type of works as is required in the present case nor are they capable of executing any such work. Their claim that they were authorised by the respondent No.7, in both the cases, holds no longer good, for the reason that the name of the respondent No.7 which was arrayed as party respondent, has been deleted from being the parties in the writ petitions. The fact that the respondent No.7 did not file the writ petitions, has clearly demonstrated that it has no any grievance in the issue involved herein. Moreover, the petitioners have not participated in the process of tender because they did not submit their bids and in other words, they were not even eligible to submit their bids. Considering the above facts and circumstances, this Court is of the view that the writ petitions are not maintainable in the hands of the petitioners and are liable to be dismissed by this Court.

[10] In view of what has been observed hereinabove, this Court need not go into the merit of the case but since the counsels appearing for the petitioners have made their submissions on merit as well, this Court deems it appropriate to deal with it. The power of the High Court to issue writs under Article 226 of the Constitution of India can be exercised for two purposes-one, the enforcement of the fundamental rights and two, the ordinary legal rights which means legally enforceable rights. The

existence of a fundamental right or legal right of the petitioner alleged to have been violated is the foundation for invoking jurisdiction of the High Court. The right to be enforced under Article 226 of the Constitution of India must ordinarily be the rights of the petitioner himself except in the case of habeas corpus and quo warranto. As has been held by the Hon'ble Supreme Court, in matter relating to award of contract by the State Government or its instrumentality, it is they who can fix their own terms of invitation to tender and that is not open to judicial scrutiny. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process. In the present case, it is not the case of the petitioners that their legal rights conferred under the provisions of a statute, have been violated and all that they have submitted, is that the pre-qualifications/ eligibility criteria prescribed by the State Government, are designed to suit the private respondents only and therefore, the State Government's action is unreasonable and malafide. But the stand of the State Government as indicated in their affidavit, is that the pre-qualifications/ eligibility criteria have been prescribed with the sole purpose of achieving the object for which the tender was issued by it. The paramount interest of the State was to ensure that the work is duly executed and that the same is effectively maintained thereafter during the maintenance period. In short, the pre-qualifications/ eligibility criteria have been prescribed after taking into



account various factors like the luminaries, lamps and ballast/ control being the main part of the stadium lighting, the requirement of expertise in such a highly technical and specialized nature of work, the pre-qualifications/ eligibility criteria in respect of the Salt Stadium, Kolkata, the performance/ lighting lux level to be maintained as per FIFA standard etc. Therefore, it will be wrong on the part of the petitioners to contend that the pre-qualifications/ eligibility criteria have been prescribed so as to suit the private respondent only. No material has been placed on record by the petitioners to demonstrate that the action of the State Government is malafide. The contention of the petitioners is belied by the averment made in the affidavit filed on behalf of the State Government to the effect that the technical bids were opened on 12/09/2018 and 3 (three) bidders were found to be eligible for the tender. This Court, while issuing notice to the respondents on 11-09-2018 in WP(C) No.848 of 2018, directed that the process of tender should not be finalized without the leave of the Court, if there were less than three eligible bidders. There was no violation of the interim order and moreover, it did not restrain the State Government from going ahead with the process of tender, provided there were no less than three eligible bidders.

[11] One aspect which needs to be considered by this Court, is that during the pendency of the writ petitions, the technical and financial bids were opened. After the bids having been considered by the Technical Committee, the work order was issued in favour of the private respondent who had executed the work. On top of that, it has been inaugurated by

[26]

the State Government recently. Therefore, the issue involved herein has become academic and in fact, there is no need of deciding it by this Court. The issue can be considered by this Court in an appropriate case in future. It is, however, open to the petitioners to approach the civil court for redressal of their grievance, if any.

[12] For the reasons stated hereinabove, the instant writ petitions are dismissed with no order as to costs.

**JUDGE**

**FR / NFR**

**Victoria**

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