

***IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR***

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT PETITION No. 11842 of 2025

***PRAGMATIC INFRASTRUCTURE PVT LTD THROUGH DIRECTOR
PRANVIR SINGH KUSHWAHA***

Versus

***MADHYA PRADESH HOUSING AND INFRASTRUCTURE
DEVELOPMENT BOARD AND OTHERS***

Appearance:

***Shri Harish Dixit – Senior Advocate with Shri Nimish Hardeniya –
Advocate for the petitioner.***

***Shri Vivek Khedkar – Senior Advocate with Shri Nakul Khedkar –
Advocate for the respondents.***

ORDER

(Delivered on this 16th day of October 2025)

Per: Justice Anand Pathak

With consent of parties, heard finally.

2. The present Writ Petition is preferred by the petitioner under Article 226 of the Constitution of India seeking following reliefs :-

- 7.1** Issue a writ order or direction in the nature of certiorari to quash the impugned order dated 18.03.2025 (annexure P-1) by the Respondent No.3.
- 7.2** Issue a writ order or direction in the nature of mandamus to reconsider the allotment of financial bid and proceed with acceptance of tender of the eligible/qualified lowest tenderer/petitioner.

7.3 Any other relief which this Hon'ble Court finds appropriate in the matter may also be granted with Costs.

3. Precisely stated, facts of the case are that the petitioner is a registered company engaged in construction works. It is a registered contractor executing various government works. Respondent No.1 is a statutory body established under Section 3 of M.P. Grah Nirman Mandal Adhiniyam, 1972 (hereinafter shall be referred to as the “**Adhiniyam**”). It is a body corporate having power to contract. Respondent No.1 is incorporated to perform public duty of providing housing accommodation to the public at large. It is fully funded by the State Government. Its Chairman and other officers are appointed by the State Government.

4. In exercise of powers conferred under Section 103 and Section 17 of the Adhiniyam, the Board has framed Conduct of Business and Delegation of Powers Regulations 2015 (hereinafter shall be referred to as the “**Regulations**”). Annexure I of the Regulations prescribes powers delegated to the officers. Board of Directors or its empowered committee having full powers to approve Tenders on Percentage Rate Basis, whereas Chairman has full powers up to Rs. Fifty Crores. Housing Commissioner has full powers only up to Rs. Twenty Crores.

5. Dy. Housing Commissioner (respondent No.3 herein) published a notice inviting percentage rate tender in the newspapers from registered contractors for the work of construction of residential cum commercial

complex - “Atal Kunj Tower” at Sector-A, Deen Dayal Nagar, Gwalior. Amount of contract as provided in the NIT dt.30.10.2024 was Rs.65.73 Crores. Detailed NIT prescribed in Clauses 4,5 and 6 Eligibility for Bidders. Pre-qualification Criteria, as per Annexure C and Special Eligibility Criteria, as per Annexure D, are reproduced as under :-

Annexure - C

(See clause 5 of Section 1-NIT)

PRE-QUALIFICATION CRITERIA

The bidder should have :

A. Financial

- i. experience of having successfully executed :
 - a) three similar works, each costing not less than the amount equal to 20% of the probable amount of contract during the last 5 financial years; or
 - b) two similar works, each costing not less than the amount equal to 30% of the probable amount of contract during the last 5 financial years; or
 - c) one similar work of aggregate cost not less than the amount equal to 50% of the probable amount of contract in any one financial year during the last 5 financial years,
- ii. Average annual construction turnover on the construction works not less than 50% of the probable amount of contract during the last 5 financial years.
- iii. Executed similar items of work in any one financial year during the last 5 financial years, which should not be less than the minimum, physical requirement, if any, fixed for the work.
- iv. **Bid Capacity** – Bidder shall be allotted work up to his available Bid Capacity, which shall be worked out as given in format I-2 of Annexure I.

Annexure - D

(See clause 6 of Section 1-NIT)

SPECIAL ELIGIBILITY CRITERIA**The Bidder should have experience of :**

1. The bidder should have experience for construction of more than 20 m high rise building, should produce certificate along with qualification documents for the same from the competent authority having rank not less than Executive Engineer.
2. The bidder should not have delayed his previous works not more than 6 months due to his own faults and should produce proof/certificate for the same duly signed by competent authority having rank not less than Executive Engineer along with qualification document as for annexure D-1.

6. It appears that Dy. Housing Commissioner (respondent No.3) issued tender Corrigendum (Corrigendum-1) vide letter dt.30.10.2024 (Annexure P/7) regarding Rescheduled Date and Time of opening of the Tender. It appears that respondent No.4 on the telephonic instruction of respondent No.2 issued another Corrigendum (Corrigendum-2) on 12.11.2024 (Annexure P/8), in which following conditions were incorporated :-

1. The Bidder Should Have Experience For Construction of More Than 20 M High Rise Building, Should Produce Certificate Along With Qualification Documents For The Same From The Competent Authority Having Rank Not Less Than Executive Engineer.
2. The Bidder Should Not Have Delayed His Previous Works Not More Than 6 Months Due To His Own Faults And Should Produce Proof/Certificate For The Same Duly Signed By Competent Authority Having Rank Not Less Than Executive Engineer Along With Qualification Document As For Annexure D-1.

