

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.P. No.11239/2021

M/s K & J Projects Private Limited
-Versus-
Madhya Pradesh Road Development Corporation & anr.

W.P. No.11371/2021

AICONS Engineering Pvt. Ltd.
-Versus-
Madhya Pradesh Road Development Corporation & anr.

Shri Deepesh Joshi, Advocate for the petitioners.

Shri P.K. Kaurav, Advocate General with Shri Aditya Khandekar,
Advocate for the respondents.

CORAM :

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Order Reserved on : 16-8-2021
Pronounced on : 27-8-2021

[Hearing convened through video conferencing]

ORDER

(Jabalpur, dtd.27.8.2021)

Per : Vijay Kumar Shukla, J.-

Regard being had to the facts of the case and the reliefs sought in the present writ petitions, they were heard together and are being disposed of by a common order. For the sake of convenience and clarity the facts enumerated in WP-11371-2021 are taken note of.

2. Shorn or unnecessary details : The respondent No.1 – Madhya Pradesh Road Development Corporation [for short, “the MPRDC”] invited tender for Consultancy of Independent Engineer for Operation & Maintenance (O & M) period on Completed Road Projects under BOT (Toll), BOT (Toll + Annuity) & BOT (Annuity) Mode for MPRDC for the State of Madhya Pradesh (hereinafter referred to as “the Project”) on 22-9-2020. Request for Proposal (for brevity “RFP) was issued by the respondents. The petitioner along with its lead partner – M/s K & J Projects Private Limited participated in the tender process and submitted its bid for the tender on 17-10-2020. The technical evaluation was declared on 25-01-2021 wherein the score of the petitioner was recorded to be 94.55 marks which is reflected in the Minutes of the Meeting of the Bid Evaluation Committee held on 21-01-2021. The petitioner further submits that as per sub-clause (ii) of Clause 5.5 of the Data Sheet, the technical proposal of a bidder must secure a minimum of 75 marks to be considered for the financial evaluation. A reference is made to Clause 5.5 (iii) of the Data Sheet. A revaluation was conducted on 9-02-2021, however, there was no change in the scores obtained by the petitioner, which scored the highest marks and thus, qualified for opening of the financial bid. The petitioner has referred to the Minutes of the Meeting of the Bid Evaluation Committee, dated 9-02-2021. It is stated that as a result of the

petitioner's highest score, it was qualified for the financial bid, wherein the petitioner was also the lowest bidder in the whole tender process.

3. It is setforth that pursuant to the petitioner's qualification for the technical and financial bid on 16-02-2021, a complaint was received by the respondent No.2 on 18-02-2021 against the petitioner regarding the documents submitted by it from Neeraj Nigam. On the basis of the complaint dated 18-02-2021, the respondent No.2 issued a letter dated 31-03-2021 to the petitioner seeking clarification with regard to the difference of period of engagement of Mr. Akhil Khare shown in his Curriculum Vitae [hereinafter referred to as "CV"] submitted by the lead partner in association with the petitioner in the present Project and in another CV submitted in a project of M/s URS Scott Wilson India Private Limited, in association with the petitioner are not matching with each other. The CV of Mr. Akhil Khare was submitted as per Appendix B-5 under Section 4 Format for submission of Technical Proposal of the RFP, as also uploaded in the Infracon portal.

4. It is putforth that in the meanwhile, the respondent No.2 had also sought the same clarification from M/s URS Scott Wilson India Private Limited as to the differences in the contents of the CV

of Mr. Akhil Khare on 6-03-2021. In consequence of the letter dated 6-03-2021 M/s URS Scott Wilson India Private Limited sought clarification from Mr. Akhil Khare and Mr. Akhil Khare also replied, vide letter dated 12-03-2021.

