

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

ITANAGAR PERMANENT BENCH

WP(C) NO. 414(AP)2018

with

IA(C)174(AP)2018

with

IA(C)166(AP)2018

1. M/s Manoj Kumar Harlalka

Represented by its proprietor Shri Manoj Kumar Harlalka, a resident of Paglasthan, House No. 10, Bongaigaon, P.O & P.S. Bongaigaon, District Bongaigaon, Assam.

2. Smti. Jeena Tungi Venia W/o Shri Jabring Venia,
R/o Itanagar, P.O & P.S. Itanagar, Papumpare District, Arunachal Pradesh, Attorney holder of M/s Manoj Kumar Harlalka.

.....*Petitioners*

- *Versus* -

1. The State of Arunachal Pradesh represented by the Chief Secretary to the Government of Arunachal Pradesh.
2. The Secretary/Commissioner, Rural Work Department, Government of Arunachal Pradesh, Itanagar.
3. The Chief Executive Officer & Empowered Officer, Arunachal Pradesh Roads Development Agency (ARRDA), Rural Works Department, Government of Arunachal Pradesh.
4. The Superintending Engineer, Rural Works Circle, Rupa, West Kameng District, Arunachal Pradesh.
5. The Executive Engineer & DPIU, Rural Works Division, Charangtajo, East Kameng District, Arunachal Pradesh.
6. The four members tender opening cum evaluation Board headed by its Chairman, Superintending Engineer, Rural Works Circle, Department of Power, Rupa.

7. M/s Tamchi Kusuk represented through its Proprietor Shri Tamchi Kusuk, Bank Tinali, Itanagar, P.O & P.S. Itanagar, Papumpare District, Arunachal Pradesh.
8. M/s Tenzing Construction represented through its proprietor Shri Lobsang Tsering, R/o Dirang Bazar line, P.O & P.S Dirang, West Kameng District, Arunachal Pradesh.

.....*Respondents*

Advocates for the petitioner : Mr. R. Sonar
Ms. T. Devi
Mr. T. Ruku
Mr. G. Jini
Mr. L. Tapa
Mr. K. Diyum

Advocates for the respondents: Mr. G. Tarak, SC (RWD)
Mr. K. Ete, Sr. Addl. Advocate
General
Mr. D. Kamduk
Mr. K. Eshi
Mr. L. Jillen
Mr. K. Jini
Mr. T. T. Tara
Mr. T. Gadi
Mr. D. Loyi
Mr. B. Picha
Mr. J. Jini
Mr. G. Bam
Mr. M. Rime

:::B E F O R E:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 08.10.2018
Date of Judgment & order : 31.10.2018

JUDGMENT AND ORDER(CAV)

Heard Mr. Rajesh Sonar, learned counsel appearing on behalf of the petitioners. Also heard Mr. Kardak Ete, learned Senior Addl. Advocate General appearing for the State respondents No. 1 & 2, and Mr. Gimi Tarak, learned Standing counsel for the RWD, Govt. of Arunachal Pradesh, for respondents No. 3,

4, 5 & 6 as well as Mr. T. T. Tara, learned counsel assisted by Mr. G. Bam, learned counsel for the private respondents No. 7 & 8.

2. By preferring the instant petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the impugned recommendations of the Technical Evaluation, dated 20.08.2018, made by the respondent No. 6/ the Tender Opening-cum-Evaluation Board in respect of the contract work, viz "C/O Road from Sawa to Venia, (Stage-1), package No. AR/03/03/048" and whereby rejected the technical bid of the petitioner firm allegedly on non-existing grounds.

3. The petitioners' grievance is that in response to an e-procurement notice, dated 13.07.2018 inviting the item rate bids, in electronic tendering system, *inter alia*, for work "C/O Road from Sawa to Venia, (Stage-1), package No. AR/03/03/048" under Pradhan Mantri Gram Sadak Yojana (PMGSY), the petitioners' firm and six other firms participated in the electronic tendering process. The technical qualification part of the bid was opened on 07.08.2018, by a Technical Evaluation Board headed by the respondent No. 4/ the Superintending Engineer, Rural Works Circle, Rupa, West Kameng District, Arunachal Pradesh and vide the impugned recommendation letter No. RWC/R/PMGSY-XII(I) E-PRO/2018-19, dated 20.08.2018, which was uploaded for public view on e-procurement system on 21.08.2018, the private respondents No. 7 & 8 were made qualified for participating in the financial bid, which was fixed on 27.08.2018 and all other bidders including the petitioner firm were disqualified on the grounds that the solvency certificate for the amount equivalent to 50% of the value of work put to tender submitted by the petitioner was wrong as it was not submitted in terms of clause 4.4 B(a)(iii) of Appendix to ITB of SBD and that the petitioner firm made misleading or false representations in the forms, statements and affidavit in contravention of clause 4.71 of Section 2(ITB) of the SBD. According to the petitioner, the aforesaid grounds were false and non-existing and the respondent No. 7, who was made responsive had glaring defects in the bid documents, such as failure to submit the financial turnover statement duly certified by a Chartered Accountant as required under clause-4.4 A(a) of Section 2(ITB) of the SBD. The financial turnover statement submitted by the said respondent is a self certified