3. The Bidder Should Have Experience of Fire Fighting works The Scope of Fire Fighting Works Mention In The Tender Is of Amount 155.30 Lakh. The Bidder Should Have Experience of Single Work of 50%, Two Works off 30% And Three Works of 20% In The Same Building.
4. The Bidder Should Have Experience of Providing And Fixing Lift/Elevator. The Scope of Providing And Fixing 10 Numbers Lifts Works Mention in The Tender. The Bidder Should Have Experience of Single Work With 6 Number Lift, Two Works With 3 Number Lift In Each Building and Three Works With Two Number of Lifts In Each Building.

7. It is pertinent to mention here that by Corrigendum-2, four conditions were added in the NIT [alongwith two conditions were already existing) but none of the conditions contained in Annexure-C or Annexure-D were deleted or removed.

8. It further appears that on 19.11.2024, respondent No.4 upon the oral instruction of respondent No.2 again issued Corrigendum (Corrigendum-3) cancelling the Corrigendum-2. A copy of the letter dt.19.11.2024 is filed as Annexure P/10 and Corrigendum-3 is filed as Annexure P/11. It is further pertinent to emphasis here that by Corrigendum-3, respondents cancelled all the four conditions mentioned in Corrigendum-2 dated 12.11.2024 and it was specifically mentioned that conditions mentioned in the NIT were kept as it is. Meaning thereby special conditions as existing earlier, again revived.

9. Procedure for opening and evaluation of bid is provided in Clause 19. As per procedure, Envelope 'A' required to be opened first online, thereafter Envelope 'B' (Technical Bid) and thereafter Envelope 'C' (Financial Bid) of

bidders. Wherever Envelope 'B' (Technical Bid) is required to be submitted, the same was to be opened online at the time and date notified in presence of the bidders. Similarly, Envelope 'C' was to be opened online at the time and date notified. After opening Envelope 'C', all responsive bids had to be compared to determine the lowest evaluated bid. The employer had to communicate the acceptance of tender to the successful bidder by issuing a 'Letter Of Acceptance (LOA) about acceptance of his bid.

10. It appears that after opening of Envelope 'B' (Technical Bid), following result appeared :-

Name of Contractor	Remark
1. M/s Girraj Construction	Disqualified
2. M/s Paliya Construction	Disqualified
3. M/s Shrivardhnam inf. Pvt. Ltd.	Qualified
4. M/s Pragmatic inf. Pvt. Ltd.	Qualified

11. The respondent No.2 assigned reasons for disqualifying two bidders as under :-

Name of Contractor	Remark
1. M/s Girraj Construction	Bidder is not qualifying in turnover criteria & work Experience
2. M/s Paliya Construction	Bidder is not qualifying in criteria of work experience. Only 2 works in 20% slab instead of required 3 works.

12. After approval of the Technical Bids, acting upon the complaint of disqualified bidder, respondent No.2 through letter dated 28.01.2025 sought report from respondent No.3 and respondent No.3 was stopped further

processing of the tenders.

13. Respondents No.3 and 4 submitted detailed report in connection with the complaint submitted by disqualified contractor. It is explained in letter dt.29.01.2025 (Annexure P/17) by respondent No.4 that amendment proposed through Corrigendum-2 had been deleted vide Corrigendum-3, therefore criteria required in original NIT was to be followed. Reason for disqualification of disqualified bidder namely M/s Paliya Construction was explained in preceding para.

14. Respondent No.3 reminded respondent No.2 through letter dt.06.02.2025 (Annexure P/18) regarding time limit of 4 months of opening and decision of tenders prescribed in the Bid Data Sheet and sought instructions regarding further proceeding.

15. Respondent No.2, while referring to letters dt.22.01.2025, 29.01.2025 and 30.12.2024, the letters through which the respondents No.3 and 4 were stopped from proceeding further and responses thereof, directed vide letter dt.07.02.2025 (Annexure P/19) to take action as per Regulations and to proceed and to open the financial bid.

16. Financial bids are invited on percentage rate basis. Respondent No.4 on 10.02.2015 opened the financial bid of two tenderers whose technical bid was found qualified. Result of the opening of the financial bids is as under :-

Tenderer	Quoted Percentage	Tender amount
1. M/s Pragmatic Infrastructure Ltd.	9.11% below SOR	Rs.59,74,30,905.88
2. M/s Shrivardhanam Infra-Project Pvt. Ltd.	8.15% below SOR	Rs.60,37,41,101.39

17. Bid of the petitioner was found lowest and therefore petitioner was informed through email dt.12.03.2025 (at 16.01 PM) that its bid had been opened and bid of the petitioner has been admitted. Another email dt.12.03.2025 on 16.05 PM was received vide Annexure P/22 about the acceptance of bid during financial evaluation by the duly constituted committee. Copy of auto generated Tender Summary Report dt.18.03.2025 (Annexure P/23) also received by the petitioner.