5. The petitioner vide its reply dated 7-04-2021 to the letter dated 31-03-2021 issued by the respondent No.2 informed that the CV of Mr. Akhil Khare which was submitted in the present Project by the petitioner was taken from the Infracon Portal of the Ministry of Road Transport and Highways, Govt. of India and the CV submitted in the earlier Project of M/s URS Project was submitted as per requirements of that Project. For the present Project, the CV was obtained from Infracon Portal, wherein the Key Personnel submitted the details in an elaborate format containing his employment records. It is relevant to note that Section 3 of the RFP issued to M/s URS Scott Wilson India Private Limited project provides the qualification of the Senior Quality Surveyor (SQS) and accordingly, the CV was submitted by the petitioner therein to the respondent No.1 in the prescribed format. It is further submitted that the work experience of Mr. Akhil Khare submitted by M/s URS Scott Private Limited for previous tender, which clearly states that 'the past employment that is not relevant to the assignment does not need to be included'. Hence, the formats of the CV submitted by

Mr. Akhil Khare were different as per the requirement of both the RFPs and the same could not be compared for the purposes of ascertaining the qualification of Mr. Akhil Khare for this RFP.

6. It is contended that despite having received the reply and justification so offered by the petitioner, the decision to annul the tender was taken by the Bid Evaluation Committee of the respondent No.1 in a haste manner and the bid submitted by the petitioner was rejected on 7-5-2021. Thereafter, as the decision for rejecting the bid was already taken without giving an opportunity of hearing to the petitioner, an order of annulment of tender dated 11-5-2021 was purportedly passed by the respondent No.2.

7. After passing of the tender annulment order dated 11-5-2021, the very next day on 12-5-2021 a fresh tender bearing No.2021_MPRDC_142220_1 having Tender Ref. No.502 was invited by the respondent No.1 for the same Project as "Proposal for engaging an Independent Engineer (IE) on the basis of National Competitive Bidding for Operation and Maintenance (O & M) of the MPRDC road projects under BOT (Toll), BOT (Toll and Annuity) and BOT (Annuity mode in the State of Madhya Pradesh).

8. According to the petitioner the respondent No.1 issued a fresh tender in a haste manner in order to ensure that the petitioner had no chance to present its claim or make an adequate representation before the respondents regarding the said complaint of Key Personnel's CV made to the respondent No.2. After having annulled the said tender the respondent No.2 realised that the petitioner was not given an opportunity of hearing and was also not offered the opportunity to replace the Key Personnel and hence, the exercise of giving an opportunity was initiated. After passage of almost 1 ½ months and after sleeping on the allegations mentioned in a false complaint against the petitioner, the respondent No.2 issued a show cause notice dated 20-5-2021 to the petitioner to conceal the act already done with the intent to award the tender to third party. The show cause notice issued to the petitioner required the petitioner to give an explanation as to why the petitioner should not be debarred owing to the alleged difference in CV of the Key Personnel. The allegation in the said show cause notice were only based on the differences found in the CV of the Key Personnel for the position of SQS, and there was no such content which points out that the petitioner has presented wrong information wilfully during the course of the tender process.

9. It is putforth that the petitioner has completely complied with all the contents of Clause 3.4(iv)(b) of Section 2 of the RFP. It is pertinent to mention here that the respondent No.2 alleged that the said tender was annulled due to foul play found in the CV of Mr. Akhil Khare submitted by lead partner and the petitioner by putting incorrect data in the CV to get the tender. It was also denied that the petitioner has never dictated the contents of the CV of Mr. Akhil Khare and it was Mr. Akhil Khare, who uploaded the CV on Infracon portal with the sole responsibility of content correctness vested with him. The submissions in the CV of Mr. Akhil Khare is totally his own responsibility and the petitioner had no involvement in it. It is asserted that even when the respondents found the alleged discrepancy in the CV of Mr. Akhil Khare, then instead of giving the benefit of the remarks 2 of Data Sheet under Section 2 of the RFP and Clause 4.5(d) of the General Conditions of Contract (GCC) to the petitioner or undertake the process of revaluation of the CV as per the terms and conditions of the RFP, the respondent No.2 directly annulled the tender and then did a futile exercise of issuing a show cause notice. The petitioner was also issued a show cause notice on 20-5-2021. It is strenuously urged that the petitioner only submitted the CV which was taken from the most authentic Infracon portal of MORTH, Govt. of India. It is stated that as per the Note (g) of the Format of CV for the proposed professional staff provided

under Appendix B-5 of Section 4 of the RFP it was mandated that the CV of the Key Personnel must be taken from the Infracon Portal only for its validity.

It is necessary to note here that the CV was only submitted in the format as mandated by the terms and conditions of the RFP. The petitioner did not make any amendment or modification in the CV of the Key Personnel for the tender process.

