

**AFR****Reserved on 23.07.2021****Delivered on 17.08.2021****Court No. - 1****Case :-** MISC. BENCH No. - 15664 of 2020**Petitioner :-** M/S Geo Miller & Co. Pvt. Ltd. Thru. Director**Respondent :-** U.P. Jal Nigam, Lucknow Thru. General Manager & Ors.**Counsel for Petitioner :-** Agendra Sinha, S.D. Singh**Counsel for Respondent :-** Rishabh Kapoor, Raj Kumar Singh, Sudhir Kumar Pandey**Hon'ble Ritu Raj Awasthi, J.****Hon'ble Dinesh Kumar Singh, J.****(Per Dinesh Kumar Singh, J.)**

1. According to Hindu Mythology, *Bhagiratha*, a legendary king of the *Ikshvaku* dynasty, brought the River *Ganga* to Earth from heavens because only she could bestow *nirvana* to *Bhagiratha*'s ancestors who were cursed by Sage *Kapila*. After years of great penance, River *Ganga* descended on Earth and Lord *Shiva* agreed to channelize her flow. Therefore, River *Ganga* flowed from Lord *Shiva*'s hair. The place where the sacred river originated is known as *Gangotri* in present times, and since the river originated from Lord *Shiva*'s *Jata* (hair) it is also called *Jatashankari*.

2. River *Ganga* is called by several names, including *Jahnavi*, *Shubhra*, *Sapteshwari*, *Nikita*, *Bhagirathi*, *Alaknanda*, and *Vishnupadi*.

3. It is believed that it flows from all the three worlds - Heaven/*Swarga*, Earth/*Prithvi*, and Hell/*Patala*. In Hinduism, the holy River *Ganga* is personified and personalized as Goddess *Ganga*. People believe that bathing in the pious *Ganga* can help wash all sins. It is also believed that a mere touch of the river can help attain *moksha* (salvation) and so the ashes of the dead persons are immersed in the sacred river so that the dead attains *moksha* (*gange tav darshanarth mukti*). There is no match to the everlasting divinity of holy river *Ganga*.

4. It is lifeline of India because it provides water to 40% of India's population. It is a source of irrigation for a wide variety of crops. Its basin has fertile soil that largely influences the agricultural economies of India and its neighboring country of Bangladesh. It also supports fishing industries, making it an agricultural and professional necessity for the livelihood of Indians.

5. Varanasi, Haridwar, Gangotri, Prayagraj, and Rishikesh are the prime religious destinations that have great religious significance for Hindus located at the Banks of river Ganga. Kumbh Mela is organized in Prayagraj and Haridwar. Ganga Arti takes place in twilight everyday at Rishikesh, Haridwar and Varanasi.

6. Adventure tourism is also organized in Rishikesh, such as river rafting, kayaking, and body surfing etc. The bathing ghats of Ganga are popular tourist attraction. Travellers often visit these ghats to bathe and witness the funeral rites and *Ganga Arti*.

7. Several yoga retreats have been established on the banks of River *Ganga* because of its calm and peaceful atmosphere. River *Ganga* is worshiped as *Ganga Maa* or *Mother Ganges*.

8. It is the longest river in India and it flows around 2525 kms from the Himalayan Mountains to Bay of Bengal. It has the second greatest water discharge in the world, and its basin is the most heavily populated in the world with over 400 million people living in it. The course of river begins in Himalayan Mountains where the *Bhagirathi* River flows out of the *Gangotri* glacier in Uttarakhand. The glacier is located at an elevation of 12,769 feet. In long stream, the *Bhagirathi* and *Alaknanda* rivers join. As the river *Ganga* flows out of the *Himalayas*, it creates a narrow, rugged canyon. From Rishikesh, it begins to flow onto the Indo-Gangetic Plain. As river *Ganga* then flows farther downstream, it changes its direction several times and is joined by many other tributary rivers such as *Yamuna*, *Ramganga*, *Tamsa*, and *Gandaki* Rivers. River *Ganga* flows out of India and into Bangladesh, its main branch is known as *Padma* River. Before entering the Bay of Bengal, the river creates the world's largest delta, Ganges Delta. This region is a highly fertile sediment-laden area that covers 23,000 square miles. Its overall length of drainage size is based on what

tributary rivers are included. Its drainage basin is estimated to be about 4,16,990 square miles.

**9.** River *Ganga* basin has been inhabited by humans since ancient times. The first region *Harappan* civilization, who moved into the Ganges River basin from the Indus River basin around the 2nd millennium B.C.E. Later, the Gangetic plain became the center of the *Maurya* Empire and then the *Mughal* Empire. *Megasthenes* in his work *Indica* has discussed the importance and significance of river *Ganga*.

**10.** Despite being the lifeline of the nation, having been worshiped, providing sustenance to large population, over the time river has become highly polluted. According to the studies, it is one of the most polluted river in the world. Pollution of River *Ganga* is caused by both human and industrial waste due to rapid industrialization as well as religious events. Waste and raw sewage of population living in the river *Ganga* basin (400 Millions) is dumped into the river. Many people bath and use the river to clean their laundry. Studies have described bacteria level near Varanasi at least 3000 times higher than what has been prescribed as safe by the World Health Organization.

**11.** Industrial practices, population growth and harmful religious activities are plausibly responsible for high level pollution of the river. Tanneries, Chemical plants, Textile mills, distilleries, slaughter houses etc., along with river dumping their untreated and intoxicated water into the river are responsible for very high pollution and for poor health of river *Ganga*. Its water contains high level of intoxicated substances like Chromium Sulphate, Arsenic, Cadmium, Mercury and Sulphuric Acid. Even religious practices such as offering foods and other items to river *Ganga* which are regularly thrown into the river as well as religious events also add to the pollution level of the river.

**12.** In the late 1980s, Rajiv Gandhi, India's the then Prime Minister began the Ganga Action Plan (GAP) to clean up the river *Ganga*. The plan shut down many highly polluting industrial plants along the river and funds were allotted for the construction of wastewater treatment plants. However, efforts have fallen short as the plants are not large enough to handle the waste coming from such a large population. Many of the polluting

industrial plants are also continuing to dump their hazardous waste into the river.