18. It appears that respondents No.3 and 4 sought certain information from the petitioner, which was provided. However, matter was kept pending for about one month and thereafter impugned order dt.18.03.2025 is passed by the Additional Commissioner of Housing Board, Bhopal (respondent No.2 herein), in which it has been held that by way of Corrigendum-3 special conditions of original NIT were deleted and therefore M/s Paliya Construction was also becoming eligible but its bid was not considered, therefore, process is vitiated. Therefore, direction for fresh bid was given. Hence, petitioner approached this Court by way of filing this Writ Petition.

19. Learned senior counsel appearing for the petitioner submits that scope of interference in contract matters is discussed in detail in different judgments

of the Apex Court from time to time. Section 23 of the Adhiniyam empowers the Board to appoint committee to discharge its duties. Regulation 11 (c) (iii) of Regulations mandates constitution of a Business Committee of Chairman, Housing Commissioner, Commissioner (Town & Country Planning) and Engineer-in-Chief, Public Works Department to accept and reject the tender. Present tender has been scrutinized by technical committee of Deputy Commissioner constituted by Commissioner through work distribution memo dated 26.09.2019. As per Regulation 11(c) (iii) of Regulations, a Business Committee consisting of Chairman, Housing Commissioner, Commissioner (Town & Country Planning) and Engineer-in-Chief, Public Works Department has the power to accept/reject the tenders or take the appropriate decision on behalf of the Board. The committee has to be presided over by Chairman and matters before the Committee shall be presented by the concerned Additional Housing Commissioner.

20. Therefore, it is submitted that Business Committee is the Committee which has the power to accept/reject the tender not the respondent No.2. In fact, the decision of the standing committee has to be placed before the Board for information at the Board meeting immediately following such a decision. As per Section 23 (iii) of the Adhiniyam and Regulation 11 (c)(iii) of the Regulations, the proceedings are to be approved by the Board. Here no such compliance is being made. Therefore, it is an act contrary to law.

21. Learned senior counsel referred judgments of the Apex Court in the

case of **Tata Cellular v. Union of India – (1994) 6 SCC 651, Jagdish Mandal v. State of Orissa and others – (2007) 14 SCC 517, Reliance Energy Ltd. and another v. Maharashtra State Road Development Corporation Ltd. And others – (2007) 8 SCC 1**. According to learned senior counsel, earlier Corrigendum was issued whereby special conditions were added regarding fire fighting equipments and installation of lift elevator which were in addition to earlier special conditions contained in NIT. Respondent No.2 gave telephonic instructions to respondent No.3 for inclusion of these special conditions.

22. Later on, respondent No.2 again on telephonic instructions directed respondent No.3 to issue Corrigendum-3 while deleting four special eligibility criteria prescribed in Corrigendum-2, but still, in Corrigendum-3, it was mentioned specifically that conditions of original NIT are kept intact. Original conditions of NIT incorporated special conditions regarding experience for construction of 20 mtr. High rise building and regarding prompt execution of work whereby bidders should not have delayed his previous work not more than six months due to his own fault. Therefore, it was not the case that special conditions were over looked while deciding technical bid.

23. The company which was rejected in Technical Bid did not have requisite experience/documents/certificates to demonstrate that it fulfilled special conditions as contained in original NIT. Therefore, it was rightly

rejected. However, just to support M/s Paliya Construction Company, respondent No.2 altered conditions by causing issuance of corrigenda. Still that company did not succeed because of non adherence to eligibility criteria. This raises suspicion and malice regarding conduct of respondent No.2.

24. It is further submitted that even after opening of Technical Bid when complaint was made by M/s Paliya Construction, then opening of financial bid was stopped. The matter was considered by the Technical Committee and since nothing wrong was found, respondents decided to open the Financial Bid. Had there been any objection to decision of competent authority deciding Technical Bid, tender must have been rejected at that very stage. Later, after opening of financial bid, when petitioner stood successful as L-1, the same committee and same respondent No.2 rejected the tender and decided to invite afresh. By this act, the petitioner is not only deprived of legitimate consideration of his name for award of contract but also prejudiced for future as its competitive position is disclosed to the rival bidders. Learned senior counsel relied upon the judgments of the Apex Court in the case of **Sterling Computers Limited v. M/s M & N Publications Limited and others (1993) 1 SCC 445, Subodh Kumar Singh Rathour v. Chief Executive Officer and others - AIR 2024 SC 3784**, in support of his submissions.

25. According to learned senior counsel, the authority should justify the action assailed on the touchstone of justness, fairness and reasonableness.

Action is actuated with an oblique motive, therefore, it could be characterized as being arbitrary. Even public interest is compromised because now with the passage of time cost would increase and delay would be caused in the project.

26. It is the argument of learned senior counsel that respondents' power under Clause 19.5 of NIT is not so sacrosanct that whenever employer deems fit can annul the bid process and reject all the bids at any time without any reasonable cause. According to him, Clause 19.5 does not insulate the process. He relied upon the judgment of the Division Bench of this Court in the case of **Krsnaa Diagnostics Pvt. Ltd. v. State of M.P. and others – 2021 (3) MPLJ 111.**

27. *Per contra*, learned senior counsel appearing for the respondents opposed the prayer made by the petitioner. It is the submission of learned senior counsel that as per Regulations, the process of tendering and technical affairs has been given to the Project Management and Technical Affairs Committee.