10. The petitioner replied to the show cause notice vide letter dated 26-5-2021, wherein it explained its position in the light of the Remark 2 under Date Sheet of the RFP and requested for withdrawal of the show cause notice. The petitioner elaborately explained its position regarding the information mentioned in the CV and in fact, the petitioner had nothing to do with the preparation of the CV of the Key Personnel for the post of SQS. It is pertinent to state that the said Key Personnel Mr. Akhil Khare even clarified the same information that he was working simultaneously in two organizations and there is nothing to hide or he has represented any factually incorrect information, as the said CV was uploaded on the Infracon portal which was relied upon by the petitioner.

11. It is set forth that the petitioner in its reply dated 26-5-2021 also relied on Clause 4.5(d) of GCC which provides that in case the information mentioned in the CV is found to be incorrect,

then the Key Personnel shall be removed and it was only in case of a second time involvement of the consulting firm, then an action can be taken against the consulting firm. It is submitted that the petitioner had no involvement whatsoever in the preparation of the CV of the Key Personnel for the position of SQS or any involvement with regard to the mention of the total years of experience with the firm. The petitioner solely relied on the CV which it took from the most authentic portal of Infracon.

12. It is asserted that the petitioner being the highest scorer in technical bid and having the lowest financial bid, again requested vide letter dated 4-6-2021 for reconsideration and re-evaluation of the technical bid and requested for cancellation of fresh tender for the same Project. No consideration was made by the respondents on the aforesaid letters. The respondent No.2 passed an order dated 15-6-2021 debarring the petitioner from participating in future tenders invited by the respondent No.1 quoting violation of Clause 3.4(iv) (b) of Section 2 of the RFP for a period of two years.

13. According to the petitioner it submitted all necessary informations derived from the CV as uploaded in the Infracon Portal. The CV clearly elaborated the number of years of Key Personnel with the firm and also his degree of responsibility held in

various assignments. Thus, no incorrect information has been submitted by the petitioner. The respondent No.2 also debarred Mr. Akhil Khare, Key Personnel for the post of SQS in the instant Project, vide order dated 15-6-2021.

14. It is urged that pursuant to the order of debarment the petitioner submitted a representation before the respondent No.1 on 18-6-2021 seeking a relief to revoke the order of debarment. However, the representation was rejected by the respondent No.2 vide letter dated 23-6-2021. It is submitted that the order of debarment passed by the respondent No.2 was with the knowledge of and in concurrence with the respondent No.1, whereas the order of debarment dated 15-6-2021 does not state so and in fact, the respondent No.2 gave the option to challenge the order of debarment before the appellate authority, i.e., Managing Director in the said letter. But when the petitioner preferred the appeal/representation against the order of debarment, the same was again rejected by the respondent No.2 without considering the submissions made by the petitioner. The order impugned debarring the petitioner from participating in future tender of the respondents, has been assailed on the ground that the same runs counter to the principles of natural justice. It is vehemently pleaded that the impugned order is against the terms and conditions of the RFP and the decision of debarment

has been taken in haste and the formality of issuance of show cause notice was done only after the decision of the debarment was taken. It is vehemently argued that the respondent No.2 while debarring the petitioner by issuing the order dated 15-6-2021 did not follow the provisions contained in the RFP and misinterpreted the clauses as well. The respondent No.2 also ignored the fact that it was not in dispute that it was not a concluded contract, as the work was not awarded to the petitioner. Thus, the question of commission of any breach of the terms and conditions of the concluded contract also does not arise. It is argued that debarring the petitioner from participating in future tenders for two years was that the CV submitted by Mr. Akhil Khare by the lead partner – M/s K & J Projects Private Limited of the petitioner in association with the petitioner for the subject work, had shown that Mr. Akhil Khare was working with the petitioner since September, 2011. Whereas the CV of Mr. Akhil Khare was submitted by a company – M/s URS Scott Wilson India Private Limited in association with the petitioner for “MPRDC SDV-V MPDR-II SP Package – I Bhopal Project” shows that Mr. Akhil Khare had worked with M/s Stanley Consultant Inc. from July 2010 to August, 2012; M/s STUP Consultancy Private Limited from September, 2012 to November, 2015; and M/s Consultancy Engineering Group from December, 2020 till date. It is contended that Mr. Akhil Khare was working

simultaneously in two different projects at different locations and the said fact was known to the petitioner but he suppressed the said fact. Therefore, taking recourse of Clause 3.4(iv)(b) of Section 2 of the RFP, the petitioner was debarred, whereas there was no breach of Clause 3.4(iv)(b) of Section 2 of the RFP, as the petitioner has already submitted all the informations pertaining to Key Personnel, Mr. Akhil Khare for the post of SQS, as enclosed in the CV and no information supplied by the petitioner was found to be incorrect at any stage, enabling the respondents to annul the tender or debar the petitioner.