**13.** The future of this nation to large extent will be depending on health and well being of this river. It is, therefore, imperative that every effort should be made to revive the river and make it pollution free. Prime Minister, Narendra Modi after getting elected from Varanasi Parliamentary seat in May, 2014 said " It's my destiny to serve Maa Ganga"

**14.** In 2014, the Government has come out with a Flagship Programme 'Namami Gange', an Integrated Conservation Mission, to accomplish twin objectives of effective abatement of pollution, conservation and rejuvenation of National River 'Ganga'. It is being operated under the Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti. The programme is being implemented by the National Mission for Clean Ganga (NMCG), and its state counterpart organizations i.e., State Program Management Groups (SPMGs). NMCG is the implementation wing of National Ganga Council set up in 2016; which replaced the National Ganga River Basin Authority (NRGBA). Budget outlay is Rs.20,000-crore, centrally-funded, non-lapsable corpus and consists of nearly 288 projects. The main pillars of the programmes are:

- (i) Sewerage Treatment Infrastructure & Industrial Effluent Monitoring,
- (ii) River-Front Development & River-Surface Cleaning,
- (iii) Bio-Diversity & Afforestation,
- (iv) Public Awareness.

**15.** The government's Namami Gange Programme has revitalized India's efforts in rejuvenating river *Ganga*. Critical sewage infrastructure in 20 pollution hotspots along with the river and cleaning of its tributaries is underway. River *Gomti* is one of the tributaries of river *Ganga*. River *Gomti* is very highly polluted.

**16.** Several strategies are being evolved and implemented under the Mission to see that the river is rejuvenated and becomes pollution free. National Mission for Clean Ganga (NMCG) is the implementing agency of Namami Ganges Programme. NMCG is treated as an authority with statutory powers under Environment Protection Act, 1986. It has been given bureaucratic autonomy and regulatory powers to execute the mission in coordination with respective State Governments. In five years, Rs.20,000

crore have been sanctioned which is five times the amount committed in the past 35 years. There is 100 per cent central funding of key projects. The mission has four major parts:-

- (i) Nirmal Ganga;
- (ii) Aviral Ganga;
- (iii) Jan Ganga and
- (iv) Gyan Ganga.

**17.** The focus is on rejuvenating the entire main stream of river *Ganga* rather than a few cities on its banks. There is emphasis on regenerating and conserving the aquatic and riparian biodiversity of the river basin. Seven IITs had prepared a detailed basin management plan and plenty of fieldwork, including estimating the amount of sewage generated by major urban and rural centres alongwith its banks. So far the NMCG has sanctioned a total of 333 projects at a cost of Rs 29,578 crore, of which 142 projects have been completed.

**18.** The NMCG is an authority constituted in accordance with the provisions of Section 3 of the Environmental (Protection) Act, 1986 vide notification No.S.O.3187(E) dated 07.10.2016 *inter alia* to take measures for prevention, control and abatement of environmental pollution in river Ganga and to ensure continuous adequate flow of water so as to rejuvenate river Ganga. It is a nodal agency for implementation of the provisions of the above notification and for effective abatement of pollution and rejuvenation, protection and management of river Ganga and its tributaries.

**19.** NMCG is under the administrative control of Ministry of Jal Shakti, Government of India. It is a Central Government Authority constituted for the purpose of executing projects such as cleaning of river Ganga undertaken on mission mode by the Central Government in view of the concerns on the subject of pollution in river Ganga and its tributaries including those expressed by the Supreme Court (**M.C. Mehta vs Union of India, 1987(4) SCC 463, (1988) 1 SCC 471, (2015) 2 SCC 764**) and in orders passed by the National Green Tribunal.

**20.** In order to expedite implementation of the project in all earnestness and in transparent manner, keeping with spirit of the orders passed by the Supreme Court and taking into consideration the public interest involved and the obligation of the Government to provide a clean and healthy

environment, the State missions have been set up in various States and executing agencies have been identified for execution of the projects. NMCG has provided substantial funding for these projects up to an extent of 100 per cent central funding and has also imposed conditions amongst others to keep overall control over the nodal missions in the State. The sewerage works in the State of Uttar Pradesh are being executed through U.P. Jal Nigam, a State owned corporation. The executing agency is required to take such steps for award of contracts and its implementation thereof, as may be deemed necessary including issuance of tenders subject to certain conditions specified by NMCG.

21. It is stated that overall control on such processes including for award and implementation thereafter rests with NMCG.

22. River Gomti is one of the tributaries of river Ganga. River Gomti is highly polluted in Lucknow city and it smells and looklike a big sewer drainage in City Lucknow. Untreated sewerage and waste flows directly into river Gomti in Lucknow. To make river Gomti clean so that its flow into river Ganga is pollution free, a tender for project of construction of sewerage network of STP (Lucknow) was sanctioned by NMCG in favour of U.P. State Ganga Conservation Programme Management Society, Government of U.P. This Society is within the State Mission for clean *Ganga*, which is an executing arm of the State Ganga Committee, constituted vide notification dated 07.10.2016. State mission for clean *Ganga* is an implementing agency for the project based on their proposal submitted to NMCG and sanctioned by executing committee of NMCG subject to several terms and conditions. The project is to be executed through U.P. Jal Nigam (respondent No.1), an agency of State Government.

23. NMCG generally funds the following category of projects:-

- (i) projects funded through externally aided agencies including World Bank; and
- (ii) projects funded under National Ganga Plan (NGP)

24. The project in question at Lucknow was sanctioned in March, 2019 under NGP under Namami Gange Programme with 100 per cent central funding.

25. Tenders for the above works were accordingly invited for the execution of the project work. Tenders were invited on 30.01.2020 vide notification

No.358/M-13/16. NMCG has sanctioned estimated cost of Rs.213.91 Crores on 06.05.2020 with 100 per cent NMCG funding for the pollution, abatement works for river *Gomti* at Lucknow with STP.

**26.** It is also one of the conditions that procurement of goods and services shall be made strictly as per National Ganga River Basin Authority (NGRBA) Programme Framework and various guild-lines of NMCG. Union Cabinet while approving Namami Gange Programme decided that the programme will be executed in accordance with NGBRA Programme Framework.

