

**IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

Writ Appeal 17(AP)2016

1. Union of India represented through Ministry of Power, Govt. of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Rural Electrification Corporation Ltd., (REC), a Govt. of India Enterprise, Through Chief Project Manager, DDUGJY, having its registered office at Core-4, SCOPE Complex, 7 Lodhi Road, New Delhi-110003.

.....Petitioners.

-Versus-

1. M/s Millenium Synergy Pvt. Ltd. having its office at No. 12A, 11th Avenue, Ashok Nagar, Chennai-600083, LIC Colony, represented by its authorized signatory, Shri. Jabring Venia, S/o Lt. T. Venia, R/o Panchali, Mowb-II, P.O/P.S. Itanagar, Papumpare District, Arunachal Pradesh (Petitioner in WP (C) 461 (AP) 2016 and WP (C) 523 (AP) 2016).
2. M/s Rays Power Infra Pvt. Ltd., having its registered office at D-43 Janpath, Shyam Nagar, Jaipur-302019, in the State of Rajasthan, represented herein by its authorized signatory, Shri Praveen Sharma, S/o Late Late Ramavtar Sharma, resident of Vidhyadhar Nagar, Dist. Jaipur, Rajasthan -302023. (Petitioner in WP(c)466(AP) 2016 and WP (c)513(AP)2016).
3. The State of Arunachal Pradesh represented by the Chief Secretary to the Govt. of Arunachal Pradesh, Itanagar (respondent in WP(c)461(AP)2016 and other connected cases).
4. The Commissioner, Department of Power and Non-Conventional Energy Resources, Govt. of Arunachal Pradesh, Itanagar(respondent in WP(c)461(AP)2016 and other connected cases).

5. The Director, Arunachal Pradesh Energy Development Agency (A state Government Agency), Urja Bhawan, Tadar Tang Marg, Near IG Park, Itanagar-791111 (respondent in WP(c)461(AP) 2016 and other connected cases).
6. Arunachal Pradesh Energy Development Agency (A State Government Agency) Urja Bhavan, Tadar Tang Marg, Near IG Park, Itanagar-791111 represented by its Secretary. (respondent in WP(c)513(AP)2016).
7. The Tender Opening cum Evaluation Committee headed by its chairman, the Chief Engineer (CEZ), Department of Power, Itanagar(respondent in WP(c)461(AP)2016).

..... Respondents

Advocates for the petitioners:

Mr. Deepak Khurana
Mr. Ninnong Ratan

Advocates for the respondents:

Mr. Kardak Ete, Additional Advocate General, Arunachal Pradesh
Mr. P. D. Nair
Mr. S. Chamaria
Mr. M. Phukan
Mr. D. Sarmah
Mr. M. Tamut

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 22-11-2016

Date of Judgment & Order: 24-11-2016

JUDGMENT & ORDER(CAV)

(By Michael Zothankhuma, J.)

Heard Mr. Deepak Khurana, learned counsel for the appellants. Also heard Mr. K. Ete, learned Sr. Addl. Advocate General for the respondent No. 1 and Mr. S. Chamaria, learned counsel for respondent No. 2.