15. It is argued that the impugned order suffers from gross non-application of mind, as even if the said Key Personnel's experience was not found to be correct, then the said CV could have been ignored and zero mark could have been given to the petitioner for consideration of the qualification as per the Data Sheet Remark-2. It is put forth that since the contract itself was never concluded and, therefore, the respondent No.2 had no authority to invoke Clause 3.4(iv)(b) of Section 2 of the RFP. Lastly it is submitted that debarment of the petitioner from participating in the future tenders for a period of 2 years is not only grossly disproportionate to the alleged fault attributed, but also grossly punitive, as the petitioner has not committed any fault in submitting the requisite information,

because as per the requirement mentioned in the tender document, the CV of the Key Personnel was required to be taken from Infracon Portal, wherein the said Key Personnel Akhil Khare had already uploaded the CV.

16. The respondents have filed reply in WP-11239-2021 and adopted the same in other writ petition (WP-11371-2021). It is stated that the respondents had invited tender on 22-9-2020 for the Project which included a total of 87 roads in 10 divisions of the MPRDC in the State having total length of 4070.88 Kms. The Independent Engineer/Consultant was required to independently review activities associated with design, design review, during construction, required quality assurance and quality control tests and operation and maintenance of the Project on behalf of both the MPRDC and Concessionaire, so as to ensure compliance of the requirement of the provisions of the Concession Agreement and to report to the MPRDC on financial, technical and physical progress of implementation aspects of the Project. The total period of contract was 3 years which was extendable by a further period of one year. The Request for Proposal (RFP) permitted consultants to apply either as a sole firm or as a joint venture with upto a total of three partners. In the present case, the petitioner was the lead

partner and M/s Aicons Engineering Pvt. Ltd. was the associate partner.

17. It is putforth that the format for submitting the certification of the qualifications and experience by the candidate as well as the Consultant is enclosed with the RFP. Format of Curriculum Vitae (CV) for proposed professional staff which clearly shows that the prospective bidder was obligated or required to examine and verify the credentials of the professional staff and had to certify that the contents of their CV were true and correct.

18. Though the respondents raised preliminary issue regarding availability of an alternative remedy of arbitration under Clause 8.2 of the General Conditions of Contract (GCC) which prescribes arbitration as a mode of dispute resolution as per the provisions of the M.P. Madhyastham Adhikaran Adhiniyam, 1983, but they did not press the aforesaid ground of availability of an alternative remedy. It is submitted that the impugned order of debarment was passed under Clause 3.4(iv)(b) of the RFP. It is apt to reproduce Clause 3.4(iv)(b) of the RFP which reads :

“3.4(iv)(b) – Key information should include years with the firm and degree of responsibility

held in various assignments. In CV format, at summary, the individual shall declare his qualification and total experience (in years) against the requirements specified in TOR for the position. If any information is found incorrect at any stage, action including termination and debarment from future MPRDC projects upto 5 years may be taken by MPRDC on the personnel and the Firm.”

19. Further, Clause 3.4(vii) mandates that a certification to the effect should be furnished by the Consultant that they have checked the qualification and experience details submitted by the Key Personnel in their CVs and found the same to be correct. It further stipulates that the certification should be made in CVs of all Key Personnel after the certification by the candidates. The format of CV includes certification to this effect.