28. As per Clause 19.5 of bid document, employer reserves right to accept or reject any bid and to annul the bidding process and reject all the bids at any time prior to contract award without incurring any liability.

29. As submitted, in the present case, the bid process was going on and terms and conditions of contract have been confirmed by the Additional Housing Commissioner, at the instance of whom the tender was floated. Since the process of allotment of tender was going on and prior to it, the power has

been vested with the employer under Clause 19.5 to withdraw it or annul it at any point of time, therefore, the provisions as pointed out by the counsel for the petitioner in Regulation 11 (c)(iii) would have no applicability. The state of accepting or rejecting bid would be when after opening of financial bid, the matter would have been placed before the Business Committee as mentioned in Regulation but process of tender was not complete, only financial bid was opened, therefore Clause 19.5 is attracted. As per Section 13 of the Adhiniyam, Housing Commissioner is Principal Execution Officer of the Board and subject to over all control of the Board and Chairman. Therefore, impugned order (Annexure P/1) has rightly been issued after approval of Housing Commissioner.

30. It is further submitted that admittedly for approval of tender or rejection of instant tender (it is more than Rs.50 Crores), the processing authority is the Board but because the stage of approval or rejection was not available during the process of tender and it was in between the tender floating or finalisation of the tender, therefore, power of Board is not attracted.

31. It is the submission of learned senior counsel that power is fully vested with the Additional Housing Commissioner at the instance of whom conditions were inserted and subsequently withdrawn. By way of Corrigendum dt.12.11.2024, four conditions were mentioned but later on by another Corrigendum, earlier Corrigendum was cancelled although it was

referred that earlier conditions mentioned in the bid would be the same but the fact remains that conditions No.1 and 2 were already in original NIT and it created confusion that while cancelling the Corrigendum-3, conditions No.1 and 2 would remain in the NIT or not. Therefore, at the time of technical decision in respect of technical evaluation, the objection was raised by the M/s Paliya Construction but still financial bid was partly accepted in favour of the petitioner. But looking to the objections raised, the authority took note of it and therefore, impugned order is being passed.

32. Learned counsel fairly submits that it is true that reasons assigned in the impugned order (Annexure P/1) is not happily worded but the fact remains that process was fully followed and there was no delay in taking the decision. Learned counsel referred the judgments of the Apex Court in the case of **M/s N.G. Projects Limited v. M/s Vinod Kumar Jain & Ors – (2022) 6 SCC 127**, **M/s Siemens Aktiengesellschaft & S.Ltd. v. DMRC Ltd. - (2014) 11 SCC 288**, **Rishi Kiran Logistics Pvt. Ltd. v. Board of Trustees of Kandla Port Trust & Ors. - (2015) 13 SCC 233**, **M.P.Power Management Company Limited v. M/s Sky Power Southeast Solar India Pvt. Ltd. and others (2023) 2 SCC 703**.

33. Learned senior counsel appearing for the respondents opposed the contention of the petitioner that decision has been taken with mala fide intention. Decision was taken in the light of instructions and even prior to approval of financial bid, impugned order was issued. Therefore, petition

deserves dismissal.

34. Heard learned counsel for the parties at length and perused the documents as well as synopsis filed by them.

35. Before proceeding further, scope of interference in contract/tender matter is to be reiterated.

36. In the case of **Tata Cellular (supra)**, the exhaustive judgment on different aspects of scope of judicial review in contract/tender has been discussed. Not only scope of judicial review but the question of arbitrariness, bias and other related aspects have been discussed in detail. Relevant paragraphs of the aforesaid judgment are reproduced hereinbelow for ready reference and for bringing clarity in the issue :-

68. Having regard to the above arguments we propose to deal with the matter from the following five aspects :-

1. The scope of judicial review in matters of this kind.
2. Whether the selection is vitiated by arbitrariness ? – (a) regarding financial projection and (b) regarding rental.
3. Bias of Mr. Nair - Whether affected the selection ?
4. Whether the Apex Committee has been bypassed ?
5. Evolving of hidden criteria - whether valid ?

1. Scope of Judicial Review

69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender :

1. It must be unconditional.
2. Must be made at the proper place.
3. Must conform to the terms of obligation.
4. Must be made at the proper time.
5. Must be made in the proper form.
6. The person by whom the tender is made must be able and willing to perform his obligations.

7. There must be reasonable opportunity for inspection.
8. Tender must be made to the proper person.
9. It must be of full amount.

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.* The right to refuse the lowest or any other tender is always available to the Government. But the principles laid down in Article 14 of the Constitution have to be kept in view, while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

75. In *Chief Constable of the North Wales Police v. Evans (1982)* 3 All ER 141, 154 Lord Brightman said :

"Judicial review, as the words imply, is not an appeal from a decision but a review of the manner in which the decision was made.

XX

XX

XX

Ju the decision-madicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the

following terms :

"This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretion properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner."

In *R. v. Panel on Take-overs and Mergers, ex p. Datafin plc*, (1987) 1 All ER 564, Sir John Donaldson, M.R. Commented :

"An application for judicial review is not an appeal."