- 2.** The appellants have filed this appeal against the common judgment and order dated 07.11.2016 passed in WP(c)461(AP)2016, WP(c)466(AP)2016, WP(c)523(AP)2016 and WP(c)513(AP)2016.
- 3.** The appellants have made a challenge to the judgment and order dated 07.11.2016, wherein the learned Single Judge had set aside the 18th Review Planning & Monitoring(RPM, for short), Ministry of Power, held on 10.08.2016, and all consequential decisions made thereupon. The impugned Judgment and order also set aside the decision by the latter Chief Minister on 13.08.2016 and upheld the decision made by the earlier Chief Minister on 08.07.2016, which were in the form of "File Notings". The State authorities were thereafter directed to award the contract work to the respondent Nos. 1 & 2(herein writ petitioners) vide the impugned judgment & order.
- 4.** The facts of the case is that the Government of India had launched a scheme called the Deen Dayal Upadhyaya Gram Jyoti Yojana(DDUGJY, for short), for electrification of unelectrified villages in the country.
- 5.** The Government thereafter appointed the Rural Electrification Corporation Ltd. (REC, for short) i.e. appellant No. 2, to be the nodal agency to implement the said DDUGJY Scheme. The REC thereafter appointed the Arunachal Pradesh Energy Development Agency(APEDA, for short), a State Public Sector Undertaking, to implement the scheme in the State of Arunachal Pradesh and in this respect, a Notice Inviting Tender(NIT) dated 06.04.2016 was issued by the Director, APEDA, for design, supply, installation, testing, commissioning and maintenance of 300 WP Solar Power Packs for rural electrification under the scheme "Electrification of 1058 nos. off-grid villages in Arunachal Pradesh". The estimate cost of the tender was Rs. 127.00 crores.
- 6.** Pursuant to the said Notice Inviting Tender(NIT), 10(ten) bidders including the Respondents No. 1 and 2 participated in the tender process. The said tender process was a 2(two) bid system, wherein the tenderers had to submit technical and financial bids.
- 7.** After opening of the technical and financial bids, the Tender Opening-cum-Evaluation Committee(TOEC, for short) found that out of 10(ten) bidders, 6(six) tenders were found valid. Out of 6(six) tenderers, the present case

pertains to 3(three) tenderers, namely, M/s Sukam Power Systems Ltd. who had quoted the lowest rate i.e. Rs. 87,03,44,820/- and was placed as L1. The Respondent No. 1/writ petitioner in WP(c)461(AP)2016 and WP(c)513(AP) 2016, was placed as L3, having quoted the third lowest tender amount of Rs. 1,26,89,57,907/-. The Respondent No. 3 was placed as L2 as he had quoted the second lowest tender amount of Rs. 1,25,78,37,800/-. The TOEC found the rate quoted to be abnormally low and recommended the rejection of the bid of L1. The TOEC, thereafter, sent its comparative statement and recommendation to the Director, APEDA, who, thereafter, made a Note dated 14.06.2016, to the effect that contract work should be awarded to L1 and if L1 fails to execute the work in time, the work may be awarded to L2 and L3.

8. Thereafter, the File was sent to the Commissioner to the Government of Arunachal Pradesh, Finance & Power Department, who, then made a Note dated 05.07.2016 which is as follows:

"This is a matter pertaining to electrification of 1058 rural villages on the off-grid mode through installation of 300 Wp solar power packs. The matter has been reviewed at the highest level in Govt. of India and REC has been given the task of monitoring this project. The Govt. of India has sanctioned an amount of Rs.131.26 Crs on 85:15 funding pattern. The enclosed file may be seen, wherein a draft bid document was sent to Law and Fin Deptt for examination: FD had at Page 13 given an unambiguous opinion which is reproduced below.

- (i) The technical evaluation, the conditions for ISO certification at Sl. No. 9, 10, 11 can be clubbed as a common certification.***
- (ii) Once companies have qualified technical benchmarks, finalization of bid must be on price alone and the bid be awarded to the lowest bidder as standard procurement practice.***
- (iii) A perusal of bid documents of PAEDA at page 132 of this file reveals that APEDA has retained complete flexibility in awarding work regardless of price bid. This is against established codal formalities, procurement procedures, General financial rules and CVC guidelines. It is surprising that inspite of categorical instructions by FD, the clause of bid documents were not amended.***

Now APEDA, has given a synopsis of tender process, wherein tender of Rs.127.00 Crs was floated in April, 2016 for design, manufacture, supply, testing and commission with 5 years warranty for electrification of 1058 off-grid villages. Out of 10 bidders, 2 bids were rejected and only six bidders were technically qualified for financial bid. As per the analysis given by APEDA, M/s Su kam Power System has qualified as the

lowest bidder quoting at Rs. 87.00 Crs, 31% below the justified rates. The justified rates are given at Page 257-260. However, neither the basic for arriving at these rates are given nor have these rates been certified by any competent Engineers and an adhoc justified rate of Rs. 120.1 Crs has been arrived at on "market price".

APEDA has given a proposal that notification of award may be issued to L1 and if they fail to execute the work, it may be distribute to L2 and L3. I am not in a position to agree to this proposal as this militates against established procurement practices. We have the following course of action now available to us.

a) Award the work to L1.

b) In case L1 expresses inability to execute the work, float fresh bids with revised bid documents as per standard procurement practices."

