

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM AND
ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

W. P. (C) No. 100 (AP) of 2013.

M/S. Sedi Allied Agency,
Having its Registered Office at Pasighat,
East Siang District, Arunachal Pradesh,
Represented by its Constituted Attorneys
Shri Marshall Lego,
resident of Rani Village, P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh and
Shri Oni Tamuk,
Resident of Pasighat Market, P.O.& P.S. Pasighat,
East Siang District, Arunachal Pradesh.

..... Petitioner.

- *VERSUS* -

- 1) The State of Arunachal Pradesh,
Represented by the Chief Secretary,
Government of Arunachal Pradesh, Itanagar.
- 2) The Commissioner, Public Works Department,
Government of Arunachal Pradesh, Itanagar.
- 3) The Chief Engineer,
Public Works Department, Eastern Zone,
Government of Arunachal Pradesh, Itanagar.
- 4) The Superintending Engineer,
Public Works Department, Boleng Circle.
- 5) The Executive Engineer,
Public Works Department, Pasighat Division.
- 6) The Tender Scrutiny Board,
Headed by its Chairman, the Executive Engineer,
Public Works Department, Pasighat Division.
- 7) The Tender Scrutiny Board,
Headed by the Chief Engineer,
Public Works Department, Eastern Zone, Itanagar.

- 8) M/S. Gepong Enterprises,
 Represented by its Proprietor
 Shri Nabam Tagi, B-Sector,
 Naharlagun, P.O. & P.S. Naharlagun
 Papum Pare District, Arunachal Pradesh.
- 9) Shri Toli Basar,
 Office of the Chief Engineer,
 Public Works Department, Eastern Zone,
 Itanagar, P.O. & P.S. Itanagar,
 Papum Pare District, Arunachal Pradesh.

..... Respondents.

Advocates for the Petitioner : Mr. A. K. Bhattacharyya,
 Sr. Advocate.
 Mr. Indraneel
 Chowdhury ,

Mr. Dicky Panging
 Mr. Kali Bogo,
 Ms. S. V. Darang,
 Mr. Duge Soki,
 Mr. V. Jamah and
 Mr. N. Dai

Advocates for the Respondents : Mr. R. H. Nabam,
 Sr. Govt. Advocate
 For Respondent Nos. 1 to 7.

Mr. Dilip Mazumdar,
 Mr. Gimi Tarak and
 Mr. J. Likha.
 For Respondent No. 8.

Mr. K. N. Choudhury,
 Sr. Advocate.
 Mr. Pritam Taffo,
 Ms. Nikita Dangeen,
 Mr. Tabo Gyadi and
 Ms. Joya Doji.
 For Respondent No. 9.

**BEFORE
HON'BLE MR. JUSTICE M. R. PATHAK**

Date of Hearing : 12-09-2013 and 03-10-2013
Date of Judgment & Order : 07-03-2014

JUDGMENT & ORDER (CAV)

Heard Mr. A. K. Bhattacharyya, learned Senior Advocate, assisted by Mr. Indraneel Chowdhury and Mr. Dicky Panging, learned counsels appearing for the Petitioner. Also heard Mr. R. H. Nabam, learned Senior Govt. Advocate appearing for State Respondent Nos. 1 to 7; Mr. Dilip Mazumdar, assisted by Mr. Gimi Tarak, learned counsels for the private Respondent No. 8 and Mr. K. N. Choudhury, learned Senior Advocate, assisted by Mr. Pritam Taffo, learned counsels for the private Respondent No. 9.

2) The Executive Engineer (EE in short), Pasighat Division, Public Work Department (PWD in short), Arunachal Pradesh, the Respondent No. 5, issued a Notice Inviting Bid (Invitation for Bids) (NIB or IFB in short) vide Bid No. PA/CON-1/2011-12/6603-30 dated 12-03-2012 for the work "Construction of Road from Rani to Oyiramghat (Assam) via Sika Tode - Sika Bamin Village - Jampani and Anchalghat Camp Road (25.00 KMs) in East Siang District for an approximate value of Rs. 2525.00 Lakhs.

3) As per said IFB dated 12-03-2012, bidder(s) was required to submit two separate bids namely "Technical Bid" & "Financial Bid" and the bidder(s) who's "Technical Bid", on evaluation by the Standing Screening Committee, whose decision is final, found to be qualified, was to be invited to

attend the opening of “Financial Bid”. In terms of said IFB, the last date and time of submission of “Bid” was 13-04-2012 at 1500 hrs.

4) In response to the said IFB dated 12-03-2012, altogether 10 farms, including the petitioner farm & the respondent No. 8 farm, submitted their bids. The Technical Bids of the participating Bidders were opened on 13-04-2012 itself and on scrutiny & evaluation, the Standing Screening Committee found 3 (three) farms technically responsive and they are - (i) M/S. Sedi Allied Agency (petitioner farm), (ii) M/S. Gepong Enterprises (respondent No. 8 farm and (iii) M/S. Super Infratech Pvt. Ltd., Dibrugarh.

5) The Financial Bids of the aforesaid qualified three farms were opened on 16-07-2012 in presence of the respondent No. 5, EE, PWD, Pasighat and after preparing the comparative statements of said three Financial Bids, the Screening Committee, found as follows:

| Sl. No. | Name | Bid Value |
|----------------|--------------------------------|---------------------|
| 1 | M/S. Sedi Allied Agency | Rs. 22,98,80,366.07 |
| 2 | M/S. Gepong Enterprises | Rs. 23,19,20,485.12 |
| 3 | M/S. Super Infratech Pvt. Ltd. | Rs. 23,44,65,553.15 |

After the said comparative statement prepared by the Screening Committee, the authorized persons of the above noted three farms’ endorsed their signatures on the tender register on 16-07-2012 itself.

6) On 23-07-2012 the respondent No. 5, the EE, PWD, Pasighat Division forwarded the comparative statements,

scrutiny sheet etc. of the above noted three farms to the respondent No. 4, the Superintending Engineer (in short SE), PWD, Boleng Circle, for his further action and In the said communication it was also informed that on 06-07-2013 the Chief Engineer, Eastern Zone, PWD approved the Technical Bids of those three farms/bidders. On 06-08-2012, the SE, Boleng Circle, with his findings & observations, forward the relevant documents sent to him by the respondent No. 5 to the respondent No. 3, the Chief Engineer, PWD, Eastern Zone, Govt. of Arunachal Pradesh, Itanagar, for his perusal and necessary action.