statement which should not have been accepted by the Technical Evaluation Board (T.E.B.) as the aforesaid clause provides that to qualify for award of the contract a bidder has to mandatorily submit a statement showing the prescribed minimum financial turnover duly certified by a Chartered Accountant. In this regard, the petitioner firm filed a representation to the respondent No. 3/ the Chief Executive Officer and Empowered Officer, Arunachal Rural Roads Development Agency (ARRDA), RWD, Government of Arunachal Pradesh for an immediate redressal of the grievances of the petitioners and with a further prayer for reconsideration of their technical bid as well as for making the private respondent No. 7 disqualified.

4. Mr. R. Sonar, learned counsel appearing on behalf of the petitioners submitted that the solvency certificate was issued by the concerned bank, where the petitioners' firm had no role to play and it is not an essential condition of the bidding document and as such, a curable defect. Mr. Sonar further submitted that there was no material on record to substantiate the finding that the petitioners had made any misleading or false representation in the statement and affidavit rendering the petitioners' firm disqualified. According to Mr. Sonar, the petitioners' firm had met all the eligibility criteria defined in clauses 3 & 4 of Section 2 (ITB) of the SBD documents and was substantially responsive to the requirements of the bidding documents.

5. The State respondents No. 1 to 5 in their affidavit-in-opposition averred and Mr. Kardak Ete, learned Senior Addl. Advocate General of Arunachal Pradesh submitted that the petitioners' firm was found to be non-responsive as the solvency certificate submitted by them did not contain any mention as to whether the said certificate was solvency certificate and did not even contain any mention regarding the amount as per requirement of clause 4.4 B (a)(III)(c) of the appendix to ITB. Mr. Ete further submitted that the value of the work put to tender being 3335.19 lakhs, the bidder was required to furnish a solvency certificate from a competent bank for a minimum amount of Rs. 1667.59 lakhs, however, the petitioner failed to meet this essential condition. Mr. Ete also submitted that under clause 4.2 (g) of the ITB, a bidder is required to furnish evidence of access to line(s) of credit and availability of either financial

recourses/facilities (10% of the contract value) certified by the bank, which must not be older than 3 (three) months, however, the petitioners submitted the said banker's certificate, dated 31.07.2018, whereby it was certified that the bank shall be able to provide credit facilities up to Rs. 33,35,19,000 which did not conform to the essential requirements of the banker's certificate. The petitioner submitted the new solvency certificate dated 23.08.2018, i.e. after opening the technical bids. Therefore, Mr. Ete submitted that the grounds of rejection of the petitioners' technical bid by the T.E.B. were substantial in nature. It was vehemently submitted by Mr. Ete that in order to establish the decision of tender authority to be arbitrary, illegal, malafide and illogical, the Court needs to pose itself the questions (a) whether the process adopted or decision made is malafide or intended to favour someone; (b). whether process adopted or decision made is so arbitrary and irrational that no reasonable authority acting reasonably in accordance with law could have reached or; (c) whether public interest is affected. In the instant case, however, the petitioner has miserably failed to make out any case to answer the aforesaid pertinent questions. In support of his argument, Mr. K. Ete, learned Sr. Addl. Govt. Advocate General relied upon the ratios of the judgments rendered by the Hon'ble Supreme Court in ***Central Coalfields Limited and Ors. Vs. SLL-SML(Joint Venture Consortium) and Ors.*** reported in ***(2016)8 SCC 622*** and in ***Municipal Corporation, Ujjain and Ors. Vs. BVG India Limited and Ors.*** reported in ***(2018)5 SCC 462.***

6. Mr. G. Tarak, learned Standing counsel RWD, appearing for the respondents No. 3 to 6, stood by the argument advanced by the learned Sr. Addl. Advocate General, Arunachal Pradesh and submitted that the petitioners' case being wholly dependent on the question of validity of the solvency certificate, submitted in the bid for the said contract work and in view of the grounds cited by the learned Sr. Addl. Advocate General, Arunachal Pradesh, the petition is liable to be dismissed.