The Chairman, APEDA, thereafter, made a Note that M/s Sukam Power Systems Ltd.(L1) may be directed to appear-in-person before APEDA to justify their rate and thereafter, APEDA, should take a final decision on whether the work could be allotted to L1.

9. Thereafter, the File was sent to the Minister, Power Department, who made a Note that the rate quoted by L1 was unworkable and accordingly, L2 i.e. Respondent No. 2 should be awarded the contract work. The File was thereafter sent to the Chief Minister, who approved the Minister's Note on 08.07.2016 and also added the fact that L3, who is the Respondent No. 1, should also be awarded the contract.

10. Thereafter, a letter was sent on 11.07.2016, by L1, to the Director, APEDA, stating that no legal notice had been sent by their Company and accordingly, the alleged legal notice sent to the Director, APEDA, should be disregarded. On receiving the said letter dated 11.07.2016 from L1, the Director, APEDA, placed the File regarding the tender process before the Commissioner, Power Department, on 19.07.2016. The said Commissioner, thereafter, made another Note dated 19.07.2016, which was to the effect that the previous Chief Minister had approved awarding of the contract to L2 and L3, which was impermissible as per Standard Procurement Guidelines. Accordingly, a proposal was made for reconsideration of the earlier Chief Minister's decision by placing the File before the new Chief Minister who had now taken the place of the earlier Chief Minister.

11. In pursuance to the File Notings of the Commissioner, Power Department, the Director, APEDA, made a Note dated 02.08.2016 on the status of the tender proceedings and stated that M/s Sukam Power Systems Ltd. had submitted a letter dated 11.07.2016, which implied that they were not interested in the tender, as they had realized that they had misquoted their tender rates, without proper calculation of the manual transportation cost involved.

12. The Note dated 02.08.2016 written by the Director, APEDA, also stated that the rates quoted by L1 was abnormally low and impracticable, and in view of the withdrawal of L1 from the tender process, L2 and L3 became the lowest bidders in respect of 15 districts i.e. L2 becomes L1 in 9(nine) districts and L3 becomes L1 in 6(six) districts. The Director, APEDA, thereafter, sent the Note dated 02.08.2016 for consideration of the Chief Minister. The Chief Minister, on 13.08.2016, made a Note that L1 had quoted the rates below the justified rate by 31.47 percent. The Chief Minister also made a Note that as per the Notes of the Commissioner(Power), the CVC Guidelines did not permit awarding of work to L2. Accordingly, after discussing the matter with Commissioner(Power), Government of Arunachal Pradesh, the Chief Minister made a Noting whereby the entire tender process was directed to be cancelled and a fresh tender process was to be initiated.

13. Thereafter, Director, APEDA, issued Notification dated 24.08.2016, whereby the Notice Inviting Tender(NIT) dated 06.04.2016 was cancelled and it was stated that fresh tender would be invited through 'e' tendering process. In the meantime, a meeting was held under the Chairmanship of Secretary, Power, Government of India, on 10.08.2016, wherein senior officers from the Ministry of Power, REC, PFC, CEA, CPSUs, Member Secretary/Secretary, NAG of the States and other representatives participated. The meeting was called the 18th RPM Meeting and in the Meeting Minutes, it was reflected at Paragraph No. 2.2, as follows:

"2.2. The representative from Arunachal Pradesh stated that bids for grid villages (478) are under evaluation and would be awarded by end of August, 2016. However, for off-grid villages(766), the tender could not be awarded. REC informed that despite regular follow ups, State has not been able to award projects even after more than 10 months of sanction. After detailed discussions, it was decided that SECI, a CPSU under MNRE will be the implementing agency for the

off-grid projects in Arunachal Pradesh and finish off-grid electrification by December, 2016."

14. The Respondents No. 1 & 2 were aggrieved by the Notification dated 24.08.2016, cancelling the Notice Inviting Tender(NIT) dated 06.04.2016 and also the decision made in the 18th RPM on 10.08.2016, wherein the implementing agency for off-grid projects for Arunachal Pradesh, had been changed from APEDA to SECI. SECI is a Central Public Sector Undertaking.