7). The Chief Engineer, Eastern Zone [CE (E/Z) in short], PWD, the respondent No. 3 by his letter dated 24-08-2012 sought for (i) Approved Technical Bids and (ii) Copies of Financial Bids of aforesaid three farms from the respondent No. 4, the SE, PWD, Boleng Circle forwarding a copy of the same to the respondent No. 5, the EE, PWD, Pasighat Division and accordingly same were made available to the respondent No. 3.

8) After comparison of the Financial Bids of the aforementioned three farms, the respondent No. 3, the Chief Engineer, PWD, Eastern Zone on 07-09-2012, came to his finding as follows:

| Sl. No. | Name | Bid Value |
|----------------|--------------------------------|---------------------|
| 1 | M/S. Gepong Enterprises | Rs. 22,97,25,215.07 |
| 2 | M/S. Sedi Allied Agency | Rs. 22,99,04,601.81 |
| 3 | M/S. Super Infratech Pvt. Ltd. | Rs. 23,44,65,553.15 |

9) However, during such evaluation on 07-09-2012, it was found that the petitioner did not quote clear amount

against Item Nos. 58 to 62 in his Financial Bid and quoted a lump sum amount of Rs. 81,840 for said Items, and the Chief Engineer, accepting the view & observation of the respondent No. 4, SE, PWD, Boleng Circle that the petitioner's such offer is clear deviation from the norms required for item wise bid tenders as per Section 7, i.e. Bill of Quantities (BOQ in short) for item rate tender of the approved Notice Inviting to Bidders (NIB); rejected the Bid of the petitioner.

10) The Chief Engineer, on 07-09-2012 itself, forwarded the proposal to the Commissioner, PWD, Government of Arunachal Pradesh, the respondent No. 2, for necessary approval for acceptance the Tender of the respondent No. 8. The Deputy Secretary, PWD vide his communication dated 30-11-2012 informed the Chief Engineer about the Government's approval of accepting the Tender and awarding the work to the respondent No. 8 farm pursuant to the IFB dated 12-03-2012.

11) Thereafter, the Chief Engineer by his communication dated 11-12-2012, forwarded the Bid document of the respondent No. 8 to the Government for its onward submission to the Law Department for necessary vetting. On such vetting of Law & Judicial Department of the State on 14-01-2013, the Deputy Secretary, PWD, by his letter dated 13-02-2013, communicated on 25-02-2013, returned the Tender documents along with the necessary vetting on the draft agreement of the Law Department to the Chief Engineer, for his necessary compliance. Accordingly, the Superintending Surveyor of Work, for the Chief Engineer, by his letter dated 06-03-2013 informed, the EE, PWD, Pasighat Division about the Government's approval on the Financial Bid of the respondent No. 8 farm for the amount of Rs. 2297.25 Lakhs and directed

him to award the work to the respondent No. 8 farm and also to draw the necessary agreement with the said respondent No. 8 after observing all necessary codal formalities in accordance with advice, terms, conditions of the Government's approval.

12) Being aggrieved with such decision of the official respondents, the petitioner has preferred this petition amongst others for setting aside and to quash (i) the letter under Memo No. SPWD/W-13/ NLCPR/2011-12(1)/823 dated 30-11-2012, issued by the Deputy Secretary, PWD informing the Chief Engineer about the Government's approval of accepting the tender and awarding the work "Construction of Road from Rani to Oyiramghat (Assam) via Sika Tode - Sika Bamin Village - Jampani and Anchalghat Camp Road (25.00 KMs) in East Siang District" (indicated in the IFB dated 12-03-2012) to the respondent No. 8, M/S. Gepong Enterprises; (ii) the letter under Memo No. CEAP(EZ)/NLCPR-28/BC/PD/12-13/ 8067-71 dated 06-03-2013 issued by the Superintending Surveyor of Work for the Chief Engineer, EZ, PWD, informing, the respondent No. 5, the EE, PWD, Pasighat Division about the Government's approval on the Financial Bid of the respondent No. 8, M/S. Gepong Enterprises for the work indicated in the IFB dated 12-03-2012 and (iii) to the direct the respondent authorities, more particularly the Chief Engineer, PWD to award/settle the work indicated in the IFB dated 12-03-2012.

13) Mr. A. K. Bhattacharyya, learned Senior Counsel for the Petitioner submitted that that the respondent No. 3, the Chief Engineer, EZ, PWD proceeded as an appellate authority over the evaluation made by the Tender Scrutiny Committee and completely re-evaluated the Financial Bids of the three farms, by its decision dated 07-09-2012 and altered the bid

value of the petitioner, raising the same from Rs. 22,98,80,366.07 to Rs.22,99,04,601.81 without informing him & without taking his concurrence, in violation of the provisions of Clause 27(2) of the Instruction to Bidders (in short ITB) of the IFB dated 12-03-2012 and further submitted that the Chief Engineer increased the rates of the Item Nos. 10 & 51 tendered by the petitioner, behind his back.

14) Mr. Bhattacharyya also submitted that the Tender Screening Committee on their evaluation of the three Financial Bids on 16-07-2012, in presence of the EE, PWD, Pasighat, found the Bid Value of the petitioner at Rs. 22,98,80,366.07, followed by the respondent No. 8 at Rs. 23,19,20,485.12 and as no discrepancies were found with such evaluation, the authorised persons of the said three farms endorsed the said finding of the Tender Screening Committee by putting their signatures in the Tender Opening Register of the Department at Pasighat on 16-07-2012 itself and surprisingly discrepancies with regard to the Financial Bids of the petitioner & the respondent No. 8 aroused only during the re-evaluation made by the Chief Engineer on 07-09-2012, after two months from opening of the Financial Bids on 16-07-2012. Mr. Bhattacharyya further submitted that the Item Nos. 16, 23, 30, 38 & 45 are of similar nature of work and from the comparative statement of the Screening Committee, it can be seen that the rate quoted by the respondent No. 8 for the said items are similar i.e. Rs. 6657.03 per cum and during the re-evaluation made by the Chief Engineer, Item No. 30 of the respondent No. 8 has been reduced so as to lower his bid. Mr. Bhattacharyya pointed out that with regard to the corrections made in the Bid Value of the Financial Bid of the respondent No. 8, his concurrence was obtained by the Chief Engineer on 07-09-2012

itself; however, no such concurrence was obtained from the petitioner, though his Bid Value tendered in the Financial Bid was raised after the re-evaluation made by the Chief Engineer, which gives rise to the presumption about the participation of the respondent No. 8 at the time of re-evaluation of the Financial Bids by the Chief Engineer on 07-09-2012. Mr. Bhattacharyya contended that the re-evaluation and correction made by the Chief Engineer, lowering the Bid Value of the respondent No. 8 and raising the Bid Value of the petitioner is in clear violation of the provisions as laid down in the Clauses - 27 and 29 of the ITB.