In *Lonrho plc v. Secretary of State for Trade and Industry*, (1989) 2 All ER 609, Lord Keith said :

"Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin, Re (Amin v. Entry Clearance Officer)*, (1983) 2 All ER 864, Lord Fraser observed that :

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. Reached a decision which no reasonable tribunal would have reached or,
5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. **Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:**

- (i) **Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.**
- (ii) **Irrationality, namely, Wednesbury unreasonableness.**
- (iii) **Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind 1991 (1) AC 696*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

78. What is this charming principle of Wednesbury unreasonableness ? Is it a magical formula ? In *R. v. Askew (1768) 4 Burr 2186 : 98 ER 139*, Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained great value two centuries later :

"It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is

trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in *Emma Hotels Ltd. v. Secretary of State for Environment* (1980 41 P & CR 255), the Secretary of State referred to a number of factors which led him to the conclusion that a non-residents bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R. v. Barnet London Borough Council, ex p. Johnson* (1989 88 LGR 73) the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down.

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.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

37. In the case of **Tata Selular (supra)**, Apex Court interfered in two cases (out of many cases filed at the instance of service providers) on the ground of arbitrariness and violation of principle justice. Relevant paragraph No.151 in this regard is reproduced as under :-

151. In the above two cases, we are obliged to interfere on the ground of arbitrariness and violation of the principle of natural justice confining ourselves to the doctrine of judicial restraint, however, by the application of permissible parameters to set right the decision-making process.

38. In the case of **Jagdish Mandal (supra)**, while relying upon the

judgment delivered in **Tata Cellular (supra)** as well as **Sterling Computers Limited (supra)**, Apex Court has given the guidance in the following manner :-

22. 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.

39. Similarly, in the case of **Reliance Energy (supra)**, Apex Court held that **“legal certainty’ is an important aspect of the rule of law in the matters of tender because in absence of clarity or objectivity it may result unequivocal and discriminatory treatment. Apex Court also stressed over doctrine of ‘level playing field’.** Relevant discussion is as under :-

37. In *Union of India v. International Trading Co., (2003)5 SCC 437*, the Division Bench of this Court speaking through Pasayat, J. had held :

"14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act

validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

38. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This "legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of "level playing field".

39. In the case of *Reliance Airport Developers (P) Ltd. v. Airports Authority of India*, (2006)10 SCC 1, the Division Bench of this Court has held that in 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. This 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 exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, however, such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of rule of law will not arise. 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. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above "certainty" is an

important aspect of rule of law. In the case of Reliance Airport Developers (*supra*), the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks had different stages. Objectivity was thus provided.

40. These judgments are still followed up to **Subodh Kumar Singh** (*supra*).

41. Illegality, irrationality and procedural impropriety are the broad grounds as discussed by the Apex Court in the matter of **Tata Cellular** (*supra*) but at the same time, it does not rule out addition of further grounds in course of time. While discussing the facet of irrationality, it has been mentioned that it is open to the court to review the decision-maker's evaluation of the facts. The Court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. Another facet of irrationality is that a decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. Therefore, from the present case, it is to be deciphered where the case suffers from illegality, irrationality and procedural impropriety.

Regarding illegality :

42. Arguments of the senior counsel appearing for the petitioner was that as per Section 23 of the Adhiniyam, the Board may from time to time appoint committees and all proceedings of such committee shall be subject to

confirmation by the Board. Section 23 deals in respect of appointment and functions of committees and Regulation 11 deals with conduct of business of the Board, which includes different standing committees. Section 23 is reproduced for ready reference :-

23. Appointment and functions of committees -(1) The Board may from time to time, appoint committees consisting of such number of persons as it may think fit for the purpose of discharging such duties or performing such functions and on such terms and conditions as may be prescribed by regulations.

(2) The Chairman or such other person as he may nominate in this behalf shall be the president of the committee and the committee shall observe such rules and procedure in regard to transaction of business at its meeting as may be prescribed by regulations.

(3) All proceedings of such committee shall be subject to confirmation by the Board.

43. Similarly Regulation 11 of the Regulations is reproduced for ready reference :-

11. Conduct of Business of the Board - (a) The ex-officio members of the Board shall be eligible for Travelling Allowance/Dearness Allowance while attending the Board meeting or its Committee meeting as per their eligibility in the parent organisation.

(b) The others members of Board shall be eligible for Travelling Allowance/Dearness Allowance while attending the Board meeting or its Committee meeting as per eligibility of Class I Officer of the rank of Principal Secretary to the State Government.

(c) The Board as empowered in section 23 shall have the following standing Committees:

(i) An Appeal Committee comprising of Commissioner (Town & Country Planning), representative of Secretary- in-

charge of the Finance Department, Government of Madhya Pradesh and representative of Chairman & Managing Director Housing and Urban Development Corporation (HUDCO) for hearing appeals against disciplinary action against the employees of the Board/ Orders in service matters as per section 16 of the Act. The Committee shall be presided over by Commissioner (Town & Country Planning) and matters before the Committee shall be presented by the Chief Administrative Officer.

(ii) An Audit Committee comprising of Housing Commissioner, Commissioner (Town & Country Planning) and representative of Secretary-in-charge of the Finance Department,, Government of Madhya Pradesh for deciding audit objections raised by Chief Audit Officer in its reports. The Committee shall be presided over by Housing Commissioner and matters before the Committee shall be presented by the Chief Audit Officer.

