IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3129 of 2019

==

M/s S.K. Traders, Birla Mandir Road, Patna through its Proprietor Shankar Kumar, aged about 45 years (Male), Son of Jamuna Kumar Sahu, Resident of House no.30B, Mohalla Birla Mandir Bari Path, P.O.-Bankipur, P.S.-Pirbahore,District-Patna

... ... Petitioner/s

Versus

1. The Bihar School Examination Borad through its Chairman, Patna
2. The Chaiman, Bihar School Examination Board, Patna
3. The Secretary, Bihar School Examination Board, Patna
4. The Deputy Controller of Examination-Cum-Incharge Officer, Stores (Secondary Education), Bihar, School Examination Board, Patna
5. Jeereshwari Enterprises through its Proprietor Nagendra Kumar Singh, Son of not Known to the Petitioner, Resident of Village-Chamarichak, P.O.-Jamsaut, P.S.-Sahpur, District-Patna
6. Shree Shyam Trading Company, Savitri Matket, P.O.-Khazanchi Road, P.S.-Jakkanpur, Patna-800004 through its representative Sanjay Kumar Modi,aged about not Known to the Petitioner (Male), Son not Known to the Petitioner, Resident of Savitri Market, P.O.-Khazanchi Road, P.S.-Jakkanpur Patna-800004

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Adv. Mr. Prince Kumar Mishra, Adv. Ms. Kumari Shubham, Adv.
For the BSEB	:	Mr. Satyabir Bharti, Adv. Mr. Gyan Shankar, Adv. Mr. Alok Chandra, Adv.
For the Respondent no.5	:	Mr.Subhash Kumar Singh, Adv.
For the Respondent no.6	:	Mr. S.D. Sanjay, Sr.Adv. Mr. Alok Kumar Agrawal, Adv.

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date : 13-03-2019

This writ application has been preferred for the following reliefs:-

> *"(I) For issuing writ/writs, order/orders including the writ of mandamus to the Respondents No.1 to 4 bring on record the letters(s) dated 07.02.2019 or such letters(s) through which*

Respondent No.5 and 6 have been held to be successful bidders for the Tender Notice No. PR-198-18 for auction of used answer books of compartmental Intermediate Examination, 2017 used Practical Answer Books of Annual Intermediate Examination, 2018 and other scrap papers (flying slip, award sheet, marks file, attendance sheet and other utilityless papers), other paper and coudments relating to Intermediate and matriculation compartmental examination 2018; and the aforesaid Respondent No.5 and 6 have been asked to deposit the required amount meant to be deposited by the selected highest bidder in the aforesaid auction/tender notice No.PR-198/18.

(ii) Further for issuing writ/writs, order/orders including the writ of certiorari and thereby quash the letter (s) dated 07.02.2019 or such letter (s) through which Respondent No.5 and 6 have been held to be successful bidders for the Tender Notice No. PR-198-18 for auction of used answer books of compartmental Intermediate Examination, 2017 used Practical Answer Books of Annual Intermediate Examination, 2018 and other scrap papers (flying slip, award sheet, marks file, attendance sheet and other utilityless papers), other paper and documents relating to Intermediate and matriculation compartmental examination 2018; and the aforesaid Respondent No.5 and 6 have been asked to deposit the required amount meant to be deposited by the selected highest bidder in the aforesaid Auction/Tender notice No.PR-198/18.

(iii) For holding that the Respondent No.5 and 6 who have not enclosed the agreement with the paper mill in terms of Rule/Condition 14 & 15 of Auction/Tender Notice No.PR-198/18 are as such disentitled and disqualified to have been alloted such tenders/Auction for Item No.1, 2, 3, 5, 6 and 8 notified through the aforesaid Auction /Tender Notice No.PR-198/18 seeking bids for auction of used answer books of compartmental Intermediate Examination, 2017 used Practical Anser Books of Annual Intermediate Examination, 2018 and other scrap papers (flying slip, award sheet, marks file, attendance sheet and other utilityless papers), other paper and documents relating to Intermediate and

matriculation compartmental examination 2018.