7. Mr. T. T. Tara, learned counsel appearing on behalf of the respondents No. 7 & 8, besides lending support to the argument of the learned Sr. Addl. Govt. Advocate General, submitted that as per clause 12.2 of the SBD, the bidders were required to submit the Annual Turnover Certificate from Chartered Accountant for

last five financial years with breakup of civil works and total works in each financial year with reference to clause 4.4 of ITB and an affidavit regarding correctness of certificates as per clause 4.4 submitted along with the bid. Mr. Tara further submitted that as per clause 12.2 (d), the bidders are required to submit the original documents as per provisions of clause 4.4 (a)(ii) of ITB with the office specified in the Bid Data sheet, on date not later than 3 working days after the opening of the technical bids either by registered post or by hand, but the petitioners had failed to comply with the aforesaid provisions. According to Mr. Tara the T.E.B. rightly rejected the technical bid of the petitioners' firm as most of the paper uploaded were not legible and also that the technical bid of the petitioners' firm was not only found to be non-responsive on the ground of solvency certificate, but also under clause 4.4 B (a) (iii) of ITB, which provides that "such other certificate as defined in the Appendix to ITB. Failure to produce the certificates shall make the bid non-responsive". The petitioner had failed to produce blaster technical personnel qualification certificate which as per requirement was five years experience as blaster which was sought by authorities in NIT in question. According to Mr. Tara, the petitioners' blaster man is not having five years of experience in his field as Blaster and he had just completed three months as per certificate dated 25.05.2018, issued by the Dy. Chief Controller of Explosive, Guwahati, which is contrary to the mandatory provision of clause 4.7 (ii) of the Section 2 of ITB. Therefore, the petitioners' firm sworn a false affidavit in regard to the experience of the Blaster man. Further, Mr. Tara submitted that the petitioners had submitted only four years' financial turnover balance-sheet instead of five years to qualify for award of the contract as required by clause 4.4 A (a) of Section 2 of ITB of the SBD and himself certified have submitted four years' turnover. Therefore, Mr. T. T. Tara, learned counsel for the respondents No. 7 & 8 vehemently opposed the writ petition moved by the petitioners.

8. I have given due consideration to the rival contentions made by the parties and the arguments advanced by the learned counsel of both sides as well as perused the documents annexed to the pleadings so far the grounds of rejection of the petitioners' technical bid are concerned.

9. Perusal of the impugned recommendations of the Technical Evaluation Board (T.E.B.), dated 20.08.2018, it appears that after detailed Technical Evaluation of Bids documents, the Board recommended the respondents No. 7 & 8 firms responsive and the petitioners' firm and 4 (four) other firms non-responsive as per clause B and 4.4 B (a) (iii) (c) of Appendix to ITB of SBD for the 'C/O Road from Saura to Venia (stage-I), package No. AR/03/03/048' under the PMGSY Scheme. The petitioners' firm bids was found non-responsive firstly for being not complied with the terms of Clause 4.4 B(a)(iii)(c) of Appendix to ITB which stipulated for Solvency Certificate for an amount equivalent to 50% of the value of work put to tender and secondly, as per clause 4.7 (i) as the petitioners' firm made misleading or false representations in the statement forms, affidavits and attachments, which, as a whole, was essentially dependent on the first ground aforementioned.

10. It needs to be mentioned that under clause 4.4(B)(a)(iii)(c) of Appendix to ITB, a bidder was required to submit the original Solvency Certificate for an amount equivalent to 50% of the value of work put to tender from any scheduled commercial bank approved by the Reserved Bank of India (RBI) in banker's letter head. Further, under clause 4.2(g) of the ITB, a bidder was also required to furnish evidence of access to line (s) of credit and availability of other financial resources/ facilities, which is of 10% of the contract value, certified by the bank (the certificate being not more than 3 (three) months old).

11. In the instant case, as per the NIT, the cost of the work being Rs. 3335.19 Lakhs, a bidder was required to furnish a Solvency Certificate from a scheduled commercial bank for an amount of Rs. 1667.59 lakhs being 50% of the aforesaid value of work put to tender, under clause 4.4(B)(iii)(c) of Appendix to ITB. However, the petitioners' Solvency Certificate, dated 21.06.2018, issued by the State Bank of India, Bongaigaon Branch, Assam, it is noticed, did not bear mention of any amount fulfilling the criteria of requirement of an amount equivalent to 50% of the value of work put to tender. The text of the aforementioned Solvency Certificate issued in favour of the petitioners' firm reads as herein below extracted:

" TO WHOM SO EVER IT MAY CONCERN

This is to certify that Manoj Kumar Harlalka S/O Mr. Bodulal Harlalka, of Paglasthan, PO & Dist. Bongaigaon is maintaining a current Account with us bearing number 35825759052 since long. The status of the account is Satisfactory. Further, to the best of our knowledge, he is financially sound.