20. Then respondents have raised the objection that there is no challenge to the annulment order. It is asseverated that a complaint was received stating inter alia, that a false and fabricated CV has been submitted by Shri Akhil Khare, Senior Quantity Surveyor-cum-Contract Specialist alleging that Shri Akhil Khare is working for URS Scott Wilson India Pvt. Ltd. with Sub-consultant M/s Aicons Engineering Pvt. Ltd. in MP District Road-II Sector

Project (MPDRIISP) Package-I (Bhopal); that on the basis of CV showing employment with M/s CEG Engineering Ltd. from December, 2015 onwards; that based on the complaint, a show cause notice was issued to the lead partner i.e. the petitioner on 31-03-2021; that the petitioner submitted its response to the show cause notice on 7-4-2021 and Shri Akhil Khare submitted his response on 12-3-2021; that in the said response, the petitioner has not disputed the variance in the CV and has in fact, admitted that the variation is minor in nature; and that the Bid Evaluation Committee examined the entire matter on 7-5-2021 and observed that Mr. Akhil Khare has worked with multiple organizations at the same time and, therefore, recommended that the tender awarded to M/s K & J Projects Pvt. Ltd. and M/s Aicons Engineering Pvt. Ltd. be recalled and action as per Clause 3.4(iv)(b) be taken against them. It is argued that in the aforesaid backdrop the tender was annulled by order dated 11-5-2021. The petitioner has not challenged this order and, therefore, it has accepted cancellation of the tender.

21. The respondents further raised an objection regarding non-participation of the petitioner in the Tender No.2021 MPRDC 142220 1. Upon annulment of the earlier tender, the respondents issued a new tender on 12-5-2021. As per the terms of the tender, the bids were invited from 12-5-2021 till 16-6-2021 and the bids

were opened on 17-6-2021. But, neither the petitioner nor its associate partner i.e. M/s Aicons Engineering Pvt. Ltd. participate in the tender process and, therefore, the petitioner cannot seek for a relief for staying or setting aside the tender process. It is contended that in absence of taking part in the tender process, the petitioner has no locus to challenge the fresh tender. The respondents placed reliance on the judgment rendered in **Dinesh Dixit vs. State of M.P., 2013 Online MP 5471**. It is also submitted that the earlier tender was annulled on 11-5-2021. The fresh tender was invited on 12-5-2021 and the last date for submission of bids was 16-6-2021 and the petitioner was debarred on 15-6-2021. Therefore, if the petitioner was desirous to participate in fresh tender, could have submitted its bid from 12-5-2021 till 15-6-2021. Since the petitioner failed to participate in the fresh tender process, it cannot be said to be affected by its outcome and cannot challenge the same before this Court by way of a writ petition.

22. The respondents vehemently argued that the order of debarment was passed as per law, after issuance of a show cause notice and considering the reply submitted by the petitioner. It is stated that in view of the recommendation of the Bid Evaluation Committee, a show cause notice was issued to the petitioner, M/s Aicon Engineering Pvt. Ltd. and to Mr. Akhil Khare on 20-5-2021.

In the show cause notice it was clearly stated that the petitioner should submit its reply within 15 days, otherwise appropriate action would be taken as per Clause 3.4(iv)(b) of the RFP. The petitioner submitted its response on 25-5-2021 stating that – we wish to again submit that we have submitted the CV as available on Infracon portal only and not made any change in it. There is no mechanism that we find out regarding 4-5 years back details of CV submitted by Key Personnel for any other assignment. Hence, onus of submission of correct information is on the Key Personnel and not on the firm.

23. According to the respondents, in fact, the petitioner has admitted that an incorrect CV has been submitted and it has attempted to shift the obligation to Mr. Akhil Khare. It is submitted that as per the RFP, the CV was required to be certified by the consultant and even in the present case, a certificate has been given by M/s Aicons Engineering Pvt. Ltd. stating that the CV has been checked and found to be correct. Thus, the obligation of submitting a correct CV was on the petitioner or its minor partner. Thus, the respondents have duly considered the reply submitted by the petitioner as well as M/s Aicons Engineering Pvt. Ltd. and Shri Akhil Khare and all of them have been debarred for a period of two years by clearly recording that Shri Akhil Khare was working in

multiple places. There is no illegality in issuance of the impugned order.