**27.** For the said sanctioned work, U.P. Jal Nigam invited bids from qualified, capable and experienced bidders for Survey, Investigation, Design, Supply, Construction, Installation, Testing & Commissioning for pollution abatement works of river *Gomti* at Daulatganj, Lucknow including all appurtenant structures and allied works including 15 years of operation and management as per the scope of the bid document vide Tender Notice No.358M-B/16 dated 30.01.22020. The work is to be executed within 18 months. One of the qualifications of the bidder for sound financial capabilities, is that the bidder must possess a financial net worth minimum equivalent to INR 1784.89 lakhs in each of the last three financial years ending on 31.03.2020 and bidder should demonstrate the banker's certificate that it has available cash credit facility minimum equivalent to INR 1189.93 lakhs as on the date of submission of the bids. Tenders were invited on two bids system i.e. (i) Technical cum Financial Capacity and pre-qualification evaluation bid; and (ii) Financial bid.

**28.** Subsequently, NMCG sanctioned revised Administrative Approval and Expenditure Sanction (AA&ES) for the pollution abatement works of river *Gomti* at Lucknow.

**29.** NGRBA framework procurement manual (chapter number-4 clause 4.2), which has been placed with the counter affidavit filed by Union of India provides that all contracts of value more than US \$1 million equivalent (Rs.7.4 Crores) are subject to prior review by the funding agency i.e. NMCG in the instant case. Accordingly, the procurement for this project is also under prior review and approval by NMCG.

**30.** Eight bidders namely, (i) Geo Miller and Co. Pvt. Ltd.,; (ii) HNB Engineers Pvt. Ltd; (iii) Maha Shree Infrastructure; (iv) MHS Infratech Pvt.

Ltd.; (v) M/s Ashoka Buildcon Ltd.; (vi) M/s JSP Projects Pvt. Ltd.; (vii) M/s. K.B. Srivastava; and (viii) R.K. Engineers Sales Ltd., submitted their bids in response to the aforesaid tender notice. However, by corrigendum notice dated 29.07.2020, General Manager, U.P. Jal Nigam, the Executing Agency without taking approval from the NMCG, the funding agency, cancelled the tender without assigning any reason. This action of the Executive Agency would cause unwarranted delay in implementation and execution of the project within the time frame provided by the National Green Tribunal and the Supreme Court and would severely affect the clean *Ganga* Mission much against public and national interest as such.

**31.** Bidders upon learning about the cancellation of the tendering process, represented before the NMCG which in turn vide letter dated 31.07.2020 issued instructions to U.P. Jal Nigam not to give effect to the cancellation order. The NMCG noted that delay in matters of tendering and indecisions or improper decisions by the Executive Agencies/State missions adversely affect the programmes of these high priority projects.

**32.** It is further said that timelines are fixed by the National Green Tribunal and the Supreme Court and State must do everything possible earlier to these timeline and expedite action at every stage. The Project Director of U.P. Jal Nigam was directed to submit the technical evaluation reports of the bidders. The Executing Agency was directed to proceed further only after getting instructions/clearance from the NMCG.

**33.** It is important to note that the Technical Evaluation Committee headed by the Chief Engineer of U.P. Jal Nigam had found three bidders to be technically qualified excluding the petitioner and four others, namely;

- (i) M/s R.K. Engineers Sales Ltd;
- (ii) M/s KB Srivastava;
- (iii) Ashoka Buildcon Pvt. Ltd.

**34.** Minutes of the meeting of the Technical Evaluation Committee dated 20.07.2020 have been placed on record as Annexure CA-6 of the counter affidavit filed on behalf of the U.P. Jal Nigam. However, Tender Sanctioning Committee headed by the Managing Director of U.P. Jal Nigam in its meeting dated 27.07.2020, found that only one bidder i.e. Ashoka Buildcon Pvt. Ltd., was qualified and in that view of the matter a Corrigendum dated 29.07.2020 was issued canceling the tender process.

35. The NMCG reviewed the recommendation of the technical evaluation committee and evaluated the technical bids of all eight bidders including the petitioner's bid herein and found two more bidders namely (i) M/s R.K. Engineers Sales Ltd; (ii) M/s KB Srivastava; besides Ashoka Buildcon Pvt Ltd., to be technically qualified and their bids responsive as was found by the Technical Evaluation Committee headed by the Chief Engineer.

36. The petitioner's bid was again not found responsive at the level of the NMCG as it was not technically qualified. In view of the aforesaid, the NMCG having overall control and supervision of the project and being 100 % funding agency, vide letter dated 25.08.2020 directed the U.P. Jal Nigam to open the financial bids of three bidders, who were found technically qualified by the Technical Evaluation Committee and, later on by the NMCG itself.

37. In pursuance of the aforesaid direction issued by the NMCG, U.P. Jal Nigam issued notice dated 03.09.2020 for opening of the financial bids. In the financial bids, respondent no.4 was found to be eligible and, therefore, Letter of Award dated 17.09.2020 has been issued in its favour.

38. The present writ petition has been filed by the petitioner, whose bid was not found responsive as having not met the technical qualification criteria, first by the Technical Evaluation Committee headed by the Chief Manager, secondly by Tender Sanction Committee headed by the Managing Director of U.P. Jal Nigam and, thirdly by the NMCG praying for *inter alia* following reliefs:-

*"(a) Issue a writ of certiorari or any other writ/order/direction of similar nature seeking the quashing of letter/decision dated 2.09.2020 issued by the Chief Engineer, U.P. Jal Nigam Respondent No.2; and*

*(b) Issue a writ of certiorari or any other writ/order/direction of similar nature whereby quashing the order/message dated 03.09.2020 (Annexure No.13) issued by the respondent No.1 and 2 for allegedly revoking the cancellation order dated 29.7.2020 and notifying the Petitioner as it was declared "Not qualified";*

*..*

*(d) Issue a writ of certiorari or any other writ /order/direction of similar nature whereby quashing the document dated 7.9.2020 (P-*

*16) uploaded on the website of the Respondent No.1 whereby three Bidders have been declared as qualified and the Petitioner so there declared not qualified;*