This Certificate is issued at the request of the person concern without any prejudice guarantee or liability on the part of the bank or its officials.

Place: Bongaigaon

Sd/illegible

Date: 21.06.2018

Chief Manager"

12. I have also perused the Banker's Certificate, dated 31.06.2018, issued by the State Bank of India, Bongaigaon Branch, Assam in favour of the petitioners' firm towards the bank guarantee/ letter of credit as required under Clause 4.2(g) of the ITB stated above. The aforementioned certificate certified that the bank shall be able to grant overdraft, credit facility up to the limit of Rs. 33,35,19000.00 to meet the working capital requirement for executing the contract work, subject to fulfillment of bank's terms and conditions of sanction, which were not mentioned therein and as such appears to be a vague certificate.

13. The petitioner's contention is that the respondent No. 6 authority arbitrarily recommended the respondents No. 7 & 8 despite having submitted glaringly defective Solvency Certificates in violation of the mandatory requirement of Clause 4.4 B (a) (iii) of Appendix to ITB to the SBD. The Solvency Certificates of the respondent No. 7 read as herein below extracted:-

In respect of respondent No. 7-

"solvency certificate

This is to certify that to the best of our knowledge and information M/s Tamchi Kujuk, of Chandra Nagar, Itanagar-791111, Arunachal Pradesh, is a customer of our Bank is respectable and can be treated as good for any engagement upto a limit of Rs. 5000.00 Lakhs (Rupees Fifty Crores) only. This certificate is issued on request to M/s Tamchi Kujuk.

It is clarified that this information is furnished in strict confidence and without nay responsibility of the bank and any of the bank's officials in any respect whatsoever more particularly either as guarantor or otherwise.

Address:

*M/s Tamchi Kujuk
Chandra Nagar, Itanagar
Papum Pare District
Arunachal Pradesh*

*Yours faithfully,
Sd/- illegible
Branch Manager
Itanagar Branch*

In respect of respondent No. 8-

"solvency certificate

This is certified that to the best of our knowledge and information SHRI LOBSANG TSERING, PROPRIETOR OF M/S TENZING CONSTRUCTION, DIRANG, West Kameng District hiving address: Son of SHRI CHOMU MONPA, P.O. & P.S. DIRANG IN THE DISTRICT OF WEST KAMENG (ARUNACHAL PRADESH), a high valued customer of our bank is a respectable and can be considered solvent/financially sound for any engagement upto Rs. 30,00,00,000/- (Thirty Crores) only.

This certificate is issued without any guarantee or responsibility on the Bank or any of the officers.

*Sd/- illegible
Name : B.C. Basumatari
No. B-7211
Address of Bank : State Bank of India
Dirang, West Kameng
Arunachal Pradesh"*

Thus it is seen that the Solvency Certificate of the respondents No. 7 & 8 were clearly more than the amount equivalent to 50% of the value of the work and as such, perfectly commensurate with the requirement of the Clause 4.4B (a) (iii) of Appendix to ITB of the SBD.

14. It further appears that after opening of the technical bids on 07.08.2018 and recommendations made on 20.08.2018, which was published by uploading in the e-procurement system, on 21.08.2018, the petitioners submitted, through e-mail, another certificate issued by SBI, Bongaigaon Branch, Assam dated 23.08.2018, certifying that the Solvency Certificate, dated 21.06.2018, issued in favour of the petitioners' firm was equivalent to 100% of the work. The aforesaid certificate is quoted herein below:

" TO WHOM SO EVER IT MAY CONCERN

This is to certify that the Solvency Certificate issued to Manoj Kumar Harlalka S/O Mr. Bodulal Harlalka, of Paglasthan, PO & Dist. Bongaigaon maintaining Current Account bearing No. 35825759052 dated 21.06.2018 for the contract work namely "CONSTRUCTION OF ROAD FROM SAWA TO VENIA (STAGE-I), LENGTH-30 KM (PACKAGE NO. AR/03/03/048) is equivalent to 100% of the value of the work mentioned above.