15. In view of the above-stated reasons, Respondent No. 1 filed WP(c)461(AP)2016 challenging the Notification dated 24.08.2016 cancelling the Notice Inviting Tender(NIT) dated 06.04.2016. The Respondent No. 1 also filed WP(c)513(AP)2016 challenging the 18th RPM Meeting Minutes dated 10.08.2016, wherein the SECI had been made the implementing agency for off-grid projects in the State of Arunachal Pradesh.

16. Similarly, the Respondent No. 2 filed WP(c) 466(AP)2016 and WP(c) 513(AP)2016 against the order cancelling the Notice Inviting Tender(NIT) dated 06.04.2016 and the 18th RPM meeting Minutes. The Single Judge by the impugned common judgment & order dated 07.11.2016 disposed of all the 4(four) writ petitions, by holding that the decision to change the implementing agency from APEDA to SECI was arbitrary. It also held that the decision dated 13.08.2016 made by the Chief Minister to cancel the Notice Inviting Tender (NIT) dated 06.04.2016 and direction for a fresh tender process was not in consonance with the earlier decision dated 08.07.2016, made by the earlier Chief Minister to award the contract to Respondents No. 1 and 2. The learned Single Judge, thus, held the decision dated 13.08.2016, was arbitrary and that subsequent Chief Minister could not have reviewed his own order, as the same was bereft of any reasons. The Single Judge also directed the respondents to award the contract work to Respondents No. 1 and 2 as per the decision of the earlier Chief Minister made on 08.07.2016.

17. The appellants have challenged the decision of the Single Judge on the ground that as per Clause 2 of the Circular No. 4/3/07 dated 03.03.2007, issued by the CVC, Govt. of India, there should be a re-tender if the lowest tenderer backs out. The other ground of challenge is that, as the decision of the Chief Minister had not materialized into an order and also, as no order had been communicated to the Respondents No. 1 and 2, regarding award of the

contract to them, no vested right accrued to the Respondents No. 1 and 2. Also, no legal or fundamental right of the Respondents No. 1 and 2, had been violated .

18. The appellant's counsel also submits that the Single Judge did not come to a finding that the cancellation of the tender process was actuated by *mala fides* or to favour any particular individual. He submits that in the absence of the above, the learned Single Judge committed an error in setting aside the Notification dated 10.08.2016 issued by the Director, APEDA, and cancelling the Notice Inviting Tender(NIT) dated 06.04.2016 and calling for a fresh tender.

19. The appellants' counsel further submits that the decision of the Central Government to change the implementing agency from APEDA to SECI is purely an administrative decision and the same has been done due to the delay in awarding the contract. He submits that sanction for the off-grid project for solar technology, was sanctioned vide letter dated 27.01.2016 issued by the appellant No. 2. The letter dated 12.01.2016 issued by the appellant No. 2 also reflects the fact that the DPR prepared by APEDA had been sent by letter and mail dated 10.10.2015.

20. The appellants' counsel submits that all the above facts goes to indicate that there has been an inordinate delay in awarding the contract by APEDA and accordingly, the decision to change the implementing agency was made only for the purpose of speeding up an already delayed project.

21. Mr. P. D. Nair, learned counsel for Respondent No. 1, submits that all orders are prepared and made on the basis of File Notings and that the Respondents No. 1 and 2/writ petitioners have challenged by way of the writ petitions, mentioned above, the Notification dated 24.08.2016 issued by the Director, APEDA, wherein the tender process issued vide Notice Inviting Tender (NIT) dated 06.04.2016 had been cancelled. He submits that the decision making process in coming to a decision to cancel the tender process is arbitrary, inasmuch as, M/s Sukam Power Systems Ltd. (L1) had been rejected by the TOEC, on 03.06.2016.

22. Learned counsel for Respondent No. 1 also submits that State Respondents and the tenderers are bound by the conditions of the contract/Notice Inviting Tender(NIT) and that Clause 6.2 of the Conditions of Contract states that the authorities may accept the lowest bidder and it was not binding upon the APEDA to accept the lowest bidder. He submits that this Clause clearly points to the fact that the APEDA could have selected the Respondents No. 1 and 2 as their rates were workable rates and it was not mandatory that the lowest bidder was to be selected.

