



**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND  
DHARMADHIKARI  
&  
HON'BLE SMT. JUSTICE ANURADHA SHUKLA  
ON THE 20<sup>th</sup> OF NOVEMBER, 2024  
WRIT PETITION No. 34694 of 2024**

***M/S R. PRIYANSHI CONSTRUCTION AND FACILITY AND  
OTHERS  
Versus  
THE STATE OF MP K AND OTHERS***

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**Appearance:**

*Shri Anshuman Singh- Advocate for petitioners.*

*Shri Kapil Duggal- Advocate for respondents No. 2 and 3.*

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**ORDER**

***Per: Justice Sushrut Arvind Dharmadhikari***

Heard finally with the consent of both the parties.

2. This petition under Article 226 of Constitution of India has been filed seeking the following relief:-

- (i) To issue a writ in the nature of mandamus setting aside the rejection of the Technical Bid of the petitioner (Annexure P3).
- (ii) To issue a writ in the nature of mandamus setting aside the result of the Financial /Commercial Bid issued by the respondents.(Annexure P7)
- (iii) To issue a writ in the nature of mandamus directing the respondents to open the Financial/ Commercial Bid of the petitioner upon declaring the petitioner technically compliant;



- (iv) To issue a writ in the nature of mandamus directing the respondents to assign reasons for the rejection of the technical Bid of the petitioner and grant an opportunity of hearing to the petitioner qua the reasons assigned thereto;
- (v) To issue a writ in the nature of mandamus directing the respondents to consider the case of the petitioner in terms of Clause 34 of the RFP documents and condone any infirmity, irregularity or otherwise, if the same does not constitute a material deviation;
- (vi) To award the petitioner costs and damages as the Honourable Court may deem fit;
- (vii) Any other relief which the Honourable Court may deem just and fit.

3. The brief facts of the case are that the petitioner No. 1 is the proprietorship firm. The petitioner No. 2 is proprietor of petitioner firm. The petitioner firm who is principally engaged in the business of the supply of manpower to various Governmental & Non-Governmental Organisations / Institutions and enjoys a reputation of being a reliable contractor with a longstanding history of successful executed contracts. The respondent-Corporation issued NIT for outsourcing of manpower required for Cleaning and Sweeping Works for Five Groups under the jurisdiction of respondent No. 2- Municipal Corporation. Thereafter, respondent No. 2 issued corrigendum on 11.03.2024 whereby they had prescribed certain documents which have to be uploaded/provided along with bid/application. The respondent-Corporation subsequently issued another corrigendum on 12.03.2024 whereby certain conditions contained in corrigendum issued on 11.03.2024 were modified and Vide corrigendum dated 15.03.2024 the respondent-Corporation extended the last date for uploading tender documents upto 30.03.2024. The



petitioner submitted their bids in pursuance of aforesaid NIT with the respondent-Corporation in prescribed format disclosing all the relevant information wherein all the necessary documents as sought by the respondent-Corporation including corrigendums were filed. However, vide order dated 06.09.2024 (Annexure-P/3) and 23.10.2024 (AnnexureP/7), the respondent- Corporation without assigning any reason disqualified the petitioner in the technical evaluation.

4. Learned counsel for the petitioners submitted that the respondent-Corporation without assigning any reason has rejected the technical bid. In fact the corporation itself in the earlier round had made a submission that the representation shall be considered and thereafter they would assign reasons for rejection. The reasons assigned for rejection is that the petitioner did not fulfill the conditions as laid down in the General Eligibility Criteria at Clause Nos. 3, 4 and 9. The General Eligibility Criteria for Bidders reads as under:-

**The essential eligibility criteria for bidders:-**

S.No.	Eligibility Criteria	Supporting Documents Required
1.	Registration under Society Act, or firm Registration	(a) Co-operative society, committee will have to keep registration certificate and list of committee members under the operative society, society, society registration act and a copy of the registration of the firm in the event of the Bidders



		participating as a firm. (b) List of its present Directors/Owners/Executive Council Members/Trustees/Board members of the bidder/agency/service provider (as applicable) on official letter head of the service provider duly signed by the authorized signatory of the bidder/agency/service provider.
2.	Goods and Service Tax (GST) Registration certificate with code number.	The attested copy of the original document/certificate.
3.	EPF certification/registration with code number issued by Employee Provident Fund Organization under EPF Act 1952.	The attested copy of the original document/certificate.
4.	(i) ESIC certificate with code number issued by Employees State Insurance Corporation under ESIC Act, 1948.	The attested copy of the original document/certificate.
5.	Bidder should have minimum average annual turnover of 3.75 CR in three financial year, 2020-21, 2021-22, 2022-23 and 2023-24 (if applicable).	Auditor's Certificate (turnover certificate) to certify turnover in three financial year, 2020-21, 2021-22, 2022-23 and 2023-24 (if applicable). Copies duly certified by Chartered Accountant.