15) With regard to the decision of the Chief Engineer dated 07-09-2012 rejecting the Financial Bid of the petitioner, after its evaluation on 07-09-2012, for not quoting item wise rate for the Item Nos. 58 to 62 by the petitioner in its Financial Bid, finding the same as a deviation from the prescribed norm, i.e. a 'material deviation' as viewed & observed by the SE, PWD, Boleng Circle; Mr. Bhattacharyya, pointed out that in the Financial Bid, the petitioner quoted the rates as a whole for Item Nos. 58 to 62, instead of item wise rate, since the nature of work involved in the said items are for erection of kilometer stone only and therefore, quoting of lump sum amount for the said Item Nos. 58 to 62, the Financial Bid of the petitioner, does not fall within the meaning of 'material deviation' as defined in Clause-26.2 the ITB. He further submitted that assuming that the petitioner did not quote any rate for the said Item Nos. 58 to 62, in terms of Clause-13 of the ITB and Clause-5 of the BOQ, the Employer is not liable to pay for the said works after execution or items shall be deemed to be covered by the other rates and prices entered in the BOQ.

16) Mr. Bhattacharyya submitted that the entire action and the manner & process adopted by the official respondents in awarding the work of the IFB/NIB dated 12-03-2012 to the respondent No. 8, is malafide, arbitrary and illegal and is with the intention to favour the said respondent only.

17) Mr. Bhattacharyya, learned Senior Counsel placed reliance on the Judgments of the Hon'ble Apex Court, in the cases of *State of UP & Others -Vs.- Maharaja Dharmender Prasad Singh & Others*, reported in 1989 (2) SCC 505 and *W.B. State Electricity Board -Vs.- Petal Engineering Co. Ltd. & Others*, reported in 2001 (2) SCC 458.

18) Mr. Nabam, learned Sr. Govt. Advocate appearing on behalf of the official respondents No. 3 to 7, submitted that the Financial Bids of the three farms including the petitioner and the respondent No. 8 were opened on 16-07-2012 and evaluation was done by the Executive Engineer at Pasighat, prepared the comparative statement on the basis of item wise rate as quoted by the three farms and found the bid amount of the three farms as follows:

| | | |
|---|--------------------------------|---------------------|
| 1 | M/S. Sedi Allied Agency | Rs. 22,98,80,366.07 |
| 2 | M/S. Gepong Enterprises | Rs. 23,19,20,485.12 |
| 3 | M/S. Super Infratech Pvt. Ltd. | Rs. 23,44,65,553.15 |

19) Mr. Nabam submitted that it is a routine procedure to check the comparative statements submitted by field division for onward submission to the competent authority for its acceptance and evaluation made by the Chief Engineer is also a part of the evaluation process till approval by the competent authority. Mr. Nabam stated that the detail evaluation was not

done with the intention to alter the bid amount, but such evaluation was done at the zonal level by the Chief Engineer as required, in terms of the ITB. On scrutiny of the Financial Bid of the respondent No. 8, at zonal level, discrepancies were found with the rate quoted in figures and in words for Item Nos. 11, 30 and 51; such as – for Item No. 11, the rate quoted in figure was “Rs. 262.64” and the rate quoted in words was “Rupees Two Hundred Forty Two and Sixty Four Paise”; for Item No. 30, the rate quoted in figure was “Rs. 6657.03” and the rate quoted in words was “Rupees Six thousand Fifty Seven and Three Paise” and similarly for Item No. 51, the rate quoted in figure was “Rs. 248.85” and the rate quoted in words was “Rupees Two Hundred Forty Eight and Five Paise” and all these escaped the sight of the respondent Nos. 4 & 5, namely, EE, PWD, Pasighat as well as that of SE, PWD, Boleng Circle respectively. Such detail evaluation was done by the Chief Engineer confidentially as per Clause-24.1 of the ITB and due to such correction of discrepancies & calculation errors, the Bid Value of the respondent No. 8 got reduced from Rs. 23,19,20,485.12 to Rs. 22,97,25,201.07 and as such, respondent No. 8’s concurrence was obtained, with regard to his reduced bid amount. Mr. Nabam also pointed out that no corrections in the rates & amounts as offered by the petitioner were done in the office of the Chief Engineer, Eastern Zone; but errors were found in the calculation (i.e. addition & multiplication), in totaling the item wise rates in the BOQ of the Financial Bid of the petitioner and accordingly, on such correction of calculation, the amount of Bid Value of the Financial Bid of the petitioner was raised from Rs. 22,98,80,366.07 lakhs to Rs. 22,99,04,601.81 lakhs. Since the correction was done for totaling only and as the rates or amount in the BOQ in the Financial Bid of the petitioner was not changed; concurrence of

the petitioner was not obtained for such correction as it was not required. Mr. Nabam submitted that such scrutiny and correction has been done by the Chief Engineer as per Clauses - 26 & 27 of the ITB of the SBD, without favour & prejudice.

20) Mr. Nabam denied that the rates quoted by the petitioner in the Item Nos. 10 & 51 were increased in the office of the respondent No. 3, and stated that from records, it can be seen that the petitioner himself quoted the rate of Rs. 22.65 per Sqm. for Item No.10 and Rs. 265.30 per Cum. for Item No. 51 in his Financial Bid and not of Rs. 22.50 and Rs. 208.20 for item No. 10 & 51, respectively, as alleged by him. Mr. Nabam also submitted that the petitioner, in clear deviation from the norms as prescribed in the bidding documents, quoted a single amount for Item Nos. 58 to 62 and as such, the Chief Engineer rightly rejected the Financial Bid of the petitioner on 07-09-2012 in terms of ITB & BOQ and as viewed & observed by the SE, PWD, Boleng Circle. Moreover, as the petitioner in the Technical Bid did not enclose any document regarding appointment of Shri Marshal Lego & Shri Oni Tamuk as its Attorney Holder, Mr. Nabam pointed out that following the Clause-24.1 of the ITB, no action was taken on their representation.

