

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

**W.P. No.7759/2020**

*M/s S.K. Samanta & Co. (P) Ltd.*

***-Versus-***

*Coal India Limited and others*

Smt. Shobha Menon, Senior Advocate with Shri Rahul Choubey,  
Advocate for the petitioner.

Shri Naman Nagrath, Senior Advocate with Shri Greeshm Jain,  
Advocate for the respondents.

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**CORAM :**

**Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice.**  
**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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**ORDER**  
**(Jabalpur, dtd.02.7.2020)**

**Per : Vijay Kumar Shukla, J.-**

Heard through video conferencing.

2. In the instant writ petition the petitioner has invoked writ jurisdiction under Article 226 of the Constitution of India challenging the order dated 13-5-2020 passed by the respondent No.2 cancelling the tender process initiated on 18-11-2019 for the works of Planning, Design, Engineering, Construction, Fabrication, Erection, Supply, Testing, Trial Run and Commissioning of Coal Handling Plants for Dudhichua open cast project consisting of all Civil, Structural, Electrical and Mechanical works as per NIT and all

other accessories and facilities require to make it complete in all respects including OB slope stability measures on turnkey basis and operation and management of plant for four years.

3. The learned counsel for the petitioner submitted that the decision of the respondents cancelling the tender in question is arbitrary, as the petitioner was L-1 and, therefore, the tender could not have been cancelled without assigning reasons. To buttress her submissions she has placed reliance upon the judgment passed by a Division Bench of this Court in the case of **Mangal Amusement Park Pvt. Ltd. (M/s) vs. State of M.P. and other, 1994 JLJ 571** and the judgement of the Apex Court rendered in **State of Punjab vs. Bandeep Singh and others, (2016) 1 SCC 724**.

4. The respondents have filed their reply and justified their action for cancelling the tender process. It is urged that the Board of Directors of N.C.L. at their meeting convened on 4<sup>th</sup> and 5<sup>th</sup> May, 2020 after detailed deliberation have taken a conscious decision to cancel the tender process. They have ascribed reasons in para 15 of the reply. Upon perusal of the minutes of the meeting, it is luminescent that the Board after detailed deliberations and noting the facts has taken the decision to cancel the tender and the same

has been put to re-tender. While taking such decision *inter alia* the

Board has noted the following facts :

*“(a) The final quoted amount of L-1 is inexplicably higher than the estimated cost put to tender and the updated estimated cost prepared by CMPDIL.*

*(b) The final quoted amount of L-1 Rs.690 crores is 7.94% higher than updated estimated cost Rs.639.22 crores (prepared by CMPDIL), the Consultant) and L-1 bidder has not submitted detailed breakup of price analysis justifying its quotes.*

*(c) There is wide variation in comparison to recently awarded similar work of CHP to the same bidder, M/s S.K. Samanta & Co. Pvt. Ltd. at Jayant Project. The said work was awarded at 14.75% below updated estimated cost whereas in instant tender, L-1 rate is 8.80% higher than updated estimated cost prepared by CMPDI.*

*(d) There has been distinct lack of competition amongst bidders and there was no reverse bidding, therefore, the rates are not competitive.*

*(e) L-2 bidder has quoted just Rs.50 lacs higher than L-1 rate in such a high value contract yet L-2 bidder did not participate in reverse bidding even for single iteration resulting in non-competitive price discovery.*

*(f) There is wide activity-wise variation of the bidders quoted value with respect to updated estimated cost prepared by CMPDL ranging from (-)36.08% to (+)64.19% which is not properly explained.”*

In view of the aforesaid facts, it is vivid that the Board of Directors of the respondents have unanimously approved cancellation of the tender in question and directed for re-tender. It

cannot be held that there is any arbitrariness on the part of the respondents.

Thus, the judgments relied upon by the learned counsel for the petitioner would not render any assistance in the facts of the present case.

5. The Supreme Court in **Tata Cellular Vs. Union of India (1994) 6 SCC 651**, has laid down various principles whereby it has been held that there should be sufficient play in the joints with regard to making of economic decision and the Court cannot sit over the decision which had been taken in its wisdom by the State. The relevant extract of the said judgment reads as under:-

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the *invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested

by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

6. In the case of **Shimnit Utsch India Private Limited and another vs. West Bengal Transport Infrastructure Development Corporation Limited and others (2010) 6 SCC 303**, the Apex Court after considering the submissions of the parties held that until there was any arbitrariness or irrationality, the tendering authority had right to cancel the tender process and could not be compelled to persist with those conditions and could alter the same.

Relevant para of the judgment reads as under:-

"64. It is true that the State or its tendering authority is bound to give effect to essential conditions of eligibility stated in a tender document and is not entitled to waive such conditions but that does not take away its administrative discretion to cancel the entire tender process in public interest provided such action is not actuated with ulterior motive or is otherwise not vitiated by any vice of arbitrariness or irrationality or in violation of some statutory provisions. It is always open to the State to give effect to new policy which it wished to pursue keeping in view "overriding public interest" and subject to principles of Wednesbury reasonableness."

7. Scope of interference in tender matters has been dealt with in the cases of **Chhattisgarh State Industrial Development Corporation Limited and another vs. Amar Infrastructure Limited and others, (2017) 5 SCC 387** and **Municipal**

**Corporation, Ujjain and another vs. BVG India Limited and others, (2018) 5 SCC 462.** In **Amar Infrastructure Limited and others (supra)**, the scope of judicial review has been held to be very limited in the case of cancellation of auction/re-auction/re-tender. It has further been recorded that in a fight between rival tenderers involving no element of public interest, the Court has to be loath to make interference under Articles 226 and 136 of the Constitution of India.

8. It is a trite law that there has to be freedom of contract available to the Government and the Court is only to see whether the action of the Government is fair. The judicial review, in such circumstances, has to be limited since the terms of the invitation of the tender lie within the realm of contract. The Court is only to examine the decision which is being taken whether it is just or not and it cannot substitute its opinion for that of the authority.

9. In view of the obtaining factual matrix and enunciation of law, the present **writ petition being sans substance deserves to and is hereby dismissed.** However, there shall be no order as to costs.

**(Ajay Kumar Mittal)**  
**Chief Justice**

**(Vijay Kumar Shukla)**  
**Judge**

*ac.*