6.	No deviations from Terms and Conditions of Bid Document	Proforma for 'No Deviations' given in Annexure of this bid document duly filled and signed by the bidder.
7.	PAN Card stating the number issued by Income Tax Department of India.	The attested copy of the original document/certificate.
8.	IT Return	Copies (duly certified by Chartered Accountant) of its Income Tax Returns filed for three (3) financial years (i.e. 2020-21, 2021-22, 2022-23).
9.	The Bidders will have to give an affidavit that does not have any Dues to him or concern firm, society, company etc.	Affidavit in Non judicial stamp paper of INR 100/- duly registered by notary.
10.	The Bidders will have to give an affidavit that does not have any Cases for PF, ESIC and Labour Law.	Affidavit in Non judicial stamp paper of INR 100/- duly registered by notary.
12.	Undertaking for mandatory compliance of all statutory liabilities and other terms and Conditional as specified in bid document.	Affidavit to be furnished on Non judicial stamp paper of INR 100/- duly registered by notary as per The Proforma for Undertaking given in Annexure.
13.	It is necessary to have experience of any of the following work of providing labor/manpower for cleaning and sweeping work (Housekeeping work will not be considered as cleaning) in the	Only Experience/work completion certificate will be considered/accepted for certifying amount of work experience (Issued by the



	<p>five financial years. (Fy, 2019-20, 2020-21, 2021-22, 2022-23, 2023-24 (till 31/12/2023).</p> <p>1. Experience of three work of total amount more than or equal to 20% of the tender amount (12.38 Cr.)</p> <p style="text-align: center;">Or</p> <p>2. Experience of two work of total amount more than or equal to 30% of the tender amount (12.38 Cr.)</p> <p style="text-align: center;">Or</p> <p>3. Experience of one work of total amount more than or equal to 50% of tender amount (12.38 Cr.).</p>	<p>competent authority of the Central Government/State Governmentn/ULB/Government Autonomous Institution) or public listed company/private company/trust.</p> <p>(अनुभव प्रमाण पत्र पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट द्वारा जारी करने की स्थिति में पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट का टर्नओवर 5 वर्षों में 100 करोड को होना चाहिए। संविदाकार द्वारा पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट द्वारा जारी किये गए अनुभव प्रमाण पत्र लगाये जाने पर पब्लिक लिस्टेड कंपनी/प्राइवेट कंपनी/ट्रस्ट का CA द्वारा सत्यापित टर्नओवर सर्टिफिकेट भी संलग्न करना होगा तभी अनुभव प्रमाण पत्र मान्य होगा।)</p> <p><b>(Note:-Scope of work clause 37 will be applicable in this condition)</b></p>
14.	Joint venture/consortium	<p>ALLOWED</p> <p>(AS PER SECTION III (ITB) CLAUSE 4)</p> <p><b>(Format of joint venture agreement is given in Annex-</b></p>



		<b>XVIII)</b>
15.	Bidder currently having contract of manpower supply for cleaning and sweeping work in JMC will have to submit work satisfaction certificate issued by JMC. (this condition will not be applicable for other bidder's)	Work Satisfaction certificate given by JMC.

5. Learned counsel for the petitioner submitted that so far as Clause No.-3 is concerned, they had presenting the challans as proof of payment of EPF. So far as Clause No. 4 is concerned, the respondents had raised a demand for payment of ESIC, therefore, the bid could not have been rejected. So far as the Clause-9 is concerned, learned counsel for petitioners fairly stated that affidavit has not been submitted. However, the respondents ought to have waived the condition or could have granted opportunity to file the affidavit.

6. *Per contra*, respondents No. 2 and 3 contended that in the mandatory conditions of the eligibility criteria, particularly Clause- 3, 4 and 9 have not been complied with, therefore, the technical bid of the petitioner has been rightly rejected. It is well settled legal position that the Courts should not normally entertain the writ petitions against tender.

7. Learned counsel for the respondents contended that the instant petition is not maintainable in light of the judgments passed by the Apex Court in the case of **Silppi Constructions Contractors Vs. Union of India and Another**, reported in (2020) 16 SCC 489, **Agmatel India Private Limited Vs. Resoursys Telecom**, reported in (2022) 5 SCC



**362, Vinayak Purshottam Dube (Deceased) Through Legal Representatives Vs. Jayashree Padamkar Bhat and Others**, reported in **(2024) 9 SCC 398** and **N.G. Projects Limited Vs. Vinod Kumar Jain and Others**, reported in **(2022) 6 SCC 127** wherein the Apex Court has taken note of the earlier judgment and has reiterated that it is for the authority inviting the bids to see whether the bidder satisfies the tender conditions and by the court should be reluctant to interfere with the contract for want of necessary expertise. It has also been held that the approach of the High Court should not to find fault with magnifying glass in its hands.