21) Mr. Nabam also pointed out that as the Tender Bid amount of the IFB/NIB dated 12-03-2012 is of Rs. 2525 lakhs, the same is beyond the delegated financial power of the Chief Engineer as specified in the Central Public Work Department Works Manual, 2012 and therefore, the respondent No. 3 issued the letter dated 24-08-2012 to the respondent No. 4 with a copy endorsed to respondent No. 5 for submission of original approved technical bids and financial bids documents as those

were necessary to accompany the Financial Bid, which is required to be submitted to the Government for acceptance of the tender. According to him, as per CPWD Works Manual 2012, the power delegated to the Chief Engineer for acceptance of tender under his own is of Rs. 1000 lakhs; with the prior approval of the ADG, is Rs. 1300 lakhs; with the prior approval of the DG, is Rs. 1600 lakhs and with prior approval of the CW Board, the Chief Engineer has the full power. In the present case, as the work is of Rs. 2525 lakhs, Mr. Nabam submitted that the bid amount is beyond the power delegated to the Chief Engineer, respondent No. 3 and therefore, he forwarded all documents to the Principal Secretary, PWD, Govt. of Arunachal Pradesh for prior approval of the Government as required for such bid amount and on obtaining Government's approval, the Chief Engineer vide his letter dated 06-03-2013 conveyed the same to the Executive Engineer, PWD, Pasighat about the Government's approval in favour of the respondent No. 8 and directed him for drawal of agreement with the respondent No. 8 after observing all codal formalities.

22) Mr. Dilip Mazumdar, learned counsel for the respondent No. 8 has adopted the submission of Mr. Nabam as placed on behalf of the respondent Nos. 3 to 7. In addition to the same Mr. Mazumdar submitted that the Executive Engineer, PWD, Pasighat did not prepare the comparative statement correctly and there were errors in totaling the value of item works in the tender paper of the petitioner which actually comes to Rs. 22,99,04,601.81 and not Rs. 22,98,80,366.07. Mr. Mazumdar further submitted that the respondent No. 8 did not had any opportunity to make the detail calculation for finding the mistakes occurred in his tender and further, the question of raising any objection against

such discrepancies in the bid of the respondent No. 8 could not be pointed out. Therefore, the respondent No. 8 denied that he accepted the evaluation made by the respondent No. 5 as he has given his signature on the tender register, after evaluation of Bids by the said respondent No. 5 and stated that the certificate of the Screening Committee Members is also of no consequence. Mr. Mazumdar pointed out that there were mistakes in totaling the figure mentioned against the various items in the tender and as such there was a requirement for re-checking for correction of the records and therefore, the petitioner cannot be allowed to take the benefit of any erroneous calculation on the plea that the calculation were redone and rechecked again at the zonal level by the Chief Engineer. Mr. Mazumdar contended that it is only after re-checking and re-calculation by the Chief Engineer, respondent No. 3; the actual & correct Bid Value of the Bid of the petitioner found to be of Rs. 22,99,04,601.81 instead of Rs. 22,98,80366.07, whereas Bid Value of the respondent No. 8 came down from Rs. 23,19,20,485.12 to Rs. 22,97,25,201.07.

23) Mr. K. N. Choudhury, learned Sr. Advocate, appearing for respondent No. 9, Shri Toli Basar, Chief Engineer, PWD, Eastern Zone has also taken similar stand as that of the official respondents No. 3 to 7. Mr. Choudhury submitted that the Chief Engineer (EZ), Arunachal Pradesh, PWD is the Employer in terms of the provisions of the ITB and accordingly the Chief Engineer being the Employer evaluated the Financial Bids of the three technically responsive bidders, namely, the petitioner, the respondent No. 8 and M/S. Super Infratech Pvt. Ltd., Dibrugarh. Mr. Choudhury also submitted that on such evaluation by the Employer it was found that the in the Item Nos. 11, 30 & 51 of its Financial Bid, the respondent No. 8

quoted different rates in figures and in words and the respondent No. 9, being the Chief Engineer as Employer, corrected the same following the provisions of Clause-27.1 (a) of the ITB; obtained concurrence from the respondent No. 8 as per provisions of Clause-27(2) of the ITB and on such correction, Bid Value of the respondent No. 8 was reduced from Rs. 23,19,20,485.12 to Rs. 22,97,25,215.07. It was also pointed out by Mr. Choudhury that on similar evaluation of the Financial Bid of the petitioner, made by the Employer, mistakes in the arithmetical calculation of the actual bid amount was found, which occurred due to wrong calculation given in it and accordingly on correction of such arithmetical calculation, the Bid Value of the petitioner was raised from Rs. 22.98.80,366.07 to Rs. 22,99,04,614.81. However, Mr. Choudhury denied about the increasing of rates quoted by the petitioner in Item Nos. 10 and 51 behind his back and stated that the petitioner himself quoted the rate of Rs. 22.65 for Item No.10 and Rs. 265.30 per cum for Item No. 51.

24) Mr. Choudhury further submitted that though Item wise rates were quoted for Item Nos. 1 to 57, but for the five Item Nos. 58 to 62, the petitioner quoted a lump sum amount of Rs. 81,840 and since the said five Items are of different units of work i.e. Item Nos. 58 and 61 are in cubic meter, Item Nos. 59 and 60 are in number and Item No. 62 is in square meter, the respondent No. 4, Superintending Engineer, PWD, Boleng Circle, in his remark observed that the petitioner did not quote exact amount against Item Nos. 58 to 62, which is in clear deviation from the norms required for item wise bid tenders as per Section 7, BOQ for item rate tender of the approved Notice Inviting to Bidders. As the said NIB dated 12-03-2012 was item wise rate tender, Mr. Choudhury contended that it was

necessary for the petitioner to quote rate for each item separately in his Financial Bid and as the petitioner quoted a lump sum of amount for the Items Nos. 58 to 62 and did not give unit of the rates, the same being a deviation from the norms as provided in the ITB, which was also viewed & observed by the Superintending Engineer, PWD, Boleng Circle; the Employer/Chief Engineer rightly rejected the petitioner's bid on its evaluation on 07.09.2012.

25) Mr. Choudhury also stated that as per Para 22 of the CPWD Works Manual, it is a routine procedure to check comparative statements submitted by field divisions for onward submission for its acceptance. As in the present case, the approximate value of work is Rs. 2525 lakhs and as per the CPWD Works Manual, tender work above Rs. 1600 lakhs, the Chief Engineer is required to take prior approval from the Government. The respondent No. 9, being the Chief Engineer, is the Employer, and as such, in terms of the ITB of the SBD, has bona fide taken up the exercise for evaluation of the Tender Bids of the three technically responsive bidders including the petitioner and the respondent No. 8 and after proper scrutiny, with his findings, forwarded the proposal to the Government for its necessary prior approval. Mr. Choudhury, has relied upon the Judgment of the Hon'ble Supreme Court of India rendered in *Siemens Public Communication Net Works Pvt. Ltd. and Anr. Vs. Union of India and Others*, reported in 2008 (16) SCC 215.