23. Mr. Nair, learned counsel, further submits that in view of the fact that the Members of TOEC had come to a decision that the bid amount submitted by M/s Sukam Power Systems Ltd. (L1) was abnormally low and had accordingly recommended the said bid amount for rejection, the Respondent No. 1 who was initially L3 should be regarded as L2 and Respondent No. 2 who was initially L2 should be regarded as L1. learned counsel for Respondent No. 1 also submits that in view of the rejection of L1, the rates of Respondent No. 1, who was the lowest in 6(six) districts, had to be considered as L1 in those 6(six) districts. Similarly, the rates of Respondent No. 2 had to be considered as L1 in the other 9(nine) districts.

24. Learned counsel for Respondent No. 1, further submits that CVC Guidelines do not have any statutory force and they are not enforceable. Learned counsel submits that the contract matter in question is covered by the conditions of contract, as stipulated in the Notice Inviting Tender(NIT) dated 06.04.2016 and selection of the successful tenderer is to be made within the terms and conditions of the said Notice Inviting Tender(NIT).

25. Mr. P. D. Nair, learned counsel, for Respondent No. 1, submits that as the Respondents No. 1 and 2 have filed 4(four) writ petitions, separately, which had been disposed of by a common judgment & order, the appellants should have filed 4(four) Writ Appeals, separately instead of filing a single composite Writ Appeal. He also submits that this is in violation of proviso 1 to Rule 1 of Order 41 of the Code of Civil Procedure, 1908, *read with* Chapter 5A of the Gauhati High Court Rules.

26. Learned counsel for Respondent No. 1 further submits that there is no delay in the tender process by APEDA, inasmuch as, the appellant No. 2 had

requested the APEDA to float the Notice Inviting Tender(NIT) vide letter dated 05.04.2016. Subsequently, APEDA floated the tender on 06.04.2016 and the entire tender process prior to its cancellation had taken only 4(four) months. Learned counsel further submits that the decision of the appellants to make SECI the implementing agency for off-grid projects in Arunachal Pradesh, was made on the basis of the statement made by the Commissioner, Power Department, Government of Arunachal Pradesh, in the 18th RPM Meeting, who had apparently stated that more than 10(ten) months had elapsed after sanction for the said project was given by the Central Government.

27. Mr. P. D. Nair, learned counsel for Respondent No. 1, submits that the 18th RPM Meeting has made SECI the implementing agency for off-grid projects in Arunachal Pradesh, on the ground of delay while there has been no mention with regard to on-grid projects pertaining to the State of Arunachal Pradesh. He thus submits that this decision to make SECI the implementing agency for the reasons stated above, is unreasonable and arbitrary. Learned counsel also submits that going for a fresh tender will further delay the entire tender process.

28. Mr. S. Chamaria, learned counsel, for Respondent No. 2, submits in the same vein as the learned counsel for Respondent No. 1. He also submits that the learned Single Judge has not gone beyond the decision making process while deciding the writ petitions and accordingly, there is no legal infirmity in the impugned judgment & order.

29. Learned counsel for Respondent No. 2 further submits that the Commissioner, Power Department i.e. Respondent No. 4, has gone against the decision of the TOEC and the Director, APEDA, so that the contract would have been allotted to a particular party. He submits that this amounts to arbitrariness. Learned counsel further submits that the change of the implementing agency from APEDA to SECI is in violation of Clause 6.4 of the conditions of contract, which gives the power to APEDA to accept or reject any or all of the bids without assigning any reasons.

30. Mr. Kardak Ete, learned Additional Advocate General, Arunachal Pradesh, submits that the State Government does not have much of a role to play in the matter, inasmuch as, the appellants have made the SECI the

implementing agency. However, the State Government would like the project, in question, to be implemented as fast as possible and it would be in the interest of the State of Arunachal Pradesh if APEDA is made the implementing agency. He further submits that as the pleadings of the parties show that the implementation of the project needs to be done at a fast pace, it would be in the interest of all parties if the Notice Inviting Tender(NIT) dated 06.04.2016, is taken to its logical conclusion, as directed by the learned Single Judge.

31. We have heard the learned counsels for the parties.

32. The question that needs to be decided here is whether the latter Chief Minister could have altered the decision made by the earlier Chief Minister on 08.07.2016. The learned Single Judge has held that the latter Chief Minister could not have reviewed the decision made on 08.07.2016 by changing the same on 13.08.2016, especially when the said change was not informed by any reason.