**8.** The Apex Court in the case of **N.G. Projects Limited (supra)**, in paragraph 13 has held as under:-

13. This Court sounded a word of caution in another judgment reported as *Silppi Constructions Contractors v. Union of India and Ors.*, wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain . As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under:-

*“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is*





*arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.*

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the



state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind, we shall deal with the present case.”

(emphasis supplied)”

9. Learned counsel for respondents has also raised an objection with regard to the maintainability and entertainability of the writ petition, in as much as the petitioner being a proprietorship concern, there is no separate legal existence of the proprietorship from its proprietor. In the present case the original proprietor Shri Dharmendra Malik who died after submitting the technical bid and in the midst of the tender process, the petitioner No. 2 wife of Late Dharmendra Malik became the proprietor of the firm. In view of the aforesaid, the proprietorship cannot be transferred to petitioner No. 2. Learned counsel for the respondents submitted that the obligations which had to be performed by the original sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives. In the present case wife



became the sole proprietor and, therefore, experience cannot be counted for the purpose of new proprietor.

10. In view of the aforesaid settled legal position, the petition deserves to be dismissed.

11. Heard learned counsel for the parties.

12. Admittedly, the Clause Nos. 3, 4 and 9 of the General Eligibility Criteria appears to have not been satisfied by the petitioners. Since the presenting challans as proof of payment of EPF cannot be said to be complied, other two Clauses 4 and 9 are also not satisfied.

13. So far as preliminary objection is concerned, the Apex Court in the case of **Ashok Transport Agency Vs. Awadhesh Kumar Agency, (1998) 5 SCC 567** and the judgment passed by the Calcutta High Court in the case of **S.A. Enterprises Vs. General Manager, 2017 SCC Online Cal 16988**, clearly held that sole proprietorship firms do not have perpetual succession.

14. The Apex Court in the case of **Vinayak Purshottam Dube (Deceased) Through Legal Representatives Vs. Jayashree Padamkar Bhat and Others**, reported in **(2024) 9 SCC 398** while discussing the nature of sole proprietorship has held as under:-

“22. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the Insolvency Law Committee submitted in February 2020, the definition of “proprietorship firms” reads as under:

**“2. DEFINITION OF “PROPRIETORSHIP FIRMS”**

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2.2. Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of



businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [*Raghu Lakshminarayanan v. Fine Tubes* [*Raghu Lakshminarayanan v. Fine Tubes*, (2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455] .] Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships, such definition is limited to the context of the statute. For example, Section 2(*haa*) of the Chartered Accountants Act, 1949 defined a “sole proprietorship” as “*an individual who engages himself in practice of accountancy or engages in services...*”. Notably, “proprietorship firms” have also not been statutorily defined in many other jurisdictions.”

(emphasis in original)

[*Source* : Report of the Insolvency Law Committee, pp. 117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]

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**36.** ..... But in the case of sole proprietorship, which is a common form of business in India, when a legal obligation arises under a contract which has to be discharged personally by the sole proprietor, who is since deceased, had entered into the agreement, such as, in the case of a development agreement in the instant case, can such obligations be imposed on his legal representatives or heirs who are not parties to the development agreement and where the obligations under such an agreement per se cannot be fulfilled inasmuch as they neither have the skills nor the expertise to do so and those obligations depend purely on the skills and expertise of the deceased sole proprietor? In other words, where the decree or order



is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, we are of the view that in the latter case, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives. We reiterate that such a position is distinguished from a position where the estate of the deceased sole proprietor would become liable to satisfy the decree in monetary terms. This is because a proprietorship firm is not a separate legal entity as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise.”

15. Admittedly, in the present case the petitioner has not fulfilled the eligibility Clause Nos. 3, 4 and 9 of the General Eligibility Criteria as well as in light of the judgment passed by Apex Court in the case of **Vinayak Purshottam Dube (supra)** and the judgment passed by the Calcutta High Court in the case of **S.A. Enterprises (supra)**, this Court is of considered opinion that the writ petition deserves to be dismissed.

16. Moreover, in view of the judgment passed by the Apex Court in the case of **Silppi Construction Contractors (supra)** and **N.G. Projects Ltd. (supra)**, it is quite clear as day light that the essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge



of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. In the instant case no such ingredients are available so as to interfere with the findings of the authority.

**17.** In the present case, the petitioners have not even impleaded the L1 bidder Shri Barfani Security Service as respondent. It is subsequent thereto that the respondent No. 2 vide communication dated 29.10.2024 had sought an opinion from the competent authority relying upon the validity of bid amount submitted by Shri Barfani Security Services which in turn has given the stamp of approval to the bid amount vide communication dated 07.11.2024.

**18.** In view of the aforesaid no case is made out to interfere in the writ petition. The petitioner stands technically disqualified and as such the decision of the tender evaluating committee cannot be faulted with. This Court in exercise of the limited jurisdiction qua tender matters cannot interfere in the said decision and as such the petition fails and is hereby **dismissed.**

No order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI)  
JUDGE

(ANURADHA SHUKLA)  
JUDGE

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