24. To buttress his submissions, the learned counsel for the respondents has relied on the judgment of the Apex Court rendered in the case of **Kulja Industries vs. Chief General Manager, Western Telecom Project, BSNL, (2014) 14 SCC 731**. According to the respondents the CV submitted by the petitioner's consortium was false and fabricated and the onus to submit the correct CVs was on the petitioner. Clause 3.4(iv)(b) of the RFP specifically provided that, if any misappropriation was made, the bidder was liable to be debarred upto 5 years. Action of the respondents is in consonance with the RFP. It is submitted that the impugned order has been passed after following the principles of natural justice, as show cause notice was issued to the petitioner – M/s Aicons Engineering Pvt. Ltd. and to Shri Akhil Khare. They submitted their respective responses and after considering the same, three orders debarring them have been issued on 15-6-2021. The respondents submitted that the bid was annulled due to the fact that the petitioner submitted a false and fabricated CV. According to them, it has been admitted by the petitioner as well as M/s Aicons that the CV of Shri Akhil Khare has variances and, therefore, the action has been taken as per Clause 3.4(iv)(b) of the RFP.

25. The respondents denied the submission canvassed by the learned counsel for the petitioner that an opportunity ought to have been given to the petitioner to replace the Key Personnel. The show cause notice clearly states that if the reply is not found satisfactory, then action as per Clause 3.4(iv)(b) would be taken. The said clause permits for debarment upto a period of 5 years. In the case in hand, debarment has been done for a period of two years.

26. We have heard the learned counsel for the parties and bestowed our anxious consideration on their respective arguments advanced.

27. The learned counsel for the petitioner submitted that the impugned action of debarment could have been taken only after the contract was executed by the parties. We are not impressed with the aforesaid contention, as in the present case, Clause 3.4(iv)(b) of the RFP which has been reproduced in the preceding paragraph clearly stipulates that if any false information is supplied then action of debarment can be initiated at any stage. Further, as per Clause 3.4(vii) of the RFP, a certification to the effect should be furnished by the Consultant that they have checked the qualifications and experience details submitted by the Key Personnel in their CVs and found the same to be correct. This clarification has to be made in the

CVs of all key personnel after the certification by the candidate. The format of CV includes certification to this effect. The format for submitting the certification of the qualifications and experience by the candidate as well as consultant is enclosed with the RFP. Format of CV for proposed professional staff clearly shows that the prospective bidder was obligated/required to examine and verify the credentials of the professional staff and had to certify that the contents of their CV were true and correct.

28. The learned counsel for the petitioner further argued that if the CV was incorrect, the same could have been ignored. The said argument also cannot be accepted in view of the specific Clause 3.4(iv)(b) of the RFP, which clearly mandates that if any false information or misrepresentation is done, then respondents can debar the said employee as well as the firm that has submitted the fabricated CV. It has also been argued that the respondents were required to give an opportunity to the petitioner to replace the Key Personnel. In the show cause notice, it was clearly mentioned that in the event of failure to file reply to the show cause, action as per Clause 3.4(iv)(b) would be taken. The argument of the learned counsel for the petitioner that the debarment is grossly disproportionate, is also not worth acceptance. As per Clause 3.4(iv)(b) debarment upto a period of 5 years can take place. In

present case, debarment has been done for a period of two years and, therefore, it cannot be said that the order of debarment is disproportionate.

29. We have discussed the case of the petitioner as well as respondents in a greater detail. It is vivid that as per the RFP the bidder was required to certify that the contents of CV of the Key Personnel is true and correct and such a certification has been given in the present case as well. Thus, since the petitioner's Consultant has furnished a false certification, therefore, Clause 3.4(iv)(b) of the RFP is attracted and the order of debarment has been passed, after giving show cause notice to the petitioner to M/s Aicons Engineering Pvt. Ltd. and Shri Akhil Khare.

30. In response to the show cause notice the petitioner has averred as follows :

“ We wish to again submit that we have submitted the CV as available on Infracon Portal only and not made any change in it. There is no mechanism that we find out regarding 4-5 years back details of CV submitted by Key Personnel for any other assignment. Hence, onus of submission of correct information is on the key professional and not on the firm.”

31. From the aforesaid reply, it is luminescent that the petitioner has admitted that an incorrect CV has been submitted and it has attempted to shift the obligation to Mr. Akhil Khare. As per

Clause of the RFP, the CV was required to be certified by the Consultant and even in the case in hand, a certificate has been given by M/s Aicons Engineering Pvt. Ltd. stating that the CV has been checked and found to be correct. Thus, the obligation to submit a correct CV was on the petitioner or its minor partner.