*....*

*(h) Issue a writ of mandamus or any other writ, order or direction of the similar nature whereby commanding the Respondent Nos.1 and 2 to open the price bid of the petitioner herein with respect to e-tender notice no.358/M-13/16, dated 30.1.2020 and award the contract to the Petitioner if the price Bid of the Petitioner is lowest one, as per the procedure and rules;*

*....."*

**39.** Heard Mr. S.D. Singh, learned counsel, assisted by Mr. Agendra Sinha, Advocate appearing for the petitioner, Mr. Raghvendra Kumar Singh, learned Advocate General, assisted by Mr. Rishabh Kapoor, Advocate appearing for respondent nos. 1 and 2-U.P.Jal Nigam, Mr. J.N. Mathur, learned Senior Advocate, assisted by Mr. Amrit Khare and Mr. Ruchir, Advocates, appearing for respondent no. 3-Union of India, Mr. S.B. Pandey, learned Assistant Solicitor General, assisted by Mr. Raj Kumar Singh, Advocate also made submissions on behalf of respondent no. 3-Union of India and, Mr. Sudhir Kumar Pandey, appearing for respondent no. 4-M/s R.K. Engineers Sales Limited.

**40.** Mr. S.D. Singh, learned counsel for the petitioner has submitted that once the decision was taken by the competent authority to cancel the tender, which was in fact cancelled vide corrigendum dated 29.07.2020, the same could not have been revived by NMCG and fresh bids ought to have been invited for implementing the project/scope of the tendering process. He has further submitted that there was no authority vested in the NMCG to interfere with the tendering process or the decision taken by the owner i.e. U.P. Jal Nigam, which is defined under the tender document itself and, therefore, the decision of the NMCG to re-evaluate the technical bids of the tenderers was without jurisdiction. He has also submitted that the decision of the NMCG to declare two more bidders i.e. (i) M/s R.K. Engineers Sales Ltd; (ii) M/s KB Srivastava; to be qualified is null and void as being without jurisdiction and powers of the NMCG. It is submitted that direction of the NMCG to the U.P. Jal Nigam, the owner to open the financial bids of

only three bidders was again without jurisdiction and thus, Letter of Intent issued in favour of respondent No.4 dated 17.09.2020 is illegal, arbitrary and unjustified and is liable to be set aside.

**41.** Mr. S.D. Singh, learned counsel for the petitioner has placed reliance on Clause 6.2 of the Bid Document, under which rights of respondent No.1 being owner of the project in question has been defined, which reads as under:-

*"6.2 Owner's Right to Accept or Reject and Waive Irregularities:- the owner reserves the right to*

*1. accept the bid;*

*2. reject the bid;*

*3. annul the bidding process and reject all bids;*

*4. annul the bidding process and commence a new process; and*

*5. Waive irregularities, minor informalities, or minor non-conformities which do not constitute material deviations in the submitted bids from the bidding documents, at any time prior to the award of the contract without incurring any liability to the affected Bidder or Bidders and without any obligation to inform the affected bidder or bidders of the grounds for the Owner's actions.*

*b. Nothing in ITB section 6.2(a) is intended to permit the owner to refuse to provide reasons for rejection to an unsuccessful bidder."*

**42.** Mr. S.D. Singh, learned counsel for the petitioner has, therefore, submitted that after the tendering process was cancelled vide corrigendum dated 29.07.2020, the only course of action available to the owner was to commence fresh tendering process. There is nothing in the tendering document under which respondent No.1 i.e. U.P. Jal Nigam is vested with the power to revoke the decision of canceling the tendering process and, therefore, decision to proceed with canceled tender, is totally illegal and contrary to the terms and conditions of the tender document itself. The said decision is without any right or authority and, therefore, void ab initio.

**43.** With the cancellation of the tender, all the processes came to an end. Respondent No. 1 does not have any other option but to return the bids to all the bidders and invite fresh bids. Bids submitted in response to the tender which stood cancelled, could not be considered at all and all the bids technically become redundant and infructuous.

**44.** However, it has been stated in para 25 of the writ petition that for any reasons, if this court finds and arrives at a conclusion that the bids could have been opened and reconsidered even after corrigendum notice dated 29.07.2020, petitioner's right needs to be protected and, the declaration of the petitioner as not being qualified is required to be quashed.

**45.** It has been further submitted that the respondent authorities are obligated and duty bound to follow U.P. Procurement Manual and Manual for Procurement of Works, 2019 of the Government of India, Ministry of Finance, Department of Expenditure which contains basic principles and guidelines for any tendering process. Learned counsel has placed reliance on Clause 14.34 of the U.P. Procurement Manual to submit that procuring entity would not be entitled to open any bids or proposals after taking a decision to cancel the procurement and, is required to return such unopened bids or proposals. A procurement process, once canceled, cannot be reopened and the only option is to start a new procurement process, if so required. He has also placed reliance on Clause 5.6.8 of the manual for procurement of work, 2019 of Government of India issued by Ministry of Finance, Department of Expenditure.

**46.** In view of the aforesaid submissions, he has submitted that the decision to open the financial bids of three bidders and on that basis impugned L.O.I. dated 17.09.2020 issued in favour of respondent No.4 are illegal, arbitrary and in the teeth of the tender document itself and, therefore, the same is liable to be quashed and the executing agency be directed to adopt afresh tendering process to finalize the work in favour of the successful bidder.

**47.** Mr. Raghvendra Singh, learned Advocate General assisted by Mr. Rishabh Kapoor appearing for respondent No.1 and 2, U.P. Jal Nigam has made preliminary submissions regarding maintainability of the writ petition on behalf of the petitioner and has submitted that the petitioner was not found eligible and technically qualified by the Technical Evaluation Committee and Tender Sanctioning Committee headed by the Chief Engineer and Managing Director respectively *inter alia* for the following reasons:

(i) Effluent norms not stated as required;

- (ii) Required design inlet norms not taken in design; and
- (iii) Cash Credit facility not verified by the Bank.