26) Disapproving the submissions of the official respondent Nos. 3 to 7 and private respondent Nos. 8 & 9, Mr. A. K. Bhattacharyya, learned Senior Advocate submitted that the SBD, ITB and the BOQ of the Tender as advertised on 12-02-2012 did not specify that the provisions of CPWD Manual

will be followed in processing the said Tender and if at all, the provisions of CPWD Manual are to be followed, then, the same should be followed in toto and not in pick and choose manner, that for some items, clauses of the ITB & BOQ of the SBD will be followed and for some other items Clauses from the CPWD Manual will be followed so as to suit the respondent No. 8. Mr. Bhattacharyya, clarified that Section 20.2.1(2)(4)(a) of the CPWD Works Manual provides that when there is a difference between the rates in figures and in words, the rates which correspond to the amounts worked out by the contractors shall be taken as correct and if at all the CPWD Manual is followed for processing of the said IFB dated 12-03-2012, then, the rates quoted by the respondent No. 8 in Item Nos. 11, 30 and 51 corresponding to the quantity/amount worked out should be accepted and in that count respondent No. 8's Bid Value remains same as determined earlier at Rs.23,19,20,485.12, which is higher than the petitioner's final Bid Value, after its re-evaluation by the Chief Engineer/Employer. Mr. Bhattacharyya, pointed out that in the Financial Bid, for the Item Nos. 58 to 62, the petitioner quoted the rates as a whole, instead of item wise rate, since the nature of work involved in those items are of similar work and as per Clause-13 of the ITB and Clause-5 of the BOQ, such quoting of lump sum amount for the Item Nos. 58 to 62 does not make the same to fall within the meaning of material deviation as defined in Clause-26.2 of the ITB and by following the provisions of the ITB, the Employer is not liable to pay for the said works after execution or items shall be deemed to be covered by the other rates and prices entered in the BOQ. Mr. Bhattacharyya also submitted that the official respondents, more particularly, respondent No. 3 acted arbitrarily in a pick and choose manner, accepted the provisions of the CPWD Works Manual only to

favour the respondent No. 8, bypassing Section 20.2.1(2)(IV)(a) of the CPWD Works Manual, as the official respondent Nos. 3 to 7 & respondents No. 8 & 9 have clearly stated that the CPWD Works Manual is the source from which the PWD derived its power and therefore, the respondent Nos. 3 to 7 and the respondent No. 9 could not have applied the provisions of the CPWD Works Manual accepting the bid of the respondent No. 8 and rejecting the bid of the petitioner.

27) In the present case, petitioner's main contentions are –

- (i) The Chief Engineer (EZ), PWD acted as an appellate authority and re-evaluated the three Financial Bids.
- (ii) The Chief Engineer (EZ), PWD acted arbitrarily, illegally and in biased manner by re-evaluating the Financial Bids of the technically responsive firms with the malafide intention to declare the respondent No. 8 as the most responsive lowest bidder.
- (iii) The Chief Engineer (EZ), PWD after re-evaluating the Financial Bid of petitioner, raised its Bid Value behind his back, without obtaining his consent.
- (iv) The Chief Engineer (EZ), PWD by re-evaluating the Financial Bid of the petitioner illegally rejected the same for not quoting item wise rate for Item Nos. 58 to 62 of IFB considering it as deviation from norms.
- (v) Without incorporating in the IFB/ITB and without informing the petitioner and other bidders, the Chief Engineer (EZ), PWD followed the provisions of the CPWD Manual 2012, in a pick and choose manner, to suit the respondent No. 8.

28) In numerous cases, including the *Tata Cellular Vs. Union of India* [(1994) 6 SCC 651], *Siemens Public Communication Network Private Limited & Another Vs. Union of India & Others* [(2008) 16 SCC 215], *Shimnit Utsch India Pvt. Ltd. & Another Vs. West Bengal Transport Infrastructure Development Corporation Limited & Others* [(2010) 6 SCC 303] and others, the Hon'ble Supreme Court of India has settled the law that in the matters of Judicial Review the basic test is to see whether there is any infirmity in the decision making process and not in the decision itself. The principles of judicial review would apply to the exercise of contractual powers by Government or its instrumentalities in order to prevent arbitrariness, favoritisms, mala fides, unreasonableness, discrimination etc. and the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender, which means that the decision-maker must understand correctly the law that regulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of judicial review cannot be denied even in contractual matters or matters in which the Government or its instrumentalities exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest to see that the decision is transparent, fair, bona fide. The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety and whenever a norm or benchmark is prescribed in the tender process in order to provide certainty that norm or standard should be clear, as "certainty" is an important aspect of rule of law.

29) To examine the decision making process of the authorities in awarding the contract to the respondent No. 8 in the present case it is necessary to go through the relevant clauses and terms & conditions of the of the Invitation For Bid (IFB) along with its Instructions to Bidders (ITB) and Bill of Quantities (BOQ).

30) The Clause-3 of the Notice Inviting Bidders (NIB/IFB) dated 12-03-2012 specified that intending bidders have to submit two separate sealed covers for individual packages superscribed as "Technical Bid" and "Financial Bid" and that "Technical Bid" will be opened on 13-04-2012 in presence of the bidder(s) who wish to attend or authorised representative of the bidder(s) and that "Technical Bids" shall be evaluated by a standing screening committee whose decision shall be final and the bidder(s) who qualify shall be invited to attend the opening of "Financial Bids" for which the date and venue will be intimated later on. The Standing Screening Committee on 13-03-2012, found three farms including the petitioner and the respondent No. 8 and another farm technically responsive and selected those for opening of their Financial Bids. It is only after approval of the respondent No. 3, CE (E/Z), PWD on 06-07-2012, the respondent No. 5, EE, PWD, Pasighat Division opened the aforesaid three Financial Bids on 16-07-2012, prepared the comparative statements and forwarded to the CE (E/Z), PWD through respondent No. 4, SE, PWD, Boleng Circle.