32. The argument of the learned counsel for the petitioner that the impugned order has been passed in violation of principles of natural justice also deserves no acceptance. The respondents have issued a show cause notice in clear terms of Clause 3.4(iv)(b) of the RFP, which was issued to the petitioner M/s Aicons Engineering Pvt. Ltd and Shri Akhil Khare and they have submitted their respective responses. After considering the same, the orders of debarment were issued from 16-6-2021. The show cause notice was issued on 20-5-2021; reply thereto was submitted on 25-5-2021; and the order of debarment was issued on 15-6-2021. Thus, there is no illegality in the decision-making process. The Bid Evaluation Committee returned the finding that action under Clause 3.4(iv)(b) of the RFP should be taken. Thereafter, the decision was taken on 7-5-2021. Thus, the contention of the petitioner that the decision was taken on 7-5-2021 *per se* has no merit. The bid was annulled owing to the fact that the petitioner submitted a false and fabricated CV. It has been admitted by the petitioner as well as M/s Aicons Engineering

Pvt. Ltd. that the CV of Shri Akhil Khare has variances and, therefore, action has been taken as per Clause 3.4(iv)(b) of the RFP.

33. The learned counsel for the respondents placed reliance on the judgment rendered in the case of **Kulja Industries (supra)** and also in **Gorkha Security Services vs. Government (NCT of Delhi) and others, (2014) 9 SCC 105**, to substantiate his submission that the order of debarment/blacklisting has been passed after issuing a show cause notice and considering the reply to show cause submitted by the petitioner. Thus, there is compliance of the principle of natural justice.

34. The learned counsel for the petitioner heavily relied on the judgement rendered in the case of **Vetindia Pharamaceuticals Limited vs. State of Uttar Pradesh and another, (2021) 1 SCC 804**. The said judgement would not render any assistance to the petitioner in the present case, as the facts of the present case are distinguishable and in the case in hand, action for debarment has been taken in view of the Clause 3.4(iv)(b) of the RFP. In the said case, the allegation made in the show cause notice was that the petitioner had supplied misbranded medicines, whereas the fact was that the supply of injections had not commenced. In the present case, Clause 3.4(iv)(b) of the RFP clearly postulates that if any

information is found incorrect, action including termination and debarment from future MPRDC projects upto 5 years may be taken by MPRDC.

35. The allegations in the show cause notice are that the CVs of Shri Akhil Khare was submitted by M/s Scott Wilson India Pvt. Ltd. with sub-consultant M/s Aicons Engineering Pvt. Ltd. and other is submitted by M/s K & J Projects Pvt. Ltd. in association with M/s Aicons Engineering Pvt. Ltd. the details of work are not matching with each other from September 2011 and the date of submission of CV. Therefore, the MPRDC is of the view to take action as per Clause 3.4(b) Section 2 of RFP document. In the impugned order it has been recorded that in view of above paras, it is clear that overlapping period of employment of Mr. Akhil Khare was suppressed by M/s K & J Projects Pvt. Ltd. in association with M/s Aicons Engineering Pvt. Ltd.

36. The argument advanced on behalf of the petitioner that as per remark 2 the petitioner could have been permitted to replace the Key Personnel or the CV of Akhil Khare could have been awarded zero mark, is also not worth acceptance, because the remark clearly states that this provision is applicable only till the opening of the financial bid. In the present case, the financial bid was opened on 16-02-2021 and the complaint was received on 18-

02-2021. Therefore, it was crystal clear that there was misrepresentation and suppression of material facts as well.

37. The action of debarment of the petitioner is in conformity with Clause 3.4(iv)(b) of the RFP, wherein it has been specifically provided that if any information is found incorrect at any stage, action including termination and debarment from future MPRDC projects upto 5 year will be taken. In view of the said clause, action should have been taken even prior to execution of the contract. A reference may be made to the the decision rendered in the case of **Nova Steel (India) vs. MCD, (1995) 3 SCC 334**.

38. We have confined our judicial scrutiny only to the decision-making process and we do not perceive any illegality or arbitrariness in the decision taken by the respondents in passing the order impugned in the instant petitions.

39. In view of our preceding analysis, we do not find any illegality in the impugned order and **the writ petitions being sans substratum, are dismissed**. There shall be no any order as to costs.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.