(iii) A Business Committee consisting of Chairman, Housing Commissioner, Commissioner (Town & Country Planning) and Engineer-in-Chief, Public Works Department (or representative not below the rank of Chief Engineer), which shall have the power to accept /reject tenders or take appropriate decisions on behalf of the Board. The Committee shall be presided over by Chairman and matters before the Committee shall be presented by the concerned Addl. Housing Commissioner.

(d) The decisions of the Standing Committees shall, however, be placed before the Board for information at the Board meeting immediately following such a decision.

(e) The Board may also constitute any other Committee as it may deem appropriate for any or all of the functions of the Board.

(f) Any Committee appointed by the Board under Sec.23 of the Act shall consist of at least 3 members and may include any member of the Board and other such persons whose assistance or advice or association may be considered advantageous to the Board. If at any time, after its constitution, it is considered by the Board that the existence of any Committee is either not necessary or detrimental to the interests of the Board; the Board may order dissolution of such a Committee.

(g) The term of the Committee (except for the Standing Committees as specified in Para (c) shall be as specified in the order of its constitution; similarly, the term of appointment of a person as a member, who is not a member of Board, shall be as specified in the order of his nomination. No Committee shall be eligible to work beyond the term so specified unless the term is extended by order of the Board.

(h) The members of the Committees, who are not member of Board, shall be honorary and shall only be paid Travelling Allowance/Dearness Allowance as per rules applicable to the Members of the Board.

(i) Notice for an ordinary meeting of the Board shall be issued at-least seven days before the date fixed for the meeting. However, a notice of three days shall be sufficient for a special meeting of the Board.

(j) The business of the Committee shall be conducted in accordance with the procedure laid down below:-

(i) The date of every meeting shall be fixed by the President/Convenor;

(ii) Notice of every meeting specifying the time and place thereof and the business to be transacted there at shall be dispatched to every member at least three working days before a meeting;

(iii) The President/Convenor of the Committee may, whenever he thinks fit, call a special meeting and shall be bound to do so on receipt of written requisition signed by not less than two members;

(iv) Every meeting of a Committee shall ordinarily be held at the Head Quarters of the Board. A meeting may, however, be held at any other place in the State with the approval of the Housing Commissioner;

(v) No business shall be transacted at a meeting unless a quorum of half of the total number of members be present throughout the meeting;

(vi) Minutes of the proceedings at each meeting of a Committee shall be drawn up and recorded by the Member-Secretary and shall be signed by the President/Convener of the Committee;

(vii) The minutes of the proceedings shall include:

(a) The names of the members present;

(b) The decision of the meeting on every question considered;
and

(c) When such decision is not unanimous, the number of votes and the names of members voting for and against such question and the names of those who have remained neutral.

(d) All questions brought before any meeting of a Committee shall be decided by a majority of the votes of the members present, and in the case of an equality of votes the presiding authority at the meeting shall have a second or casting vote.

44. All proceedings of those committees shall be subject to confirmation by the Board. Business Committee as provided in Regulation 11 (c) (iii) consisting of Chairman, Housing Commissioner, Commissioner (Town & Country Planning) and Engineer-in-Chief, Public Works Department (or representative not below the rank of Chief Engineer) shall have the power to accept/reject tender or take appropriate decisions on behalf of the Board.

45. If Section 23 is read with Regulation 11, then it appears that the legislative intent was clear. Admittedly, (admitted by both the sides), tender was of more than 50 crores of value (Rs.65.73 crores) and therefore, it was the jurisdiction of the Board to accept or reject the tender or **even to take the appropriate decision on behalf of the Board.** Business Committee can take appropriate decision including the decision taken by Respondent No.2 could have been taken. When jurisdiction lies with business committee, which is a broad based committee, then decision ought to have been taken by the said

business committee and that too, decision of the said committee should have been placed before the Board for information at the Board meeting immediately following such a decision. In the present case, neither the decision has been taken by the business committee, nor it was placed before the Board for information. Section 23 (3) mandates that all proceedings of such committee shall be subject to confirmation by the Board. Therefore, unless the decision of the committee is confirmed by the Board, no independent decision could have been taken by the Additional Commissioner (Respondent No.2) as impugned order reflects.

46. Contentions of the respondents that the bid was rejected by the Commissioner holds no meaning because Commissioner had no authority to accept or reject the bid. It was the domain of business committee, as per Regulation 11 (c)(iii) and (d) of the Regulations. No document is submitted by the respondents to indicate that business committee took the decision and thereafter Board confirmed it. On the basis of discussion made above and in absence of any such document showing decision taken by the business committee, the case suffers from illegality.

Regarding irrationality and procedural impropriety :-

47. Initially a bid document contained pre qualification criteria and special eligibility criteria and both are reiterated exhaustively in facts of the case (para 5). Special Eligibility criteria, which was prescribed by the NIT are reiterated again for ready reference :-

Annexure - D

(See clause 6 of Section 1-NIT)

SPECIAL ELIGIBILITY CRITERIA**The Bidder should have experience of :**

1. The bidder should have experience for construction of more than 20 m high rise building, should produce certificate along with qualification documents for the same from the competent authority having rank not less than Executive Engineer.
2. The bidder should not have delayed his previous works not more than 6 months due to his own faults and should produce proof/certificate for the same duly signed by competent authority having rank not less than Executive Engineer along with qualification document as for annexure D-1.