31) The Section-1 of the Invitation for Bid (IFB) dated 12-03-2012 contains "Instructions to Bidder" (ITB), wherein Clause-1 of the ITB provides for "the Scope of Bid" and Clause-1.1. of the said Clause-1 stipulates that – "*the Employer (named*

in Appendix to ITB) invites bids for the construction of works (as defined in these documents and referred to as “the works”) detailed in the table given in IFB. The bidders may submit bids for any or all of the works detailed in the table given in IFB” and the Clause-1 of the Appendix to the ITB provides the name of the “Employer” as “Chief Engineer (EZ), Arunachal Pradesh, PWD” and further, the Clause-12 of the said Appendix provides the Address of the “Employer” as Chief Engineer (EZ), Arunachal Pradesh, PWD, Itanagar-791111”.

32) Clause-8 of the ITB relates with “Content of Bidding Documents” and Clause 8.3 of the same specifies that – “the Bidder is expected to examine carefully all instructions, conditions of contract, contract data, forms, terms, technical specifications, bill of quantities, forms, annexes and drawings in the Bid Documents. Failure to comply with the requirements of Bid Documents shall be at the Bidder’s own risk. Pursuant to Clause-26 hereof Bids which are not substantially responsive to the requirements of the Bid Documents shall be rejected”.

33) Clause-9 of the said ITB deals with “Clarification of Bidding Documents” and Clause-9.1 of the same reads as – “A prospective bidder requiring any clarification of the Bidding Documents may notify the Employer in writing or by cable (hereinafter Cable includes Telex and Facsimile) at the Employer’s address indicated in the Invitation of Bid. The Employer will respond to any request for clarification which he received earlier than 15 days prior to the deadline for submission of Bids. Copies of the Employer’s response will be forwarded to all purchasers of the Bidding Documents, including a description of the enquiry but without identifying its source”.

34) Clause-13 of the ITB provides for “Bid Prices” and Clause-13.1 and 13.2 reads as follows:

“13.1–The contract shall be for the whole works as described in Sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Bidder.

13.2– The Bidder shall fill in rates and prices and line item total (both in figures and words) for all items of the Works described in the Bill of Quantities alongwith total bid price (both in figures and words). Items for which no rate or price is entered by the bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting”.

35) Clause-24 of the ITB provides for “Process to be Confidential” and it stipulates –

“Information relating to the examination, clarification, evaluation, and comparison of Bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence the Employer’s processing of Bids or award decisions may result in the rejection of his Bid”.

36) Clause-25 of the ITB provides for “Clarification of Financial Bids” and it lays down –

“To assist in the examination, evaluation, and comparison of Bids, the Employer may, at his discretion, ask any Bidder for clarification of his Bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the Bid shall be sought, offered, or permitted

except as required to confirm the correction of the arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with Clause 27”.

37) Clause-26 of the ITB provides for “Examination of Bids and Determination of Responsiveness” and Clause-26.1, 26.2 & 26.3 stipulates as follows:

“26.1–During the detailed evaluation of ‘Technical Bids’, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clause 3 and 4; (b) has been properly signed; (c) is accompanied by the required securities and; (d) is substantially responsive to the requirements of the Bidding documents. During the detailed evaluation of the ‘Financial Bid’, the responsiveness of the bids will be further determined with respect to the remaining bid conditions, i.e., priced bill of quantities, technical specifications, and drawings.

26.2–A substantially responsive ‘Financial Bid’, is one which conforms to all the terms, conditions, and specifications of the Bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality or performance of the Works; (b) which limits in any substantial way, inconsistent with the Bidding documents, the Employer’s rights or the Bidder’s obligations under the Contract; or whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.

26.3–If a ‘Financial Bid’, is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation”.

38) Clause-27 of the ITB provides for “Correction of Errors” and Clause-27.1 & 27.2 reads as follows:

“27.1–‘Financial Bids’, determined to be substantially responsive, it will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

- (a) where there is a discrepancy between the rates in figures and in words, the rates in words will govern; and*
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern.*

27.2–The amount stated in the ‘Financial Bid’ will be corrected by the Employer in accordance with the above procedure and the bid amount adjusted with the concurrence of the Bidder in the following manner:

- (a) If the Bid price increases as a result of these corrections, the amount as stated in the bid will be the ‘bid price’ and the increase will be treated as rebate;*
- (b) If the bid price decreases as a result of the corrections, the decreased amount will be treated as the ‘bid price’.*

Such adjusted bid price shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount the Bid will be rejected, and the Bid security may be forfeited in accordance with Sub-Clause 16.6 (b).

39) Clause-29 of the ITB provides for “Evaluation and Comparison of Financial Bids” and Clause-29.1 & 29.2 reads as follows:

“29.1–The Employer will evaluate and compare only the Bids determined to be substantially responsive in accordance with Sub-Clause 26.2.

29.2– *In evaluating the Bids, the Employer will determine for each Bid the evaluated Bid Price by adjusting the Bid Price as follows:*

- (a) *making any correction for errors pursuant to Clause 27; or*
- (b) *making an appropriate adjustments for any other acceptable variations, deviations; and*
- (c) *making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 23.6”.*

40) Clause-31 of the ITB provides for “Award Criteria” and Clause-31.1 reads as follows:

“31.1–Subject to Clause 32, the Employer will award the Contract to the Bidder whose Bid has been determined.

- (i) *to be substantially responsive to the Bidding documents and who has offered the lowest evaluated Bid Price; and*
- (ii) *to be within the available bid capacity adjusted to account for his bid price which is evaluated the lowest in any of the packages opened earlier than the one under consideration.*

In no case, the contract shall be awarded to any bidder whose available bid capacity is less than the evaluated bid price, even if the said bid is the lowest evaluated bid. The contract will in such cases be awarded to the next lowest bidder at his evaluated bid price.

41) Clause-32 of the ITB provides for “Employer’s Right to Accept any Bid & to Reject any or all Bids” and it lays down –

“Notwithstanding Clause 31, the Employer reserves the right to accept or reject, any Bid, and to cancel the Bidding

process and reject all Bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action”.

42) The Section-7 of the Bidding Documents of the Invitation for Bid (IFB) dated 12-03-2012 provides for “Bill of Quantities” (BOQ) and Clauses-1, 5 and 9 of the said BOQ read as follows:

(7) 1. The Bill of Quantities shall be read in conjunction with Instructions to Bidders, Conditions of Contract, Technical Specifications and Drawings.

(7) 5. A rate or price shall be entered against each item in the Bill of Quantities, whether quantities are stated or not. The cost of items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.

(7) 9. Errors will be corrected by the Employer for any arithmetic errors pursuant to Clause 29 of the Instructions to Bidders.