33. On a perusal of the documents on record, it is seen that the decision of the latter Chief Minister made on 13.08.2016, has been based on the Notings made by the Commissioner(Power), Government of Arunachal Pradesh, and also after having discussed the matter with the Commissioner(Power). The Notings of the latter Chief Minister dated 13.08.2016 is reproduced below:

"From pre-page:

Perused the Notes of Director, APEDA & Commissioner(Power)

a) As per their rates, L1 has quoted rates below the justified rate by 31.47%.

b) As per notes of the Comn.(Power), CVC guidelines do not permit awarding work to L1.

I have also discussed the matter with Comn.(Power) & therefore, cancellation of the Bid and fresh bid as proposed is approved.

Sd/-(Illegible)

13.08.2016"

Besides the above, the Circular No. 4/3/07 dated 03.03.2007 issued by the CVC, Govt. of India, at Clause 2, states as under:

"It is reiterated that in case L-1 backs-out, there should be a re-tender."

34. The comparative chart made by TOEC clearly reflects that out of 10(ten) bidders, 6(six) bidders qualified, which included M/s Sukam Power Systems Ltd.. If M/s Sukam Power Systems Ltd. had been rejected by TOEC, then their name would not have been among the 6(six) qualified bidders as reflected in the comparative chart. The submission of learned counsels for Respondents No. 1 and 2 that the TOEC had not rejected the bid of M/s Sukam Power Systems Ltd., is accordingly not correct. On a further perusal of the comparative statement made by the TOEC, it is seen that the said Committee had recommended the rejection of the bid of M/s Sukam Power Systems Ltd., who was adjudged to be L1. However, there is no document showing that APEDA, who is the implementing agency, had acted upon the said recommendation for rejection of the bid amount of L1.

35. The Note dated 02.08.2016 issued by the Director, APEDA, for the first time, states that letter dated 11.07.2016, issued by L1 implies that L1 was not interested any more in the tender.

36. The Note made by the latter Chief Minister on 13.08.2016 reflects the fact that CVC Guidelines do not permit awarding of work to L2. On reading of Clause 2 of the Circular dated 03.03.2007, along with the Note dated 02.08.2016 issued by the Director, APEDA, and keeping in mind the fact that the bid amount of L1 had not been rejected by the authorities concerned, we find that there is no arbitrariness in the decision of the latter Chief Minister in cancelling the Notice Inviting Tender(NIT) dated 06.04.2016 and proposing a fresh tender.

37. Clause 6.4 of the Eligibility Conditions, gives APEDA the right to accept or reject all of the bids without assigning any reasons.

38. In the case of *Laxmikant & ors. v. Satyawan & ors.* reported in **(1996) 4 SCC 2008**; *Rajasthan Housing Board & anr. v. G.S. Investments & anr.* reported in **(2007) 1 SCC 477**; and *U.P. Awam Vikas Parishad & ors. V. Om Prakash Sharma* reported in **(2013) 5 SCC 182**, the Apex Court has held that there is no obligation on the part of the person issuing a tender notice, to accept any of the tenders or even the lowest tender.

39. After a tender is called for and on issuing the rates or the status of the contractors who have given tenders, a person issuing the tenders may decide not to entertain into any contract and thereby cancel the tender. It is also well settled that so long as the bid has been accepted, the highest bidder acquires no vested right to have an auction concluded in his favour.

40. In the case of *R. R. Verma v. Union of India*, reported in *AIR 1980 SC 1461*, the Apex Court has held that the Government has the power to review its own decision. Thus keeping the above law in view, it cannot be said that the Chief Minister cannot review his own decision.

41. In the present case, the further question that has to be seen is whether the Respondents No. 1 and 2 had any vested right to be awarded the contract on the basis of File Notings.

42. In the case of *Sethi Auto Service Station & anr. v. Delhi Development Authority & ors.* reported in *(2009) 1 SCC 180*, the Apex Court has held in *Paragraphs No. 14* and *15*, as under:-

"14. *It is trite to state that Notings in a Departmental File do not have the sanction of law to be an effective order. a noting by an Officer is an expression of his view point on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the Department and for the benefit of the final decision making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision making authority in the Department, gets his approval and the final order is communicated to the person concerned.*

15. *In Bachhittar Singh v. State of Punjab, a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said article and was then communicated to the party concerned. The Court observed that business of the State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage, a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as*

the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned."