Since, the petitioner has not challenged its disqualification and, it appears that he would not have any objection if the tender was awarded to Ashoka Buildcon Pvt. Ltd., the only bidder, which was found eligible by the Tender Sanctioning Committee headed by the Managing Director, he is not entitled to challenge the decision of the NMCG for qualifying two more bidders and directing respondent No.1 to open and evaluate financial bids of technically qualified bidders. Once the petitioner has not challenged its disqualification, the writ petition on its behalf for finalizing the tender in favour of respondent No.4 and issuing L.O.I. in its favour is not maintainable.

In support of this submission, he has placed reliance on the judgment of the Supreme Court in the case of **Shagun Mahila Udyogik Sahakari Sanstha Maryadit vs State of Maharashtra & Ors: (2011) 9 SCC 340**. He has also placed reliance on the judgment of the Supreme Court in the case of **Raunaq International Ltd., vs I.V.R. Construction Ltd., and Ors:(1999) 1 SCC 492**.

**48.** Learned Advocate General has also submitted that once the petitioner has not challenged his disqualification, he cannot be said to be a 'person aggrieved' to maintain the writ petition under Article 226 of the Constitution of India. The petitioner is not prejudiced in any manner inasmuch as he has not been found technically qualified. The 'person aggrieved' is one who has suffered some legal injury and only such a person would have right to approach this Court. He in support of this submission has placed reliance on the judgment of the Supreme court in the case of **Jasbhai Motibhai Desai vs Roshan Kumar, : (1976) 1 SCC 761**.

**49.** Next submission of the learned Advocate General is that the petitioner has not challenged the order dated 25.08.2020 taken by the NMCG in pursuance of which financial bids of three technical qualified bidders were opened. Orders dated 02.09.2020 and 03.09.2020 are consequential orders to the order dated 25.08.2020. Since the petitioner has not challenged the main order dated 25.08.2020, the writ petition would not be maintainable to

challenge the consequential orders. In support of the aforesaid submission, he has placed reliance on two judgments in the cases of **P. Chitharanja Menon and Ors vs A. Balakrishnan and Ors: (1977) 3 SCC 255** and **Amarjeet Singh and Ors vs Devi Ratan and Ors : (2010) 1 SCC 417**.

50. Mr. Raghvendra Singh, learned Advocate General has also submitted that in commercial matters even if some defects are found in decision making process, the Court should exercise its jurisdiction under Article 226 of the Constitution of India only in furtherance of public interest. He has further submitted that even if it is assumed that the decision of revocation of the cancellation vide order dated 02.09.2020 is defective because of some procedural aberration in decision making process, this Court should exercise its discretion in furtherance of public interest and not otherwise.

51. The present work is of very large public interest inasmuch as untreated sewage, waste and drainage water is being flown into river *Gomti*, one of the main tributaries of river *Ganga* and the water of river *Gomti* is injurious not only to humans but also to biodiversity and, any delay would not only increase the cost but also to have adverse impact on the National Mission for Clean *Ganga*. He has, therefore, submitted that looking at the large public and national interest involved and the fact that the delay would adversely affect the ambitious mission of clean *Ganga* and prevention of abatement of pollution in river *Gomti*, this Court may not interfere with the decision of the competent authority to award the contract in favour of the technically qualified bidder, which is just, fair and reasonable. He has placed reliance of the judgment of the Supreme Court in the case of **Air India Ltd. vs Cochin International Airport Ltd., & Ors: (2000) 2 SCC 617**.

52. It has further been submitted that entering into a contract is a commercial transaction and evaluation of tenders and awarding contracts are commercial functions. If the award of contract is bonafide and in the public interest, the Court should not interfere in exercise of powers of judicial review even, if there is a procedural aberration or error in assessment or prejudicial to a particular tenderer. The Court is required to balance the public interest viz-a-viz private interest and private interest cannot be protected at the cost of the public and national interest while deciding a contractual dispute. To buttress this submission, he has placed

reliance upon the judgment in the case of **Jagdish Mandal vs. State of Orissa & Ors : (2007) 14 SCC 517.**

**53.** Learned Advocate General has further submitted that it is a well established principle that in contractual matters the Court should not exercise the power of judicial review, if there is no arbitrariness or favoritism while awarding the contract. In support of the aforesaid submissions, he has placed reliance upon the judgment of **Siemens Aktiengesellschaft and Siemens Limited vs Delhi Metro Rail Corporation Limited and Ors: (2014) 11 SCC 288.**

**54.** Mr. J.N. Mathur, learned Senior Advocate assisted by Mr. Amrit Khare has submitted that NMCG is an authority constituted in accordance with the provisions of Sub-section 3 of the Section 3 of the Environmental (Protection) Act, 1986 vide Notification No.S.O. 3187 (E) dated 07.10.2016. The NMCG is an approving authority for planning, financing, execution and implementation of projects for prevention, control and abatement of pollution in river *Ganga* in terms of said notification. Even in terms of Administrative Approval and Expenditure Sanctioned (AA&ES) dated 02.03.2019, overall financial and administrative control is vested with the NMCG for clean *Ganga* mission. The U.P. Jal Nigam has been selected as Executing Agency for the projects in the State of Uttar Pradesh to be undertaken by the NMCG. However, the NMCG retains right to issue directions to the U.P. Jal Nigam and, also right to seek compliance of all observations made by it. Under notification dated 07.10.2016, the NMCG is an ultimate authority to review, approve, monitor the overall execution and implementation of the tender in question and, it is the final authority to take all decision in respect of tenders floated by U.P. Jal Nigam.

**55.** When the NMCG received complainants regarding abrupt decision taken by respondent No.1 on 29.07.2020 to cancel the tender process, it directed respondent No.1 to submit its report on the complaints made by bidders along with Technical Evaluation Report of all the bidders and directed the U.P. Jal Nigam to proceed further only after getting instructions from the NMCG.