43) From the reading of the Clauses – 1, 25, 26, 27, 29, 31, 32 of the ITB and Clause – 9 of the BOQ, together with Clauses – 1 & 12 of the Appendix to the ITB; it is seen that as per the terms & conditions incorporated in the IFB dated 12-03-2012, it is the “Employer”, namely, “the Chief Engineer (EZ), Arunachal Pradesh, PWD”, who shall examine, check, evaluate, compare and correct the ‘Financial Bids’ and also determine the responsiveness of the ‘Financial Bids’ of the Bidders in respect of bid conditions like - priced bill of quantities etc.

44) On perusal of the Bill of Quantity (BOQ) of the Financial Bid of the respondent No. 8, with regard to Item No. 11, it can be seen that in the quantity column, the official respondents noted 101571.75 Sqm., against which, the respondent No. 8 entered the unit price in figure as 262.64. However, in words it was written "Rupees Two Hundred Forty Two and Sixty Four Paise" and under the line item total amount column, in figures and words the respondent No. 8 has entered 2,66,76,804.42, which he arrived at by multiplying quantity 101571.75 by the unit rate of 262.64 in figure. Similarly for the Item No. 30 of the said BOQ it can be seen that in the quantity column, the official respondents noted 263.330 Cum., against which the respondent No. 8 entered the unit price in figure as 6657.03. However in words it was written "Rupees Six thousand Fifty Seven and Three Paise" and under the line item total amount column, in figures and words the respondent No. 8 has entered 17,52,995.71, which has been arrived at by multiplying quantity 263.330 by the unit rate of 6657.03 in figure. Again for the Item No. 51 of the said BOQ it can be seen that in the quantity column, the official respondents noted 7296.00 Cum., against which, the respondent No. 8 has entered the unit price in figure as 248.85. However, in words it was written "Rupees Two Hundred Forty Two and Sixty Four Paise" and under the line item total amount column, in figures and words the respondent No. 8 has entered 18,15,609.60, which he arrived at by multiplying quantity 7296.00 by the unit rate of 248.85 in figure.

45) It can be noticed from the Clauses - 27.1 & 27.2 of the ITB as noted above, that the Employer shall check the substantially responsive Financial Bids for any arithmetical errors and such errors will be corrected by him (i) where there is

a discrepancy between the rates in figures and in words, the rates in words will govern and (ii) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern. Moreover, the Employer in accordance with the above noted procedure shall correct the amount stated in the Financial Bid and shall adjust the bid amount with the concurrence of the Bidder in the manner - where as a result of such corrections, (i) if the Bid price increases, then the amount as stated in the bid will be the 'bid price' and the amount so increases shall be treated as rebate and (ii) if the bid price decreases, the decreased amount shall be treated as the 'bid price' and further, such adjusted bid price shall be considered as binding upon the Bidder and if the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid security may be forfeited. Again from Clause-9 of the BOQ it can be seen that errors will be corrected by the Employer for any arithmetic errors pursuant to Clause-29 of the ITB. Further, Clause-29 of the ITB deals with "Evaluation and Comparison of Financial Bids" and from the Clause-29.2 of the ITB is seen that the Employer, while evaluating the Bids, will determine for each Bid, the evaluated Bid Price by adjusting the Bid Price, amongst others, by making any correction for errors pursuant to Clause 27.

46) In view of the same, under the Clauses - 27.1, 27.2, 29.2 of the ITB and Clause-9 of the BOQ, such errors made by the respondent No. 8 in Item Nos. 11, 30 & 51 of his Financial Bid are amenable for correction and on making such correction by the Employer, the Chief Engineer (EZ), Arunachal Pradesh, PWD; the bid value of the respondent No. 8 got reduced from Rs. 23,19,20,485.12 to Rs. 22,97,25,215.07.

47) As per the terms and conditions given in the ITB, more particularly Clauses – 1.1., 13.2 of the ITB and Clauses – 1 & 5 of the BOQ, a bidder is required to fill in rates and prices and line item total, both in figures and words, for all items of the Works described in the Bill of Quantities alongwith total bid price, both in figures and words. Instead of quoting item wise rate and prices for all items as stipulated in the ITB, the petitioner preferred to quote only a lump sum amount for the Item Nos. 58 to 62 which is a deviation from the norms given in the ITB. Moreover, the unit/measurement of said five Items No. 58 to 62 are also different, namely, cubic meter, number and square meter. It is not the case of the petitioner that it did not quote or entered any rate or price for the said Item Nos. 58 to 62 to come under the scope of the other part of Clauses - 13.2 of the ITB and 5 of the BOQ which says - Items for which the bidder did not enter or has failed to enter a rate or price, the Employer will not pay him the cost of said Items, when the work is executed and it shall be deemed to be covered by the other rates and prices entered in the Bill of Quantities.

48) In the present case, the petitioner has deviated from the terms and conditions as prescribed in Clauses – 1.1., 13.2 of the ITB and Clause-5 of the BOQ and for not fulfilling the essential conditions of the NIB/IFB by furnish item wise rates and prices for the Item Nos. 58 to 62 in its Financial Bid, the Employer has rightly rejected the Bid of the petitioner.

49) From Clause-26.2 of the ITB it can be seen that “A substantially responsive ‘Financial Bid’, is one which conforms to all the terms, condition, and specifications of the Bidding documents, without material deviation or reservation and a material deviation or reservation is one (i) which affects in any

substantial way the scope, quality or performance of the Works; (ii) which limits in any substantial way, inconsistent with the Bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.

50) A clear reading of Clause-8.3 along with Clauses - 26.1, 26.2, 26.3 and 29.1 of the ITB goes to show that if the Bid Document of a Bidder is not found to be substantially responsive, then the same is liable to be rejected by the Employer and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation. Further, from the Clauses - 27.1 and 29.1 of the ITB, it is seen that only when a Financial Bid is determined to be substantially responsive as per Clause-26.2 of the ITB, then only it will be checked by the Employer for any arithmetic errors.

51) In the present case, as stated above, the petitioner's bid was already rejected by the Employer, since his Bid document was found to be substantially non responsive under Clause-26.2 of the ITB, due to non filling up of the rates and prices for Item Nos. 58 to 62, in terms & conditions incorporated in the ITB. The petitioner filled up those items deliberately in lump sum amount deviating from norms prescribed, though item rates were quoted by him for item Nos. 1 to 61. As the petitioner's Financial Bid was already rejected as stated above, the Employer, as per Clause-27 was not required to take petitioner's concurrence for correction of his Bid value. Rejection of the Bid of the petitioner is not because of his Bid price has been raised from Rs.