48. Later on vide Corrigendum dt.12.11.2024, which is Corrigendum-2, additional conditions were incorporated in addition to already existing Special Conditions. These two conditions were as under :-

3. The Bidder Should Have Experience of Fire Fighting works The Scope of Fire Fighting Works Mention In The Tender Is of Amount 155.30 Lakh. The Bidder Should Have Experience of Single Work of 50%, Two Works off 30% And Three Works of 20% In The Same Building.
4. The Bidder Should Have Experience of Providing And Fixing Lift/Elevator. The Scope of Providing And Fixing 10 Numbers Lifts Works Mention in The Tender. The Bidder Should Have Experience of Single Work With 6 Number Lift, Two Works With 3 Number Lift In Each Building and Three Works With Two Number of Lifts In Each Building.

49. Therefore, it appears that experience of fire fighting works and experience of fire fighting and lift/elevator were incorporated by way of additional conditions. However, on 29.11.2024 respondent No.2 again caused issuance of Corrigendum-3 by which Corrigendum-2 was cancelled.

Corrigendum 3 is placed at Annexure P/11. It reads as under :-

Tender Corrigendum-3

To open Tender Notice Number 2024_MPHID_378912_1 Date 30-10-2024

Name of Work:- CONSTRUCTION OF RESIDENTIAL CUM COMMERCIAL COMPLEX (ATAL KUNJ TOWER) AT SECTOR A DEENDAYAL NAGAR GWALIOR (CONSTRUCTION OF 28 NOS 2BHK FLATS, 32 NOS 3BHK FLATS, 138 NOS SHOPS, 50 NOS HALLS & 02 NO. BASEMENTS)

दिनांक 12-11-2024 को Corrigendum-2 में उल्लेखित चारों शर्तों को निरस्त किया जाता है, तथा निविदा प्रपत्र (NIT) की शर्तें यथावत रखी जाती हैं ।

50. Perusal of said Corrigendum-3 indicates that respondent no.2 again resorted to original NIT and therefore conditions No.1 and 2 mentioned earlier in NIT (as Special Conditions) were kept intact and two conditions of fire fighting and lift/elevator were removed. Such intermittent stand taken by the respondent No.2 creates suspicion and reflects over the working of respondent No.2. In sensitive matter like tender worth Rs.65.73 crores officers are expected to be more vigilant and cautious because wider public interest and public exchequer is involved. Public Interest and Public Exchequer can not lie at the mercy of whims of some officers.

51. Be that as it may.

52. If the Corrigendum-3 relegates the conditions to original NIT and with this conditions if petitioner and another bidder (M/s Shrivardhnam) stood

qualified in all criteria, then disqualified bidder (M/s Paliya Construction herein) had no occasion to make complaint. It never asserted that it fulfilled criteria. Respective assessment of bidders finds place with the chart appended with Annexure P/15. The petitioner and one M/s Shrivardhnam stood qualified in technical bid. Complaint of M/s Paliya Construction does not reveal any substantial ground except the change of conditions. On its objection respondent No.2 halted the procedure and enquired.

53. Once enquiry was held and disqualified bidder was found no relevance vide letter dt.29.01.2025 (Annexure P/17) by Executive Engineer, then matter was directed to be proceeded with the opening of financial bid. It was respondent No.2 only who directed the authorities vide letter dt.07.02.2025 (Annexure P/19) about opening of financial bid. Therefore, financial bid was opened in which the petitioner stood L-1. When respondent No.2 (Additional Commissioner) himself dissatisfied the objection raised by the disqualified bidder and thereafter directed to proceed for opening of financial bid vide letter dt.07.02.2025, then how he can change his stand within 45 days and pass impugned impugned order dt.18.03.2025. This smakes mischief on the part of respondent No.2. On his instructions, conditions changed intermittently. His conduct throughout the process of NIT was unprofessional and doubtful. He took the whole process very lightly.

54. Respondents have to harbor the thought that by inviting tender they become repository of public faith and their conduct should be such fair and

transparent that every bidder should feel that process of bidding proceeded with utmost fairness and transparency. Process is not only to be fair but it has to appear to be fair. Here process of bidding was not fairly conducted.

55. When original conditions were already restored vide Corrigendum-3, then it was the duty of all the officers to take the bids to its logical end. They had to place the matter before the Board as per Section 23 of the Adhiniyam and Regulation 11 of the Regulations. Therefore, such intermittent and ad hock approach and decision taken, that too, when bid was finalized and intimation was given to the petitioner suffer from arbitrariness, irrationality and procedural impropriety.

56. Many a times, it is observed that after completion of tender process, all process is aborted and denovo process is started. This shakes the credibility of process. At times, it prejudices the development of entrepreneurship and it proliferates corruption, nepotism and crony-capitalism. Best bidder should prevail for wider public interest.

57. Therefore, not only on the ground of illegality, but also on the grounds of irrationality and procedural impropriety, case of the petitioner succeeds.