**56.** It has been submitted that the petitioner has not challenged the decision of the U.P. Jal Nigam to disqualify the petitioner in the technical evaluation stage itself and, there is no challenge to said decision of the U.P. Jal Nigam

or NMCG and, therefore, the writ petition is not maintainable. It has been further submitted that in sum and substance in pursuance of the Corrigendum dated 29.07.2020 vide which the tender had been cancelled, re-advertisement could have been issued and, the petitioner would have another chance of being selected, if found qualified. He has, therefore, submitted that mere chance of selection does not entail a vested right in an interested person. He has placed reliance upon two judgments in the cases of **Commissioner of Police & Anr. vs Umesh Kumar (2020) 10 SCC 488** and **Punjab Electricity Board and Ors vs. Malkiat Singh: (2005) 9 SCC 22**.

57. It has further been submitted that the NMCG is an expert body created for the purposes as mentioned in the notification dated 07.10.2016. This expert body has evaluated the entire tendering process by U.P. Jal Nigam and, after taking into account the commercial and technical evaluation involved in the project, decision has been taken to open the financial bids of three technically qualified bidders. The petitioner was not found technically qualified by U.P. Jal Nigam or by the NMCG. The impugned decision was taken by the NMCG in public interest and same should not be interfered with by this Court in exercise of powers of judicial review under Article 226 of the Constitution of India. He has placed reliance on the judgment of the Supreme Court in the case of **Bharat Coking Coal Ltd., vs AMR Dev Prabha: (2020) 16 SCC 759**.

58. Mr. S.B. Pandey, learned Assistant Solicitor General assisted by Mr. Raj Kumar Singh, learned counsel appearing for respondent No.3 and Mr. Sudhir Kumar Pandey, learned counsel appearing for respondent No.4 have made similar arguments advanced by learned Advocate General and Mr. J.N. Mathur, learned Senior Advocate. Learned counsel for respondent No.4 has submitted that as per the notification dated 02.03.2019 placed along with the supplementary affidavit filed on behalf of respondent No.1, U.P. Jal Nigam is an executing agency for the projects to take up the I&D and STP works pertaining to pollution abatement of river *Gomti* on DBOT model. The condition on Administrative Approval and Expenditure Sanction for the project specifically stipulates that executing agency shall comply with all the observations of NMCG. He, therefore, has submitted that overall control having been vested in the NMCG, it was well within its

power to call for a report from the U.P. Jal Nigam about the technical evaluation of the bidders and having been found three bidders technically qualified, direction was issued for opening their financial bids. Respondent No.4 having being found eligible and financial bid most competitive, L.O.I. has been issued in its favour. It is, therefore, submitted that since the decision making process was fair, transparent and reasonable, this Court may not interfere with the decision taken by the competent authority for awarding contract.

**59.** We have considered the submissions of the learned counsel for the parties and gone through the record.

**60.** The questions, which arise for consideration in the present case are:-

- "(i) Whether NMCG does not have any authority to give directions to U.P. Jal Nigam to not give effect to the Corrigendum dated 29.07.2020, cancelling the tendering process and examination of the technical bids of all eight bidders including the petitioner by the NMCG itself and then direction vide letter dated 25.08.2020 to U.P. Jal Nigam to open financial bids of three bidders who were found technically qualified and proceed with finalization of the tender?"*
- (ii) Whether writ petition on behalf of the petitioner who has not challenged his disqualification, is maintainable? and*
- (iii) Whether public interest in the present case would outweigh some aberrations, if any, in the tendering process looking into the cause for which tender has been invited particularly when there is no allegation of favoritism or arbitrariness?"*

**61.** The main thrust of the submission of Mr. S.D. Singh, learned counsel appearing for the petitioner is that under Clause 15 of the NIT document, it is the U.P. Jal Nigam, which has exclusive right to accept or reject any or all the bids. NIT does not recognize any role of the NMCG in tendering process. Complete authority and autonomy has been given to U.P. Jal Nigam as 'owner' in this regard. The NMCG does not have any supervisory or controlling power or authority in respect of the tendering process. Clause 6.3 of the NIT, which provides that effectiveness of the contract shall be as of the date of the owner's signing contract subject to the final approval by the NMCG, does not empower the NMCG to revive the cancelled tendering process. Power of cancellation and acceptance is exclusively vested in the

U.P. Jal Nigam. Final approval by the NMCG does not mean that the NMCG is vested with the power to re-valuate the technical and financial bids, which is in the exclusive domain of the owner i.e. U.P. Jal Nigam. Power to award the contract is vested in the owner only.

**Re:-Question No.(i)**

**62.** NMCG is the authority constituted vide Notification No. S.O.3187(E) dated 07.10.2016 of the Ministry of Water Resources, River Development and Ganga Rejuvenation under the provisions of Environment (Protection) Act, 1986 for planning, financing, execution and implementation of projects for prevention, control and abatement of pollution in river Ganga. Under the notification dated 02.03.2019 issued by Government of India, National Mission for Clean Ganga, Ministry of Water Resources, River Development and Ganga Rejuvenation for Administrative Approval and Expenditure Sanction for the project in question i.e. Interception and Diversion of sewage plants at Lucknow at an estimated cost of Rs.298.12 crores, U.P. Jal Nigam has been chosen as an executing agency for the project. The executing agency is duty bound to comply with all observations of the funding agency i.e. NMCG before bidding and during implementation. It is important to note that under the statutory notification dated 07.10.2016 issued under Section 3(3) of the Environment (Protection) Act, 1986, the NMCG is empowered to issue directions to any person or authority, which it may consider necessary, for proper and prompt execution of the projects or cancel such projects or stop release of funds etc.

**63.** Relevant part of the said notification is extracted hereunder:-

*"(f) approve the planning, financing and execution of programmes for abatement of pollution in the River Ganga including augmentation of sewerage and effluent treatment infrastructure, catchment area treatment, protection of flood plains, creating public awareness, conservation of aquatic and riparian life and biodiversity and such other measures for promoting environmentally sustainable river rejuvenation;*

*(g) Coordination, monitoring and review of the implementation of various programmes or activities taken up for prevention, control*

*and abatement of pollution and protection and management in the river Ganga and its tributaries;*

***(k) Issue such directions to any person or authority, as it may consider necessary, for proper and prompt execution of the projects or cancel such projects or stop release of funds or direct refund of amount already and assign the same to any other person or authority or board or corporation for prompt execution thereof.***

*(m) Take such other measures which may be necessary for achievement of prevention, control and abatement of pollution, rejuvenation and protection and management in river Ganga and its tributaries."*

**64.** In view of the aforesaid, we find that under the said Statutory notification itself, the NMCG is the ultimate authority to review, approve and monitor the overall execution and implementation of the tender in question. It is also empowered to give its observation before bidding and during implementation and, the executing agency is obliged to comply with all such observations and directions.