*Place: Bongaigaon
Date: 23.08.2018*

*Sd/-Illegible
Chief Manager
Bongaigaon Branch, Assam."*

15. The petitioner ought to have submitted the above document on or before 20.08.2018, that is, on the opening date of the technical bids itself or file a complaint within 5 working days of publication of the recommendations of the T.E.B., but for not doing so, the same could not be legally accepted after the

process of opening and publication for public view of the technical bids and the grace period for filing the complaint were over. As per Clause 4.4 B (a)(iii) each bidder was required to produce certain documents including the certificates as defined in the Appendix to ITB, failing which to render the bids non-responsive. Clause 22.6 of the ITB of SBD provides that the result of evaluation of part-I of the bids, that is, the technical bids herein, shall be made public on e-procurements system following which there will be a period of 5 working days during which any bidder may submit complaint, which shall be considered for resolution before opening part-II of the bids, that is, the financial bids herein.

16. The essential qualification of the bidder was provided in clause 4 of the ITB to SBD wherein, Clause 4.2 included the details of information and documents with their bids in Section 3, qualification information were given including Clause 4.2 (b) of the ITB requires the bidder to produce documentary information regarding the total monetary value of Civil construction works performed for each of the last 5 years and under Clause 4.2 (g) evidence of access to line (s) of credit and availability of other financial resources/facilities (10% of the contract value) certified by the banker, which must not be of more than 3 months old. The entire dispute as it seems from the pleadings of the parties revolves around the Solvency Certificate, dated 21.06.2018, which is projected to be a Solvency Certificate without the required particulars as per clause 4.4 B (a) (iii) (c) of Appendix to ITB, which is stated above and as such, not a curable defect as at the time of opening of the technical bids, the petitioners failed in duty to prove financial stability to meet the expenditures for efficient and timely execution of the work if settled in their favour.

17. Considered thus, the Solvency Certificate being an important and essential financial document, the same cannot be overlooked while awarding a contract involving huge individual financial investment. The aforesaid laps on the part of the petitioner firm, in the backdrop of facts, cannot subsequently be explained or made in the form of filing a substituted document for consideration of the contract awarding authority. As observed by the Hon'ble Supreme Court in ***Rashmi Metaliks Ltd. and Ors. Vs. Kolkata Metropolitan Development Authority & Ors.***, reported in ***(2013) 10 SCC 95***, this Court cannot concern itself with the decision of

the authority, but the manner in which the decision was taken for rejecting the technical bid of the petitioner firm. On careful scrutiny of the documents placed by the petitioner and the rival contentions made by the respondents, this Court finds no fault with the decision of the State respondents more particularly respondent No. 6/the T.E.B while holding the decision that the petitioner firm is un-responsive on the grounds cited in the impugned recommendations of the T.E.B., dated 20.08.2018.

18. This Court would further like to refer here the view expressed by the Hon'ble Supreme Court in ***Central Coalfields Ltd.***(supra). The Hon'ble Court held in paragraph 48 that whether a term of the NIT is essential or not, is a decision taken by the employer, which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in ***Ramana Dayaram Shetty*** [reported in ***(1979) 3 SCC 489***]. However, if the term is ancillary or subsidiary, even that decision should be respected. The Hon'ble Court further held that the soundness of the decision cannot be questioned.

So far the petitioner's contention that the respondent authority has discriminated the petitioner Firm inasmuch as despite knowing about the material defects in the bidding documents of the private respondents, who have not submitted the financial turn-over statement duly certified by the Chartered Accountant as required under Clause 4.4A of section 2 of ITB of the bidding documents and which is a material deviation from the terms and conditions and the specification of the bidding documents, the private respondents have been made qualified, being not specifically akin to the grounds of rejection of the petitioner's technical bid, this Court finds the aforesaid contention is not sustainable for the purpose of decision in this proceeding. A comparative approach of the bid documents of the petitioner and that of the private respondents is not sustainable when the grounds of rejection of bid of the petitioner are legally acceptable.

19. In ***Tata Cellular Vs. Union of India***, reported in ***(1994) 6 SCC 651***, the Hon'ble Supreme Court observed:-

"94. (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....*

(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 decision may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."*

20. In ***Jagdish Mandal Vs. State of Orissa & Ors.***, reported in **(2007) 14 SCC 517**, the Hon'ble Supreme Court observed:-

"22. *Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to tender, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damage in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interference, either interim or final, may hold up public works for years, or delay relief and succor to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

*(ii) Whether public interest is affected.
If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tender/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."*

21. Thus, it appears that the Technical Evaluation Board considered the bids of the petitioner and the respondents No. 6 and 7 fairly and impartially without any element of arbitrariness or *mala fide* or discrimination and as such, requires no interference in the decision of the Technical Evaluation Board composed of technical experts.

22. Consequently, the petition stands dismissed.

23. The interim order, dated 28.08.2018, stands vacated.

JUDGE

J. Ban