43. In the case of *Shanti Sports Club & anr. v. Union of India & ors.* reported in *(2009)15 SCC 705*, the Apex Court has held that a Noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, can a Note be treated to be a decision of the Government. The Apex Court has further held that even if the competent authority records its own view in the File on the merits of the matter under consideration, the same cannot be treated as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with law under Article 77(1) and (2) or Article 166(1) and (2) of the Constitution of India. The Notings in the File or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.

44. No doubt, the appellant has not annexed the affidavits-in-opposition in the appeal filed. However, learned counsels for the respondents have not been able to show this Court as to how the absence of the affidavit-in-opposition in the Memo of Appeal has prejudiced them, inasmuch as, all the facts of the case are not denied by either of the parties. In view of the fact that no prejudice has been caused to the respondents, we do not find any reason to dismiss the appeal on the ground that the affidavit-in-opposition is not a part of the Memorandum of Appeal.

45. The fact that no order has been issued on the basis of the earlier Chief Minister's decision dated 08.07.2016 and as there was no question of communicating the File Noting to the Respondent Nos. 1 & 2, we find that no right had accrued to the Respondent Nos. 1 & 2 to be awarded the tender.

46. With regard to the contention of the learned counsels for Respondent Nos. 1 & 2 that they had made a challenge to the cancellation of tender process and not to the non-issuance of the contract to the Respondent Nos. 1

& 2, this Court would have to see whether the respondents had validly exercised their power to cancel the Notice Inviting Tender(NIT) dated 06.04.2016. As had been said earlier, the CVC Guidelines had been applied by the authorities as a reason for cancelling the tender process.

47. It is settled law that a Court should not substitute its views when experts in the field are there, to consider the terms and conditions of the contract. Accordingly, as L1 has allegedly backed-out, as implied in the letter dated 02.08.2016, issued by the Director, APEDA, there was no illegality or arbitrariness in the respondents applying Clause 2 of the CVC Circular dated 03.03.2007. It is well settled that judicial review is possible to review the decision making process and not the decision itself. Just because another view is possible, it does not give the Court the right to substitute its views to that made by the respondent authorities.

48. In the present case, we do not find anything arbitrary in the decision of the respondents to set aside the Notice Inviting Tender(NIT) dated 06.04.2016 and to call for a fresh tender.

49. We also do not find that the process adopted or decision made by the authorities is *mala fide* and that it is intended to favour someone. With regard to the decision of the REC to appoint SECI, a CPSU, to be the implementing agency for off-grid projects in the State of Arunachal Pradesh, in place of APEDA, we find that the same is purely an administrative decision and the change of the implementing agency cannot be said to prejudice anybody.

50. With regard to the submissions of learned counsel for the Respondent No. 1, that the appeal filed is in violation of proviso 1 to Rule 1 of Order 41 of the Code of Civil Procedure, 1908, *read with* Chapter 5A of the Gauhati High Court Rules, we are of the view that there is no violation with proviso 1 to Rule 1 of Order 41 of the Code of Civil Procedure, 1908. Further, it is to be kept in mind that only the principles of the Code of Civil Procedure, 1908, have to be followed in a writ proceeding.

51. In view of the reasons narrated above, we find that there was no arbitrariness in coming to a decision to cancel the Notice Inviting Tender(NIT) dated 06.04.2016 and call for a fresh tender.

52. In view of the fact that the electrification of off-grid villages needs to be implemented in the State of Arunachal Pradesh at the earliest, as has been pointed-out by the appellants' counsel, we hope and expect that the appellants shall immediately issue a Tender Notice and thereafter, take the matter to its logical conclusion in the shortest time possible.

53. The Writ Appeal is accordingly allowed. Consequently, the impugned judgment & order dated 07.11.2016 passed in WP(c)461(AP)2016, WP(c)466 (AP)2016, WP(c)513(AP)2016, and WP(c)523(AP)2016, is hereby set aside.

JUDGE

JUDGE

Bhask