**65.** We find force in the submission of Mr. J.N. Mathur, learned Senior Advocate appearing for respondent No.3 that vide notification dated 07.10.2016, NMCG has been vested with wide range of powers for issuing directions, which it may consider necessary for proper and prompt execution of the projects etc, and this power would include the power to issue directions to the executing agency i.e. U.P. Jal Nigam during the course of tendering process and, thereafter for proper implementation of the project.

**66.** We, therefore, do not find much substance in the submission of the learned counsel for the petitioner that the NMCG does not have power to revive the tendering process, which was cancelled by U.P. Jal Nigam vide Corrigendum dated 29.07.2020 inasmuch as overall control and supervision is vested with the NMCG and even final contract is subject to the approval of the NMCG. We hold that the NMCG was well within the power to direct the U.P. Jal Nigam not to give effect to Corrigendum dated 29.07.2020 and further direction to open the financial bids of three technically qualified bidders and proceed with the tendering process.

**67.** The project in question is funded 100% by the Central Government Agency i.e. the NMCG. Clause 5.6.8 of the Manual for Procurement of Works, 2019 issued by the Ministry of Finance, Department of Expenditure provides that the bidding process can be rejected or fresh bidding can be ordered only on the following grounds:-

- "(a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
- (b) when none of the lenders is substantially responsive to the requirements of the Procurement Documents;
- (c) none of the technical Proposals meets the minimum technical qualifying score;
- (d) If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer;
- (e) the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
- (f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process. Provided that the procuring entity, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder."

**68.** In the present case, Tender Evaluation Committee headed by the Chief Engineer found three bidders, out of eight bidders, technically qualified and they were held to be responsive bidders. However, Tender Sanctioning Committee headed by the Managing Director found only one bidder i.e. M/s Ashoka Buildcon Ltd., technically qualified and had cancelled the bidding process by Corrigendum dated 29.07.2020 on the sole ground that only one bidder was found technically qualified.

69. We find that such a course of action by the Executing Agency is against the provisions of 5.6.8 of the Manual for Procurement of Works, 2019 inasmuch as tendering process could have been cancelled *inter alia* on the ground that none of the tenders is substantially responsive to the requirement of the procurement document. Here even Tender Sanctioning Committee found one bidder substantially responsive and, therefore, cancellation of the tendering process vide Corrigendum dated 29.07.2020 is against the provisions of Manual for Procurement of Works, 2019 issued by Ministry of Finance, Department of Expenditure. U.P. Procurement Manual (Procurement of Goods) will not have relevance in the present case inasmuch as the project is fully funded by the Central Government and not by the State Government at all.

70. Exercising its powers vested under the statutory notification dated 07.10.2016 read with notification dated 02.03.2019 issued by Government of India, the NMCG was well within the power to direct the Executing Agency not to give effect to the Corrigendum dated 29.07.2020 for cancelling the project and to avoid delay in execution of the project of vital importance to abate and reduce the pollution level in river *Gomti*, which is one of the main tributaries of river *Ganga*, had decided to examine the technical bids itself and found three bidders technically qualified and, therefore, issued directions to the Executing Agency to open the financial bids of three responsive bidders and proceed for finalization of the tendering process.

71. We hold that the course of action adopted by the NMCG is well within its power and does not call for any interference by this Court.

72. In view of the aforesaid discussion, question No.1 is answered accordingly.

**Re:- Question No.(ii)**

73. Technical bids of eight bidders were scrutinized at the level of the Committee headed by the Chief Engineer on 26.07.2020, in which three bidders were found eligible. The decision of the Tender Sanctioning Committee headed by the Chief Engineer was subject to approval of the Committee headed by the Managing Director. However, the Committee headed by the Managing Director found only one bidder technically qualified. The bidders who had participated in the tendering process made

complaints to the NMCG in respect of Corrigendum dated 29.07.2020, whereby the tendering process was cancelled by the U.P. Jal Nigam. During examination of the technical bid of the petitioner, details of cash credit facility was not provided by the petitioner as per one of the tender conditions. Technical Committee wrote a letter dated 09.06.2020 to Punjab National Bank to verify the cash credit limit available with the petitioner, but no response was ever given by the Bank. The petitioner did not fulfil the technical criteria and he was not found technically qualified either by the Committee headed by the Chief Engineer or by the Managing Director and the NMCG itself. The petitioner has not challenged the decision regarding his disqualification. The petitioner has challenged the decision of the NMCG giving direction for not giving effect to Corrigendum dated 29.07.2020 and, the award of the contract in favour of respondent No.4.

74. We are of the view that once the petitioner has not challenged his disqualification or he is not aggrieved by his disqualification, he has no *locus standi* to challenge the grant of contract to respondent No.4.

75. The Supreme Court in the case of **Raunaq International Ltd., vs I.V.R. Construction Ltd., and Ors (supra)** has held that award of tender cannot be stayed at the instance of a party, which does not fulfil the requisite criteria itself.

It would be apposite to extract para 27 of the aforesaid judgment:-

*"27. In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s Raunaq International Ltd. is on valid principles looking at the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. What is more relevant, M/s I.V.R. Construction Ltd. who have challenged this award of tender themselves do not fulfil the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced. Even if the criteria can be relaxed both for M/s Raunaq International Ltd. and M/s I.V.R. Construction Ltd., it is clear that the offer of M/s Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s Raunaq International Ltd. We fail to see*

*how the award of tender can be stayed at the instance of a party which does not fulfil the requisite criteria itself and whose offer is higher than the offer which has been accepted. It is also obvious that by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units, each of 210 MW, is held up on account of this dispute. Shortages of power have become notorious. They also seriously affect industrial development and the resulting job opportunities for a large number of people. In the present case, there is no overwhelming public interest in stopping the project. There is no allegation whatsoever of any mala fides or collateral reasons for granting the contract to M/s Raunaq International Ltd."*

**76.** Once the petitioner has not challenged his disqualification or it is not aggrieved by the decision to disqualify it, it cannot said to be a person 'aggrieved' when the contract has been awarded in favour of respondent No.4, who has been found to be technically qualified firstly, by the Committee headed by the Chief Engineer of the U.P. Jal Nigam, then by the NMCG itself. If the petitioner is not a person aggrieved, he has no right to maintain the writ petition under Article 226 of the Constitution of India as he is not prejudiced in any manner by awarding the contract to respondent No.4.