(iv) For holding that Respondent No.6 who has given name of the paper mill which is not functional till date cannot be a valid intimation of a supplier to the paper mill as contemplated under Rule 14, 15 and Rule 16 of the Auction/Tender notice No.PR-198/18.

(v) For issuing the mandamus upon Respondents No.1 to 4 to allot such tenders/Auction for Item No.1, 2, 3, 5, 6 and 8 notified through the aforesaid Auction/Tender notice No.PR-198/18 seeking bids for auction of used anser books of compartmental Intermediate Examination, 2017 used Practical Answer Books of Annual Intermediate Examination, 2018 and other scrap papers (flying slip, award sheet, marks file, attendacne sheet and other utilityless papers), other paper and documentsw relating to Intermediate and matriculation compartmental examination 2018, to the petitioner keeping in view the fact that the petitioner is the next highest bidder apart from the Respondent No.5 and 6.

(vi) The Hon'ble Court may pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience."

It is the grievance of the petitioner in the present writ application that the Bihar School Examination Board (hereinafter referred to as the 'Board') while publishing notice for Tender/Auction vide PR-198/18 for seeking bids for recycling and destroying the used answer books of compartmental Intermediate Examination, 2017 used practical answer books of Annual Intermediate Examination, 2018 and other scrap papers (flying slip, award sheet, marks file, attendance sheet and other utilityless papers), other paper and documents relating to Intermediate and matriculation compartmental examination 2018 is not following its own tender conditions as contained in Annexure-1 to the writ application. It is submitted that with an intention to stop any misuse of the answer books/answer sheets and then to ensure that those are recycled properly which has a number of benefits besides saving trees from being cut down, clause 14, 15 and 16 of the tender conditions have been introduced so that auctioned scrap/rough papers including the answer sheets could be recycled and converted into fresh papers and the misuse thereof unauthorizedly or unlawfully as also threat to environment must be avoided.

It is submitted that pursuant to the Notice Inviting Tender ('NIT') the petitioner as well as the private respondent nos.5 and 6 had participated. The petitioner claims that he had enclosed a copy of the agreement dated 24.09.2018 in terms of requirement of clause '15' of the NIT showing that he had an agreement with one M/s Multiwal Pulp & Board Mills Pvt. Ltd. regarding the supply of the answer sheets and old records received from the respondent Board. A copy of the agreement dated 24.09.2018 has been brought on record as Annexure-P/2. It is stated that so far as respondent nos.5 and 6 are concerned, they had not enclosed any such agreement showing that they had an agreement with any paper mill for recycling of the answer sheets and old records received from the respondent Board, thus, the respondent nos.5 and 6 were not complying with the conditions particularly clause '15' of the NIT. Regarding respondent no.6 it is stated that he had given an information/declaration to the effect that he would be supplying paper for recycling to one VSM Paper Pvt. Ltd. which as per the reply received to his application under Right to Information Act, is not a functional unit till date. A copy of the RTI reply dated 01.02.2019 has been brought on record as Annexure-P/3 to the writ application.

The petitioner claims that he had raised an objection when the technical bid was opened on 26.09.2018. A representation was filed raising serious objection with regard to the technical bid of the respondent nos.5 and 6 but the respondent Board and its authorities proceeded for opening of the financial bid of the respondent nos.5 and 6 and allotted them item nos.1, 2, 3, 5, 6 and 8. A copy of the representation has been brought on record as Annexure-P/4 series to the writ application. The petitioner was awarded item nos.4, 7 and 9 and was directed to deposit the entire amount of Rs.13,37,024/-

towards these items. Similar letters were issued to the private respondents which have been challenged by the petitioner in the present writ application.