22,98,80,366.07 to Rs. 22,99,04,614.81 but because of his deviation from the norms under Clause-26.2 of the ITB in filling up the rates. Moreover, it is also not the case of the petitioner that it sought clarification of the Bidding Documents from the Employer either in writing or by cable in terms of Clause 9.1 of the ITB.

52) With regard to the pursuing the provisions of the CPWD Manual, it is clear from the affidavit of the State respondents, wherein it has been very specifically mentioned that the powers delegated to the Chief Engineer for acceptance of Tender under the CPWD Manual is of Rs.1000 lakhs only and in the present case as per the NIB dated 12-03-2012, the approximate value of the works involved is of Rs. 2525 lakhs, and the same being beyond the delegated power of the Chief Engineer for his acceptance of the Tender, he, accordingly, obtained necessary prior approval from the Government for acceptance of the award of contract to the respondent No. 8, as it is a procedural requirement and it is found that this action of the state respondents does not have any bearing with regard to their decision making process in rejecting the bid of the petitioner and awarding the contract to the respondent No. 8. In the present case, the provisions and conditions incorporated in the Bid Documents including the ITB and BOQ of the NIB dated 12-03-2012 have been followed for acceptance of the Technical and Financial Bids and not the provisions incorporated in the CPWD Manual. Therefore, the claim of the petitioner with regard to bypassing of Section 20.2.1(2)(iv)(a) of the CPWD Works Manual is not tenable.

53) Mr. Bhattacharyya, learned Senior Advocate, placing reliance in Paragraph 64 of the Judgment of the

Hon'ble Apex Court in *State of UP & Others -Vs.- Maharaja Dharmender Prasad Singh & Others*, reported in reported in 1989 (2) SCC 505 submitted that the Official respondents, more particularly, the Chief Engineer, should have given the petitioner a personal hearing, before enhancing his Bid value as provided in Clause-27 of the ITB and rejecting his Bid for quoting lump sum amount for Item Nos. 58 to 62 in the said Bid. The Hon'ble Apex Court in the said judgment has laid down that where the stakes are heavy for lessees who claim to have made large investments on the project and where a number of grounds require the determination of factual matters of some complexity, the statutory authority should have afforded a personal hearing to the lessees. The fact of the said case is not relevant in the present case as in that case lease of the lessee was cancelled and lessee invested huge amount for development of the land. But in the present case, petitioner's Financial Bid was cancelled as the same was found as it was not substantially responsive under Clause-26.2 of the ITB as he did not comply with the essential conditions of the IFB incorporated in the ITB and deviating from the same, he quoted lump sum amount for five items together, which are of different units of measurements. Moreover, as per terms of Clause-27.1 of the ITB, the Employer is required to check the arithmetical errors of only those Financial Bids which is determined to be substantially responsive. Since the petitioner's Financial Bid was already rejected under Clause-26.2 of the ITB and as such, his personal hearing and to obtain his concurrence for raising his Bid value or for rejection of his tender is not necessitated.

54) The other decision of the Hon'ble Supreme Court *W.B. State Electricity Board -Vs.- Petal Engineering Co. Ltd. &*

Others, reported in 2001(2) SCC 451 cited on behalf of the petitioner deals with a matter where the Bidder pleaded for correction of mistakes after opening of the bid that according to the Bidder occurred due to fault of the computer, but Hon'ble Court found Bidders' mistake was deliberate. But the very Judgment laid down that that - to ensure the Tender process to be fair and transparent the conditions of the NIT is strictly required to be followed by the Authorities as well as by the Bidders and adherence to ITB or Rules is the best principle to be followed, which is also in the best public interest in cases of contract/tender of Government or its instrumentalities. In the case in hand the petitioner deliberately quoted a lump sum amount for Item Nos. 58 to 62 together, instead of item wise rate as prescribed in the ITB, which are not amenable for correction. As such, said Judgment is not relevant to support the claims of the petitioner.

55) Mr. Choudhury, learned Senior Counsel for the respondent No. 9 placing the reliance of the Judgment of the Hon'ble Supreme Court in *Siemens Public Communication Net Works Pvt. Ltd. and Another Vs. Union of India and Others*, reported in 2008 (16) SCC 215 stated that the petitioner has failed to show any cogent reason for invoking the power of judicial review by the Court as the petitioner did not fulfill the terms and conditions of the Bid Document which being a deviation and has been rightly rejected by the Employer.

56) In the case of *Kanhaiya Lal Agarwal -Vs- Union of India*, reported in 2002 (6) SCC 315, Hon'ble Supreme Court has held that it is settled law that when an essential condition of tender is not complied with, it is open to the person inviting tender to reject the same. Whether a condition is essential or

collateral could be ascertained by reference to consequence of non-compliance thereto. If non-fulfillment of the requirement results in rejection of the tender, then it would be essential part of the tender otherwise it is only a collateral term. This legal position has been well explained in *G.J. Fernandez v. State of Karnataka & Ors* [(1990) 2 SCC 488].

57) In the present case, the Tender of the petitioner has been rejected due to non-fulfillment of the essential terms and conditions of the Tender and for deviation from the prescribed essential terms and conditions. The Hon'ble Apex Court in the Judgment reported in 2001(2) SCC 451 has settled the law that adherence to the ITB or rules is the best principle to be followed which is also in the best public interest. A Bidder is required to comply with the requirement specified in the Bid Document as it is a part of the conditions of the Tender. In the case at hand, the petitioner deviated from the conditions incorporated in the Bidding Documents and deliberately quoted a lump sum rate for Item Nos. 58 to 62 failing to furnish item wise rates and prices and line item for the said items, as such the authority rejected the Bid of the petitioner. Otherwise, if the authority had accepted the said Bid of the petitioner, it would have amounted to discrimination and favoritism. To ensure the Tender process to be fair and transparent the conditions of the NIT is strictly required to be followed by the authorities as well as by the Bidders.

58) In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that the impugned order of the settlement of awarding the contract to the respondent No. 8 in terms of the NIB dated 12-03-2012 does not suffer from any infirmity calling for interference by this Court in

exercise of its power of judicial review. The impugned order of settlement in the case in hand from the facts as stated above appears to be based on materials on record. In that view of the matter, the present Writ Petition being devoid of merit is hereby dismissed.

The interim order of status quo pursuant to the communication No. CEAP(EZ)/NLCPR-28/BC/PD/12-13/8067-71 dated 06-03-2013, issued by the Superintending Surveyor of Work for Chief Engineer (EZ), PWD, Arunachal Pradesh (Annexure-16 to the petition) passed 01-04-2013 stands vacated.

However, in the facts and circumstances of the case, there would be no order as to costs.

JUDGE

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