**77.** A person aggrieved has been defined by the Supreme Court in the case of **Jasbhai Motibhai Desai vs Roshan Kumar (supra)**.

Relevant para of the aforesaid judgment is reproduced hereunder:-

*"13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English courts have sometimes put a restricted and*

*sometimes a wide construction on the expression “aggrieved person”. However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or “standing” to invoke certiorari jurisdiction.”*

**78.** The petitioner has not challenged the decision of U.P. Jal Nigam to disqualify him and qualify only one bidder i.e. M/s Ashoka Buildcon Ltd. It appears that the petitioner would not have any grievance, if the tender was awarded to M/s Ashoka Buildcon Ltd. Once the petitioner was satisfied with the decision of the Technical Evaluation Committee and the Committee headed by Managing Director, U.P. Jal Nigam, he cannot later on challenge the decision to award contract in favour of respondent No.4.

**79.** We find that the writ petition by the petitioner is not maintainable on this ground alone.

**80.** Even otherwise, if the tendering process was cancelled and fresh bids would have been invited, the petitioner would have only a chance of being selected, if he would have met the qualifying criteria. Mere chance of selection does not entail a vested right in an interested person as held in the decisions of the Supreme Court in the cases of **Commissioner of Police & Anr. vs Umesh Kumar (supra)** and **Punjab Electricity Board and Ors vs. Malkiat Singh (supra)**.

**Re:- Question No.(iii)**

**81.** Award of a contract, whether it is by a private party or public body or the State, is essentially a commercial transaction. Paramount considerations in arriving at commercial decision, are commercial considerations. However, the State, its corporations and its instrumentalities are bound to adhere to the norms and procedure laid down by them and cannot depart from them arbitrarily. The decision may not be amenable to judicial review, but the Court can examine the decision making process and interfere with it, if it is found to be vitiated by malafide, unreasonableness or arbitrariness. The Supreme Court in the case of **Air India Ltd. vs Cochin International Airport Ltd., & others (supra)** in para 7 has held as under:-

*"7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in*

*Ramana Dayaram Shetty v. International Airport Authority of India: (1979) 3 SCC 489; Fertilizer Corporation Kamgar Union v. Union of India (1981) 1 SCC 568; CCE v. Dunlop India Ltd. (1985) 1 SCC 260, Tata Cellular v. Union of India (1994) 6 SCC 651, Ramniklal N. Bhutta v. State of Maharashtra (1997) 1 SCC 134 and Raunaq Internation Ltd. vs I.V.R. Construction Ltd.(1999) 1 SCC 492. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."*

**82.** We find that there has been no arbitrariness or malafide or illegality in the finalization of the tender in favour of respondent No.4. Even otherwise, we do not find sufficient ground to exercise our jurisdiction of judicial

review under Article 226 of the Constitution of India to interfere with the award of the contract in favour of respondent No.4.

**83.** Mission Namami Gange has huge public importance. Delay in implementing the project would not only escalate the cost but also obstruct the objective of reducing and abating the pollution level in river Gomti, which has been referred to as a stinking drainage in Lucknow City.

**84.** Looking at the large public interest involved, even if it is assumed that there has been some technical and procedural aberration in awarding the contract in favour of respondent No.4 but since, same has been without any malafide or arbitrariness, public interest would demand that such aberration is to be ignored.

**85.** We find that the decision taken by the NMCG is bonafide in public interest. Cancelling the tendering process vide Corrigendum dated 29.07.2020 was a procedural aberration, which has been corrected by the NMCG vide order dated 25.08.2020.

**86.** The Supreme Court in the case of **Jagdish Mandal vs. State of Orissa & Ors (supra) in para 22 has held as under:-**

*"Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. 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 a tenderer, 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 damages 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 interferences, either interim or final, may hold up public works for years, or delay relief and succour 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 black-listing or imposition of penal consequences on a tenderer/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."*

**87.** This writ petition has been filed on technical grounds without there being serious allegation about arbitrariness or favoritism. Even, otherwise on the facts, we do not find that there has been any arbitrariness or favoritism in awarding the contract in favour of respondent No.4.

**88.** The Supreme Court in the cases of **Siemens Aktiengesellschaft and Siemens Limited vs Delhi Metro Rail Corporation Limited and Ors (supra)** while dealing with the power of judicial review in tender matters has held as under:-

*"23. There is no gainsaying that in any challenge to the award of contract before the High Court and so also before this Court what is to be examined is the legality and regularity of the process leading to*

*award of contract. What the Court has to constantly keep in mind is that it does not sit in appeal over the soundness of the decision. The Court can only examine whether the decision making process was fair, reasonable and transparent. In cases involving award of contracts, the Court ought to exercise judicial restraint where the decision is bonafide with no perceptible injury to public interest."*

**89.** In view of the aforesaid discussion, we hold that public interest would outweigh private interest of the petitioner, if any, and, therefore, this Court in exercising of its power of judicial review vested under Article 226 of the Constitution of India, would not like to interfere with the award of contract which has huge public importance. We, therefore, in view of the aforesaid discussion, answer question No.3 accordingly.

**90.** Thus, considering the facts and circumstances of the case and submissions of learned counsels for the petitioner and respondents, we do not find any ground to interfere with the tendering process and award of contract.

**91.** In view of the aforesaid, this writ petition is ***dismissed***. No costs.

**92.** The respondents are directed to proceed with the execution of the work in all earnestness and promptness so that pollution in river Gomti is controlled and abated, consequently pollution in river Ganga would also get abated, which is the main objective of 'Namami Gange Mission'.

**Order Date:-17.08.2021**

prateek