It is the contention of the petitioner that respondent nos.5 and 6 have procured the tender without following the essential conditions as contained in clause 15 of the tender conditions. The tender committee, it is submitted could not have relaxed the essential conditions of the tender. It is submitted that in fact in the present case no such relaxation has been consciously granted by any authority of the Board but the tender committee on its own accepted the tenders of respondent nos.5 and 6 by ignoring the essential clause no.15 of the tender conditions.

As regards the respondent no.6 it is submitted that it is nothing more than a paper company as it has never started functioning as informed by the Department of Industry, Government of Bihar, Patna vide RTI reply dated 01.02.2019 as contained in Annexure-P/3. It is submitted that there is no justification for allotment of works to the private respondent nos.5 and 6. The tender committee, it is alleged could not have ignored the essential conditions of tender.

By filing a supplementary affidavit the petitioner has brought on record a copy of the reply dated 04.12.2018 given by the respondent Board in response to the information sought by the petitioner under Right to Information Act. The petitioner has also sought to challenge a communication dated 12.02.2019 as contained in Annexure-P/7 in terms of the prayer of the petitioner in paragraph 1 of the writ application. By Annexure-P/7 the respondent no.6 has been called upon to deposit a sum of Rs.1,26,55,000/- so that he may be allowed to lift the items mentioned in the said letter.

Contention of the Board

A counter affidavit has been filed on behalf of the respondent Board and its authorities who are respondent nos.1 to 4 in the writ application. It is submitted therein that the petitioner cannot argue that the respondent nos.5 and 6 were ineligible in the technical bid and their financial bid could not have been opened. It is submitted that upon consideration of the tender documents of all the tenderers in view of the fact that the undertaking of the paper mills read with declaration of the tenderers substantially and materially complied with clause '15' of the tender, the tender committee declared them eligible. It is further stated that the writ petitioner had also not submitted the agreement strictly in accordance with clause '15' of the tender as the agreement failed to specify that the paper mill shall upon procuring the waste paper from the tenderer shall recycle it, but since it had also submitted a declaration, it was declared eligible. The stand of the respondent Board is that it is not a case of discrimination against any tenderer, rather all the tenderers benefited due to the decision of the tender committee and the Board could obtain the best price for the materials sold. The next contention of the respondent Board is that the decision relating to award of contract is bonafide and is in public interest, therefore, the Court 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. It is submitted that because the Board urgently required space for safe custody of the answer books of Annual Intermediate and Secondary Examination, 2019 as also the examination which would be held in near future in larger public interest is permitted to dispose of the used answer books and permit the successful tenderers to lift the said papers.

One of the submissions of the respondent Board is that so far as VSM paper mill is concerned, the contention of writ petitioner that the undertaking of the paper mill namely VSM paper mill has been given which has not come into existence, according to respondent Board is also not relevant for deciding the tender inasmuch as the tender only required the tenderer to submit an undertaking/agreement/declaration to the aforesaid effect and if any tenderer subsequently indulges in some wrong doing, the respondent Board can definitely take all such legal steps including lodging of FIR against the tenderer which had indulged in mal practice. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **B.S.N. Joshi & Sons Ltd. Vs. Nair Col Services Ltd. & Ors.** reported in **(2006) 11 SCC 548**. Paragraph 66 of the said judgment has been relied upon to canvass the circumstances whereunder this Court can enter into a judicial review.

<u>Stand of the Private Respondents</u>

The private respondents in this case have also appeared and they have filed their respective counter affidavits. It is the stand of the respondent no.5 that he had submitted a duly granted certificate issued by "Indira Paper Mill Pvt. Ltd.", Pathpar, Mahuli, Marchi Link Road, Mahuli Begampur, Patna City in which it was clearly mentioned that they may take supply of waste papers from respondent no.5, if they succeed in BSEB tender and if negotiated successfully with them.

Annexure- 'A' to the counter affidavit of respondent no.5 is the certificate of the mill.

Similarly, the respondent no.6 has also appeared and contested the writ petition by filing a counter affidavit. It is stated in the counter affidavit that the answering respondent is the leading paper merchant for the whole of the State of Bihar and deals with various paper manufacturing companies and in fact one of the paper companies namely 'Kawatra Papers Pvt. Ltd.' vide its agreement dated 15.09.2018 had agreed to purchase the answer books and other waste paper against the tender floated by the respondent Board by using for pulp manufacturing. Annexure- 'A' to the counter affidavit of the respondent no.6 has been described as an agreement-cum-certificate dated 15.09.2018. This Court will deal with the same while considering the submissions of the respondent no.6. It is further submitted that the respondent no.6 has himself established a paper manufacturing company in the name of M/s VSM Paper Private Limited which has been incorporated under the Companies Act, 2013 and has obtained all necessary certificate/registration from different departments of the Government of Bihar with a view to come in production after procuring raw material for manufacturing pulp from the waste paper from the market. In this connection, the respondent no.6 has relied on Annexure-B series of the counter affidavit.

One of the contentions of the respondent no.6 is that this petitioner has in fact submitted a forged and fabricated document allegedly signed by one Ajay Kumar Singh, the then purchase manager of M/s Multiwal Pulp & Board Mills Pvt. Ltd. It is submitted that the respondent no.6 has got e-mail dated 25.02.2019 from the said company showing that Mr. Ajay Kumar Singh is not working with the company since 06.08.2016 and there was no authorization to sign on any document, agreement orders etc. after the above date on behalf of the company. Learned senior counsel for respondent no.6 has relied upon a judgment of the Hon'ble Supreme Court in the case of **Poddar Steel Corporation Vs**. **Ganesh Engineering Works & Others** reported in **(1991) 3 SCC 273.**

<u>Consideration</u>

This Court has heard learned counsel for the parties at length on different dates. In course of hearing it transpired to this Court that there are certain good reasons including environmental reasons behind the incorporation of clause 14 and 15 of the tender conditions which read as under:-

> "14. निविदादाता को इस आशय का घोषणा पत्र (Annexure 'A' के अनुसार) देना होगा कि

(व्यवहृत एवं रद्दी कागजातों के सभी पृष्ठों के मुख्य पृष्ठ मुद्रित भाग का) क्रय किये गये कागजातों को पेपर मिल में Recycling किया जायेगा तथा किसी भी स्थिति में उनका अन्य प्रयोग नहीं होगा।

15. निविदादाता को कागजात की Recycling हेतु पेपर मिल के साथ किये हुए एकरारनामा की सत्यापित प्रति भी आवश्यक रूप से जमा करानी होगी।"

This Court called upon Mr. Satyabir Bharti, learned counsel representing the Board to produce the original records for perusal by this Court to find out as to whether at any point of time there was any conscious decision of the competent authority to amend the tender conditions by taking away the condition as contained in Clause 15 of the tender document. The records was produced earlier and after going through the records, this Court found that at no point of time any decision was taken to either take away clause '15' of the tender document or to relax the said condition to any extent whatsoever. Mr. Bharti, learned counsel for the Board has accepted to the extent that the records at least nowhere shows that clause '15' of the tender document was ever relaxed. Learned counsel has however hasten to add that the Board has awarded the contract to the parties only on being satisfied with the declaration that they would use the purchased answer sheets and other documents for the purpose of recycling and in no way those may be misused.

According to its' stand the Tender Committee accepted the bids of all the tenderers giving same benefits therefore it is not a case of discrimination. This Court is afraid, the counter affidavit of the Board nowhere takes note of the reasons behind bringing clause 14 and 15 could have been ignored only on saying that such ignorance is giving benefits to all the tenderers.

Mr. S.D. Sanjay, learned senior counsel representing the private respondent no. 6 has in fact contested the matter by submitting that on the face of Annexure- 'A' to the counter affidavit of respondent no.6 it may be held that it was a compliance of clause 14 and 15 of the tender conditions. Annexure- 'A' to the counter affidavit of respondent no.6 is in form of a certificate issued by one authorized signatory of Kwatra Paper Mills Pvt. Ltd. On 15.09.2018. The contents of Annexure- 'A' are quoted hereunder for a ready reference:-

> *"This is to certified that answer book and other waster papers purchased through our authorised supplier M/S Shree Shyam Trading Co. Patna Prop. Sanjay Kumar Modi by tender (Bihar School Examination Board, Patna) will be used for the pulp making by us."*

The aforesaid certificate has been described as an agreement in the counter affidavit which this Court is unable to understand and appreciate.

Mr. S.D. Sanjay, learned senior counsel has gone to the extent of arguing that the tender committee has upon being satisfied with the certificate relaxed the conditions mentioned in clause 15 of the tender document and it was within the competence of tender committee. Learned senior counsel has taken this Court through Annexure-B series to demonstrate that the M/S VSM Paper Pvt. Ltd. was incorporated on 16.08.2016 and the respondent no.6 is a proprietorship firm of Mr. Sanjay Kumar Modi who is one of the Directors of the VSM Paper Pvt. Ltd. A copy of the said certificate has been brought on record which reads as under:-

> *" This is to certified that answer book and other waste papers purchased through our authorized supplier M/S Shree Shyam Trading Co. Patna Prop. Sanjay Kumar Modi by Tender (Bihar School Examination Board, Patna) will be used for the pulp making by us."*

This Court after going through the aforesaid certificates is of the considered opinion that the same cannot be said to be an agreement as envisaged under clause 15 of the tender document. A bare reading of clause 15 of the tender document would show that it is a mandatory condition and the intention is very clear when the clause says that ***"एकरारनामा की सत्यापित प्रति भी आवश्यक रूप से जमा करानी होगी।"*** Further this Court finds that in its counter affidavit, in paragraph 5 the respondent no.6 has made a categorical statement that "<u>In this connection, it is stated that in the previous year also the answering respondent was highest successful bidder and was allotted tender in his favour</u>." (emphasis supplied). The respondent no.6 is referring to the tender of the respondent Board in the previous year. Having said so, the respondent no.6 has failed to state that he had in the previous year recycled the purchased papers in the paper mill. In this connection, clause 16 of the tender condition is quoted hereunder for a ready reference:-

> ''16. यदि पूर्व में निविदादाता ने बोर्ड से रद्दी कागजात व्यवहृत उत्तरपुस्तिका की खरीद की है तो पेपरमिल में उसके Recycling किये जाने का प्रमाण पत्र जमा कराना होगा।''

On his own statement the respondent no.6 becomes liable to submit a certificate showing that the purchases made in the previous year from the Board had been used for recycling. The Tender Committee seems to have acted only casually by not verifying from its' record as to whether any of the tenderer had previously succeeded in auction and in case he had succeeded then whether this time while submitting his tender he has enclosed a certificate, in terms of clause '16'. Since this fact has come to the notice of this Court, it has become important to take note of it with reference to the relevant clause '16' of the tender conditions.

In the opinion of this Court having failed to place on record any certificate showing that in previous year also when tender was allotted to the respondent no.6 he had used the answer books for recycling, the respondent no. '6' has failed to show that he had participated in the present bid by complying with the tender conditions. This Court has already held that there are some good reasons behind these conditions incorporated in the tender document, this Court has no hesitation in recording that this was an important aspect of the matter which was required to be looked into by the tender committee, but unfortunately it has been totally ignored.

According to the information available on 'Wikipedia' the recycling of paper is the process by which waste paper is turned into new paper products. It has a number of important benefits besides saving trees from being cut down. It is less energy and water intensive than paper made from wood pulp. It saves waste paper from occupying landfill and producing methane as it breaks down. Around two thirds of all paper products in the US are now recovered and recycled, although it does not all become new paper……". This Court found on the website of the CBSE.NIC.IN the notice inviting tender by CBSE in the year 2016. In its instruction to bidders the tender document of CBSE provides one of the conditions for success in technical bids being "Proof of experience for disposal of raddi paper (Used Answer Book, OMR Sheets and used question booklet) and newspapers for at least one Dept./Ministry of the Govt. of India/Public Sector Undertaking (PSU)/Autonomous Bodies/Universities etc. and other government department (a copy each of at least one order received during each of last 3 years has to be attached).

This Court is referring the aforesaid conditions from the CBSE instruction to bidders only to show the fact that the waste papers are to be disposed off scientifically and the persons who are doing it must be well experienced. It is not a matter of conferment of benefit to a person participating in the bid. The CBSE tender document specifically states in clause 17 that the waste paper being lifted from the Board will be used only for recycling in paper mill or in pulp industry or will be destroyed in an appropriate manner to ensure official secrecy. This aspect of the matter was pointed out by this Court to the learned counsel for the parties in course of hearing. This should however not be taken and mean to understand that the Court is issuing any direction to the BSEB/Board to incorporate any similar condition. What this Court is looking for with the help of the aforesaid conditions present in the CBSE tender document is to highlight the importance of the clause 14, 15 and 16 of the tender document of the BSEB. These conditions could not have been relaxed for ignored by the tender committee of the Board. This also answers the submission of Mr.S.D. Sanjay, learned senior counsel based on the judgment of Hon'ble Supreme Court in the case of Poddar Steel Corporation (supra). This Court has found that the conditions as contained in clause 14, 15 and 16 of the tender document of BSEB are mandatory in nature.

By no stretch of imagination this Court can agree with the submission of Mr. S.D. Sanjay, learned senior counsel representing the respondent no.6 that Annexure- 'A' and the other certificate are the agreement as envisaged under clause '15' of the tender conditions. An agreement is a document which binds the parties, but a bare perusal of the certificate as contained in Annexure- 'A' this Court may easily come to a conclusion that such certificate would lead nowhere.

As regards the status of VSM Paper Pvt. Ltd., this Court finds that no doubt a company has been incorporated as back as on 16.08.2016 and registration has also been done with the Ministry of Micro, Small and Medium Enterprises, Government of India, it is an admitted position that the company has yet not gone in commercial production. Since the said company is not a party before this Court, this Court is not willing to go in much detail as regards the status of the said company. Suffice it to say that the certificate issued by M/S VSM Paper Pvt. Limited is no better than what has been issued by Kawatra Papers Pvt. Ltd. This Court is unable to accept the submission of Mr. Sanjay that it may be taken as an agreement.

So far as the allegations against the petitioner is concerned that he has used forged document, this Court would not go into that aspect of the matter in the present writ application because if that is the case of the private respondent, he may be at liberty to raise this issue before the Board or any other competent forum for an appropriate action and decision with respect thereof in accordance with law.

Learned counsel for the respondent no.5 has also relied on Annexure- 'A' to his counter affidavit which is quoted hereunder by this Court only to show that how a mere paper formality has been done without really adhering to the tender conditions.

The certificate as contained in Annexure-A to the counter affidavit of the respondent no.5 reads as under:-

> *"This is to certify that M/s Jeereshwari Enterprises, Mostafapur, Cantt. Road, Khagaul, Patna the supplier of waste paper, supplies waste paper in our factory as negotiated.*
>
> *We may take the supply of waste paper from M/S Jeereshwari Enterprises, if success in BSEB Tender (Notice no.-PR-198/18) and if negotiated successfully with us."*

It is apparent from a bare reading of the aforesaid certificate that it is a mere eye-wash and no more than that. The use of word 'if negotiated successfully with us' clearly demonstrates that there is no agreement between the respondent no.5 and the said Indira Paper Mill Pvt. Ltd. Neither in the counter affidavit of respondent no.5 nor of respondent no.6 any document has even been enclosed to show that as to who are the authorized signatory and how they were authorised on behalf of the respective companies to issue such certificates which have been brought on record.

The upshot of the aforesaid discussions and findings would lead to a conclusion that the respondent Board and its tender committee have not taken their own tender conditions seriously. The purpose behind clause 14, 15 and 16 of the tender conditions have not been given their due respect. The tender committee could not have ignored those conditions while considering the technical bids of the participants.

Conferment of same benefit to all the successful tenderers by ignoring the most important conditions of tender which are in fact heart and soul of the entire tender process cannot be a ground for this Court to stop itself from reviewing the decision making process in this case. One of the participants (respondent no.6) has himself claimed that he had purchased the answer sheets in the previous year also. In such circumstance, the tender committee should have satisfied itself with the requirement of clause 16 which has not been done. In the whole counter affidavit of the respondent Board no care has been taken to address as to how the Board is ensuring the object and purpose for which clause 14, 15 and 16 have been incorporated in the tender conditions. The counter affidavit of the Board simply gives an impression that they are only concerned with the parting with the papers as waste papers to get available a vacant place and nothing else. The Board is not even keeping in mind the environment issues which are to be taken care of by adhering to clause 14, 15 and 16. It is difficult to accept the contention of the respondent Board that no public interest is involved in not following these conditions of tender which according to this Court are important and in larger public interest.

In the given circumstances, this Court is willing to exercise its power of judicial review under Article 226 of the Constitution of India as the Court is of the considered opinion that the whole decision making process of the respondent Board suffers from violation of the essential conditions of tender which are in larger public interest. In the case of B.S.N. Joshi and Sons Ltd. (supra) what has been held by the Supreme Court in paragraph 66 are reproduced hereunder in respect of the view of this Court that it is a fit case in which this Court should go for judicial review:-

> *"We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :*
>
> *i) If there are essential conditions, the same must be adhered to;*
>
> *ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;*
>
> *iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing*
>
> *iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds*

relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction..

v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.

(vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint."

In result, the impugned letter dated 07.02.2019 by which the respondent nos. 5 and 6 have been held to be successful bidder for the tender notice no.PR-198/18 is set aside.

Since a serious dispute has been raised with regard to the validity of the agreement produced by the petitioner, this Court is not willing to issue a writ of mandamus in favour of the petitioner for award of those items which were allotted to respondent nos.5 and 6. It will be within the domain of the respondent Board to look into the allegations with regard to agreement submitted by the petitioner and take a decision thereon within a period of thirty days from the date of receipt/production of a copy of this order after giving an opportunity of hearing to the petitioner. If the Tender Committee of the respondent Board is satisfied with the agreement of the petitioner, they may take a decision to award the rest of the items in favour of the petitioner. In case, the tender committee comes to a conclusion that the agreement submitted by the petitioner is not a genuine agreement, it will be open for the committee to take an appropriate decision including that for retendering.

It is, however, made clear that the respondent Board should learn from its mistakes and must ensure that while awarding tender to the respective bidders care should be taken that those who had successfully participated in the previous year must produce the certificate that the papers purchased by them were used for recycling and proper certificate in this regard must be produced before the Board. It is expected that now the Board will ensure that those who get the tender in any year should produce a similar certificate of use of answer sheets and other waste papers for recycling within a reasonable period. The reasonable period may be fixed by the Board. This Court is observing this keeping in mind the benefits attached to the recycling method and larger environmental issues.

Care should also be taken to ensure that bonafide participants having an appropriate agreement with them and/or himself engaged in use of waste paper by recycling process should only participate in tender so that they will be using the answer sheets and other papers purchased in auction for recycling and manufacturing of fresh papers. This will be fully in consonance with clause 14, 15 and 16 of the NIT of the Board and the objects sought to be achieved thereunder.

This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	15.03.2019
Transmission Date	