58. In the case of **Kalabharati Advertising vs. Hemant Vimalnath Narichania - (2010) 9 SCC 437**, it is held that State is found to be under obligation to act fairly without illwill and malice – in fact or in law. Guidance given by the Apex Court is as under :-

25. The State is under obligation to act fairly without ill will

or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide *ADM, Jabalpur v. Shivakant Shukla* (1976) 2 SCC 521, *S.R.Venkataraman v. Union of India*, (1979) 2 SCC 491, *State of A.P. v. Goverdhanlal Pitti*, (2003) 4 SCC 739, *BPL Ltd. v. S.P. Gururaja*, (2003) 8 SCC 567 and *W.B. SEB v. Dilip Kumar Ray*, (2007) 14 SCC 568.

26. Passing an order for an unauthorized purpose constitutes malice in law. (Vide *Punjab SEB Lytd. v. Dilip Kumar Ray*, (2007) 14 SCC 568).

59. So far as question of treating Clause 19.5 has retrocent is concerned, it has to be decided on the linchpin on the grounds mentioned by the Apex Court in **Tata Cellular (supra)** and in subsequent judgments as referred above. Division Bench of this Court in the case of **Krsnaa Diagnostics (supra)** after considering the catena of judgments came to the conclusion that such clauses which reserve right for employer to accept or reject any or all the proposals does not insulate the process and impugned order from judicial review. Relevant para is reproduced for ready reference :-

[20] The Apex Court in catena of judgments held that the judicial review of a contractual matter is permissible on certain parameters spelled out by us in the previous paragraph. In *Tata Cellular vs. Union of India*, (1994) 6 SCC 651 and *Elektron Lighting Systems (P) Ltd. vs. Shah Investments Financial*

Developments & Consultants (P) Ltd., (2015) 15 SCC 137, the Apex Court opined that the judicial review in contract matter is permissible if action impugned is shown to be arbitrary. In *Ramana Dayaram Shetty vs. International Airport Authority of India*, (1979) 1 SCC 489, *Dutta Associates (P) Ltd. v. Indo Merchantiles (P) Ltd.*, (1997) 1 SCC 53, *Heinz India (P) Ltd. v. State of U.P.*, (2012) 5 SCC 443 and *Kalinga Mining Corpn. v. Union of India*, (2013) 5 SCC 252, the Supreme Court ruled that if decision making process or the decision is unreasonable, interference can be made even in contractual matters. In *Sterling Computers Ltd. v. M & N Publications Ltd.*, (1993) 1 SCC 44, *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.*, (2005) 6 SCC 138, *Michigan Rubber (India) Ltd. v. State of Karnataka*, 2012 MPLJ Online (S.C.) 34 = (2012) 8 SCC 216 and *State of Jharkhand vs. CWE-SOMA Consortium*, (2016) 14 SCC 172, the Wednesbury principle is also applied to test the decision making process adopted in a contractual matter. Reference may be made to *Raunaq International Ltd. v. I.V.R. Construction Ltd.*, 1998 MPLJ Online (S.C.) 3 = (1999) 1 SCC 492, *Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC 617, *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517, *Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.*, (2007) 8 SCC 1, *Sanjay Kumar Shukla v. Bharat Petroleum Corpn. Ltd.*, (2014) 3 SCC 493 and *Siemens Aktiengesellschaft & Siemens Ltd. v. DMRC Ltd.*, (2014) 11 SCC 288, wherein Apex Court opined that apart from the facets of arbitrariness, unreasonableness and parameters relating to Wednesbury principles, the public interest element is also an essential facet which needs to be looked into in a contractual matter. In view of these judgments, there is no cavil of doubt that judicial review of impugned order is permissible and enabling provision namely, Clause-17 aforesaid does not insulate the process and impugned order from judicial review. Despite the fact that it contained a phrase that no reasons are required to be given for invoking Section 17. This, in our view, does not mean that without any reasons or justifiable reasons, power under Clause 17 can be invoked.

60. Therefore, Clause 19.5 is not so sacred or sacrosanct that in any eventuality it insulates the whole process of bid. No, it is not. Respondents have to be fair, transparent and honest in their approach when go for bidding.

These are the only insulators rather than any clause inserted in the bid. In the garb of such cloak respondents cannot be permitted to carry out mischief.

61. Resultantly, on the basis of above discussion, impugned order is set aside. However, in the given facts and circumstances of the case, matter is relegated to the Business Committee to consider the proposal of petitioner as L-1 and place the matter before the Board as per Section 23 of the Adhiniyam and Regulations framed therein. Board shall consider the discussion made in the order, submissions raised by the petitioner, reports of the officers and judgments referred in the order and thereafter pass a reasoned order in accordance with law. Board has to pass a reasoned order. Any query if is is required to be raised, then Board can certainly raise with the petitioner and respondents for its satisfaction. Whole exercise shall be completed within two months as an outer limit. Looking to the conduct of respondent No.2 (Additional Commissioner), Board is directed, not to involve respondent No.2 in the whole process of bid discussion in any manner, to bring fairness and transparency in decision making process.

Petition stands **allowed and disposed of in above terms.**

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE