REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3330 OF 2018

(Arising out of SLP (Civil) No. 11967 of 2016)

MUNICIPAL CORPORATION, UJJAIN & ANR. ....Appellants

Versus

BVG INDIA LIMITED AND ORS. .....Respondents

WITH
Civil Appeal No. 3331 of 2018 arising out of SLP (C) No. 17201 of 2016
&
Civil Appeal No. 3332 of 2018 arising out of SLP (C) No. 30776 of 2016

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The Order dated 07.04.2016 passed by the High Court of Madhya Pradesh, Bench at Indore, allowing the Writ Petition No. 4676 of 2015 filed by B.V.G. India Limited, Pune (respondent No.1 in the civil appeal arising out of SLP(C) No. 11967 of 2016), consequently setting aside the contract awarded in favour of

Global Waste Management Cell Private Limited (respondent no. 3 in the civil appeal arising out of SLP(C) No. 11967 of 2016) by Ujjain Municipal Corporation for door to door collection and transportation of Municipal Solid Waste, is the subject matter of these appeals.

3. Heard Shri Vikas Singh, learned senior counsel appearing for Municipal Corporation, Shri Shyam Divan and Shri Guru Krishnakumar, learned senior counsel representing Global Waste Management Cell Private Limited, Shri Kailash Vasdev, learned senior counsel for M/s Eco Save Systems Private Limited (Technical Expert) and Shri Gourab Banerji, learned senior counsel for BVG India Limited.

4. Brief facts leading to these appeals are as under:

Ujjain Municipal Corporation (Appellant in civil appeal arising out of SLP(C) No. 11967 of 2016) had issued Notice Inviting Tender (for short, "NIT") dated 01.05.2015 for the appointment of an agency to carry out "Municipal Solid Waste Door to Door Collection and Transportation" for a period of 10 years in the city of Ujjain. The tender notice was for inviting online bids from the eligible bidders following a two envelope system i.e. one for technical bid and another for financial bid.

The Municipal Corporation had appointed a technical expert in Waste Management Solution viz. M/s Eco Save System Pvt. Ltd. (respondent no. 2 in the civil appeal arising out of SLP(C) No. 11967 of 2016) for scrutinising and evaluating the technical & financial bids. The last date of submission of tender was 21.05.2015. However, a corrigendum was issued and the date of submitting online tenders was extended up to 01.06.2015. The opening of the technical bid was fixed for 02.06.2015 and the opening of the financial bid on 04.06.2015. Three bidders remained for consideration of the award of tender by the Municipal Corporation. The technical bids of the parties were analysed thoroughly by the technical expert and marks were awarded as per the specifications of the NIT.

Clause 1 of the eligibility criteria of the NIT provided that the company must have been registered five years prior to 01.05.2010. Clause 9 of the eligibility criteria of the NIT permitted a consortium of two members, but with the distinct experience requirement on the subject matter. Article III of the NIT specified that technical eligibility would have a weightage of 80% and weightage for financial score was 20%. The marks obtained in the technical evaluation would contribute to 80% and

financial evaluation would contribute to 20% of the final marks for deciding the L1 bidder. The technical parameters which were required to be measured were also indicated in Article III of the NIT. The financial bids of only those bidders who secured at least 60% marks in the technical evaluations would be opened.

The tender was to be awarded based on the final score arrived at by taking the total of the weighted scores of technical and financial evaluations as per the criteria mentioned in the NIT at Article III. Respondent no.1 scored low on technical evaluation inasmuch as it got 58.94 in the weighted score, whereas the successful bidder i.e. respondent no. 3 got a weighted technical score of 67.36. On a final analysis based on technical and financial weighted scores, Global Waste Management Cell Pvt. Ltd. got first rank (L1 bidder) amongst the three bidders by getting the highest score. Hence, it was awarded the contract. Such award of contract was questioned by the unsuccessful bidder (B.V.G. India Limited, L2 bidder) before the High Court by filing the Writ Petition, which came to be allowed by the impugned judgment.

During the pendency of these matters, on 26.04.2016, this Court granted an interim order in favour of the successful bidder,

namely respondent no. 3, staying the operation of the impugned order of the High Court, consequent upon which the successful bidder was awarded the contract and is discharging the duties assigned.

5. The questions involved in these appeals are:

a Whether under the scope of judicial review, the High Court could ordinarily question the judgment of the expert consultant on the issue of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder;

b Whether a bidder who submits a bid expressly declaring that it is submitting the same independently and without any partners, consortium or joint venture can rely upon the technical qualifications of any third party for its qualification;

c Whether the High Court is justified in independently evaluating the technical bids and financial bids of the parties, as an appellate authority, for coming to the conclusion?

6. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by this Court in ***Tata Cellular*** v. ***Union of India,*** (1994) 6 SCC 651, wherein this Court observed 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, there are inherent limitations in exercise of that power of judicial review. The 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.

7. The modern trend points to judicial restraint in administrative action. The Court does not sit as a Court of

Appeal but merely reviews the manner in which the decision was made. 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. 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 a quasi-administrative sphere. However, the decision must not only be tested by the application of the Wednesbury principle of reasonableness, but must also be free from arbitrariness and not affected by bias or actuated by *mala fides*. (See the judgment in the case of ***Master Merin Services (P) Ltd.*** v. ***Metcalfe & Hodgkinson*** (2005) 6 SCC 138).

8. In ***Sterling Computers Ltd.*** v. ***M & N Publications Ltd.*** (1993) 1 SCC 445, this Court held as under:

> **"18.** While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of *Chief Constable of the North Wales Police* v. *Evans* [(1982) 3 All ER 141] where it was said that: (p. 144a)

> "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, *Chief Constable of the North Wales Police* v. *Evans* [(1982) 3 All ER 141] the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution".

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract. But, once the procedure adopted by an authority for purpose of entering into a contract is held to be against the mandate of Article 14 of the Constitution, the courts cannot ignore such action saying that the authorities concerned must have some latitude or liberty in contractual matters and any interference by court amounts

> to encroachment on the exclusive right of the executive to take such decision."

9. In ***Raunaq International Limited*** v. ***I.V.R. Construction Limited***, (1999) 1 SCC 492, this Court dealt with the matter in some detail and held in (para 9) as under:

> "9.....In arriving at a commercial decision considerations which are of paramount importance are commercial considerations. These would be :
> (1) the price at which the other side is willing to do the work;
> (2) whether the goods or services offered are of the requisite specifications;
> (3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;
> (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;
> (5) past experience of the tenderer and whether he has successfully completed similar work earlier;
> (6) time which will be taken to deliver the goods or services; and often
> (7) the ability of the tenderer to take follow up action, rectify defects or to give post contract services."

Whenever the State or public body or the Agency of the State enters into such contract, an element of public law or public

interest may be involved even in such a commercial transaction. In that very judgment, i.e., ***Raunaq International Limited*** (*supra*), the elements of public interest are also noted. It is held thus:

> "10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract; (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work - thus involving larger outlays or public money and delaying the availability of services, facilities or goods, e.g. a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.
>
> 11. When a writ petition is filed in the High court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices

> offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers."

10. The judicial review of administrative action is intended to prevent arbitrariness. The purpose of judicial review of administrative action is to check whether the choice or decision is made lawfully and not to check whether the choice or decision is sound. If the process adopted or decision made by the authority is not *mala fide* and not intended to favour someone; if the process adopted or decision made is neither so arbitrary nor irrational that under the facts of the case it can be concluded that no responsible authority acting reasonably and in accordance with relevant law could have reached such a decision; and if the public interest is not affected, there should be no interference under Article 226.

11. It is well settled that the award of contract, whether it is by a private party or by a public body or by the State, is essentially a commercial transaction. In arriving at a commercial decision, the considerations which are of paramount importance are commercial considerations. These would include, *inter alia*, the price at which the party is willing to work; whether the goods or services offered are of the requisite specifications; and whether the person tendering the bid has the ability to deliver the goods or services as per the specifications. It is also by now well settled that the authorities/State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. The State, its corporations, instrumentalities and agencies have a public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise them only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires

interference, the Court should interfere. (See the judgment in the case of ***Air India Limited*** v. ***Cochin International Airport Limited*** (2000) 2 SCC 617).

12. In ***U.P. Financial Corporation***. v. ***Naini Oxygen & Acetylene Gas Ltd.*** (1995) 2 SCC 754, this Court held that it was not a matter for the courts to decide as to whether the Financial Corporation should invest in the defaulting unit, to revive or to rehabilitate it and whether even after such investment the unit would be viable or whether the Financial Corporation should realise its loan from the sale of the assets of the Company. The Court observed that a Corporation being an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge, it is free to act according to its own right in the discharge of its functions. The views it forms and the decisions it takes would be on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. In such a situation, more so in commercial matters, the Courts should not risk their judgment for the judgments of the bodies to which that task is assigned. The Court further held that:

> "Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

13. In ***U.P. Financial Corporation*** v. ***Gem Cap (India) Pvt. Ltd. & Ors.*** (1993) 2 SCC 299, it was observed that the High Court while exercising its jurisdiction under Article 226 of the Constitution cannot sit as an appellate authority over the acts and deeds of the corporation and seek to correct them, and that the doctrine of fairness, evolved in administrative law, was not supposed to convert the writ Courts into appellate authorities over administrative authorities. It is further observed by this Court that fairness is not a one way street, and fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it.

14. In ***Karnataka State Financial Corporation*** v. ***Micro Cast Rubber & Allied Products (P) Ltd. & Ors.*** (1996) 5 SCC 65 the issue was whether the financial corporation was wrong in rejecting the offer given by the borrower which, after proper evaluation, was considered lower than the offer made by the

purchasers. This Court, while upholding the action of the financial corporation, held that the action of the said financial corporation should not be interfered with if it has acted broadly in consonance with the guidelines.

15. In ***Karnataka State Industrial Investment & Development Corporation Limited*** v. ***Cavalet India Ltd. & Ors.*** (2005) 4 SCC 456, this court after taking into consideration various questions on various subjects laid down the following legal principles, viz.-

> "(*i*) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.
>
> (*ii*) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:
>
> a There is a statutory violation on the part of the Corporation, or
> b Where the Corporation acts unfairly i.e. unreasonably.
>
> (*iii*) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.
>
> (*iv*) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the

wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(*v*) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

*(vi) P*ublic auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(*vii*) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(*viii*) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(*ix*) Reasonableness is to be tested against the dominant consideration to secure the best price.

16. Likewise, in ***B.S.N. Joshi and Sons Ltd.*** v. ***Nair Coal Services Ltd.*** (2006) 11 SCC 548, this Court while summarising

the scope of judicial review and the interference of superior courts in the matter of award of contracts, observed thus:

> "**65**. We are not oblivious of the expansive role of the superior courts in judicial review.
>
> **66**. 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 summarised 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 with 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."

17. In ***Tata Cellular*** (*supra*), this Court referred to the limitations relating to the scope of judicial review of administrative decisions and exercise of powers in awarding contracts, by observing in para 94 thus:

> "(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 negotiation 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."

In that very judgment, this Court proceeded to observe that there are inherent limitations in the exercise of the power of judicial review of contractual powers. This Court observed that the duty to act fairly will vary in extent, depending upon the nature of the cases to which the said principle is sought to be applied. The State has the right to refuse the lowest or any other tender, provided that it tries to get the best person or the best quotation.

18. This Court in ***Delhi Science Forum*** v. ***Union of India*** (1996) 2 SCC 405 observed in para 13 as follows:

> "13.....While exercising the power of judicial review even in respect of contracts entered on behalf of the Government or authority, which can be held to be State within meaning of Article 12 of the Constitution courts, have to address while examining the grievance of any petitioner

> as to whether the decision has been vitiated on one ground or the other. It is well-settled that the onus to demonstrate that such decision has been vitiated because of adopting a procedure not sanctioned by law, or because of bad faith or taking into consideration factors which are irrelevant, is on the person who questions the validity thereof. This onus is not discharged only by raising a doubt in the mind of the court, but by satisfying the court that the authority or the body which had been vested with the power to take decision has adopted a procedure which does not satisfy the test of Article 14 of the Constitution or which is against the provisions of the statute in question or has acted with oblique motive or has failed in its function to examine each claim on its own merit on relevant considerations. Under the changed scenarios and circumstances prevailing in the society, courts are not following the rule of judicial self-restraint. But at the same time all decisions which are to be taken by an authority vested with such power cannot be tested and examined by the court. The situation is all the more difficult so far as the commercial contracts are concerned. Parliament has adopted and resolved a national policy towards liberalisation and opening of the national gates for foreign investors……."
>
> (emphasis supplied)

19. In ***Central Coalfields Ltd.*** v. ***SLL-SML (Joint Venture Consortium)*** (2016) 8 SCC 622, it was observed as follows:

> "38. In G.J. Fernandez v. State of Karnataka [(1990) 2 SCC 488] both the principles laid down in Ramana Dayaram Shetty (1979) 3 SCC 489 were reaffirmed. It was reaffirmed that the party issuing the tender (the employer) "has the right to punctiliously and rigidly" enforce the terms of the tender. If a party approaches a court for an

> order restraining the employer from strict enforcement of the terms of the tender, the court would decline to do so. It was also reaffirmed that the employer could deviate from the terms and conditions of the tender if the "changes affected all intending applicants alike and were not objectionable". Therefore, deviation from the terms and conditions is permissible so long as the level playing field is maintained and it does not result in any arbitrariness or discrimination in Ramana Dayaram Shetty sense.
>
> 47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in Jagdish Mandal followed in Michigan Rubber."
>
> (emphasis supplied)

20. This Court also made an observation on judicial interference in ***Afcons Infrastructure Ltd.*** v. ***Nagpur Metro Rail Corporation Ltd. and Ors.*** (2016) 16 SCC 818, as hereunder:

> "15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

Similar observations were made in the cases of ***Jagdish Mandal*** v. ***State of Orissa and Ors.*** (2007) 14 SCC 517, and ***Meerut Development Authority*** v. ***Assn. of Management Studies*** (2009) 6 SCC 171.

21. Thus, only when a decision making process is so arbitrary or irrational that no responsible authority proceeding reasonably or lawfully could have arrived at such decisions, power of judicial review can be exercised. However, if it is *bona fide* and in public interest, the Court will not interfere in the exercise of power of judicial review even if there is a procedural lacuna. The principles of equity and natural justice do not operate in the field of commercial transactions. Wherever a decision has been taken appropriately in public interest, the Court ordinarily should exercise judicial restraint. When a decision is taken by the

concerned authority upon due consideration of the tender document submitted by all tenderers on their own merits and it is ultimately found that the successful bidder had in fact substantially complied with the purpose and object for which the essential conditions were laid down, the same may not ordinarily be interfered with.

22. As mentioned *supra*, the Ujjain Municipal Corporation with the object of keeping Ujjain city clean wanted to appoint a suitable agency for "municipal solid waste door to door collection and transportation". In that regard, NIT was issued. There cannot be any dispute that urbanization contributes to enhanced municipal solid waste generation; unscientific handling of municipal solid waste degrades the urban environment and causes health hazards. Various studies have been conducted in respect of municipal solid waste management in urban India, and reports have been filed. Despite the same, municipalities are finding it difficult for proper management of municipal solid waste. Municipal solid waste management, a critical element towards sustainable metropolitan development, comprises segregation, storage, collection, relocation, carriage, processing and disposal of solid waste to minimize its adverse impact on the

environment. Unmanaged, municipal solid waste becomes a factor for the propagation of innumerable ailments. Each of the leading municipal corporations/municipalities in India is trying its best to minimize the adverse impact on the environment through planning of its own to manage the solid waste. Certain cities started door to door collection of solid waste through agencies appointed by them. The studies made so far disclose that most cities in India cannot claim 100% segregation of waste at the dwelling unit and on an average only 70% waste collection is observed, while the remaining 30% is again mixed up and lost in the urban environment. Be that as it may, the waste collected will have to be scientifically processed. Environment friendliness, cost effectiveness, and acceptability to the local community are major attributes to achieve an efficient solid waste management system. Waste produced by houses is usually transferred into communal bins. Street sweepings also find their way to community bins. These community waste bins are also used by other essential commercial sectors in the vicinity of disposal bins along with household wastes except where some commercial complexes or industrial units engage municipal authorities for the transfer of their waste to disposal sites on payment. Keeping

in mind the adverse impact of health hazards in case the municipal solid waste is not managed properly, the municipal corporation might plan to float tenders to appoint an agency for municipal solid waste door to door collection and transportation. Necessarily, while choosing the appropriate agency, the afore-mentioned object has to be kept in mind by the municipal corporation. So also, it is the duty of the Courts to keep such factors in mind while deciding the subject matter of allocation of contract by the municipal corporation.

The Solid Waste Management Rules, 2016 (hereinafter referred to as the '2016 Rules') apply to every urban local body etc., and the areas under the control of Indian Railways, airports, airbases, ports, harbours etc. They are also applicable to the notified industrial townships, places of pilgrims, religious and historical importance as may be notified by respective State Governments from time to time. Rule 22 of the 2016 Rules mandate the time frame for implementation. It is specified under Rule 22 of the 2016 Rules that necessary infrastructure for implementation of these rules shall be created by the local bodies and other concerned authorities by directly or engaging agencies within the time frame specified in the said rules. The rule further

mandates that the local bodies and other concerned authorities shall ensure door to door collection of segregated waste and its transportation in covered vehicles to processing or disposal facilities. This task has to be completed within two years from the date of coming into force of the Rules. Prior to these Rules, Schedule II to the Municipal Solid Waste (Management and Handling) Rules, 2000 provided that the municipality shall undertake the house-to-house collection of municipal solid wastes through community bin collection, house-to-house collection, or collection on regular pre-informed timings and scheduling by using the bell-ringing of a musical vehicle without exceeding the permissible noise levels.

23 Shri Vikas Singh, representing the Municipal Corporation contends, that the High Court has erred on four points, (i) Pimpri Chinchwad Municipal Corporation (PCMC) Certificate submitted by BVG India Limited (appellant before the High Court) has been relied upon by the High Court erroneously inasmuch as the purported experience certificate is not that of BVG India Limited but the same was of BVG Kshitij Waste Management Services Private Limited and no information whatsoever was given of the relationship/linkage of BVG Kshitij Waste Management Services

Private Limited with BVG India Limited; (ii) the High Court itself has acted as an appellate authority in evaluating the tenders and has erred in increasing the marks for responsiveness from 5 to 10; (iii)method and formulae for evaluation of financial bid has been wrongly applied by the High Court; and (iv) The High Court has wrongly recorded that the Mira Bhayander certificate produced by the successful bidder, namely, Global Waste Management Cell Private Limited, was subsequent to technical evaluation. Shri Shyam Divan and Shri Guru Krishnakumar, appearing on behalf of the appellants, while supporting the arguments of Shri Vikas Singh, vehemently contended that the High Court practically has stepped into the shoes of the technical expert for coming to a different conclusion by allotting marks inconsistent with the spirit of the tender document and the established principle followed by the experts in the field in such matters.

24. *Per contra*, Shri Gourab Banerji, learned senior counsel argued in support of the judgment of the High Court and contended that the High Court is justified in correcting the errors committed by the technical expert while rejecting the bid of BVG India Limited.

Shri Gourab Banerji, relying upon the financial bid submitted by BVG India Limited, which is the lowest one, contends that the bid of BVG India Limited should have been accepted by the committee inasmuch as the said bid if accepted would safeguard the financial interest of the corporation. In other words, he submits that the work to be carried out, if assigned to BVG, India Limited would be carried out at cheaper rates as compared to the successful bidder.

25. Shri Kailash Vasdev, arguing on behalf of technical expert, contends that the expert has acted in fairest of fair manner and has kept in mind the public interest; one of the Directors of respondent no.2 is an Agro-Environment Scientist and has 22 years of experience in the field of Municipal Solid Waste Management Projects. The technical expert provides Technical Consultancy to various Municipal Corporations all over India, State Governments, Nodal Agencies etc. The technical expert has already successfully commissioned over 77 Municipal Solid Waste Management assignments. The respondent has duly applied its mind while evaluating the technical bids and financial bids. It has meticulously and carefully considered all relevant aspects and given a report. There are no allegations of *mala fides*

or bias against the expert wherever it has carried on its work as an expert. In the matter on hand also, the expert has acted true to the office it held and has not acted contrary to the confidence reposed on it by the corporation and by parties.

26. The contentions of Shri Banerji cannot be accepted, because the bid should be accepted not only based on the outcome of the financial bid, but also based on the evaluation of the technical bid. Moreover, in the matter on hand, the technical bid will have 80% marks whereas the financial bid will have 20% marks. This clearly shows that the municipal corporation has given due importance to the quality and not the financial aspect, keeping in mind the object for which bids are invited. A Constitution Bench of this Court in ***Trilochan Mishra Etc*** v. ***State of Orissa & Ors*** (1971) 3 SCC 153 held that the Government most certainly has a right to enter into a contract with a person well known to it, and especially one who has faithfully performed its contracts in the past in preference to an undesirable or unsuitable or untried person.

27. In ***Ramana Dayaram Shetty*** v. ***International Airport Authority of India*** (1979) 3 SCC 489, this Court spoke of the interpretation of essential conditions in a tender as follows:

> "7…It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use". To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable…."

28. It may also be pertinent to note the judgment of this Court in ***Delhi Science Forum*** (*supra*), where it observed as follows:

> "13……The question of awarding licences and contracts does not depend merely on the competitive rates offered; several factors have to be taken into consideration by an expert body which is more familiar with the intricacies of that particular trade. While granting licences a statutory authority or the body so constituted, should have latitude to select the best offers on terms and conditions to be prescribed taking into account the economic and social interest of the nation. Unless any party aggrieved satisfies the court that the ultimate decision in respect of the selection has been vitiated, normally courts should be reluctant to interfere with the same."
>
> (emphasis supplied)

29. In ***Montecarlo Ltd.*** v. ***NTPC Ltd.*** (2016) 15 SCC 272, this Court highlighted the freedom of the owner to decide in matters of tenders as follows:

> "26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision--making process should clearly show that the said maladies are kept at bay. But where a

> decision is taken that is manifestly, in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints."
>
> (emphasis supplied)

30. In ***Central Coalfields*** (*supra*), the Court held that the employer can decide to even deviate from the NIT:

> "48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."
>
> (emphasis supplied)

31. The reason for allowing public authorities such wide leeway in matters of contracts and tenders was elucidated in ***Sterling Computers*** (*supra*). Therein, the Court observed as follows:

> "12. At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona

> fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive."

32. That the authorities should be given latitude in making a decision on the offers was also observed in ***Sterling Computers*** (*supra*). Therein, the Court observed that any judicial interference amounts to encroachment on the exclusive right of the executive to take a decision.

33. In the matter on hand, admittedly, the successful bidder was more technically qualified and it got more marks. Normally, the contract could be awarded to the lowest bidder if it is in the public interest. Merely because the financial bid of BVG India Ltd. is the lowest, the requirement of compliance with the Rules and conditions cannot be ignored.

34. As rightly contended by respondent no. 3, a statutory authority granting licences should have the latitude to select the best offer on the terms and conditions prescribed. The technical expert in his report categorically stated that, "All the above aspects demand high level of Technicalities and Expertise rather

than just depending on lowest financial price quote for a material transport." As clarified earlier, the power of judicial review can be exercised only if there is unreasonableness, irrationality or arbitrariness and in order to avoid bias and *mala fides*. This Court in ***Afcons Infrastructure*** (*supra*) held the same in the following manner:

> "13. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision."

35. Evaluating tenders and awarding contracts are essentially commercial transactions/contracts. If the decision relating to award of contract is in public interest, the Courts will not, in exercise of the power of judicial review, interfere even if a procedural aberration or error in awarding the contract is made out. The power of judicial review will not be permitted to be invoked to protect private interest by ignoring public interest. Attempts by unsuccessful bidders with an artificial grievance and to get the purpose defeated by approaching the Court on some

technical and procedural lapses, should be handled by Courts with firmness. The exercise of the power of judicial review should be avoided if there is no irrationality or arbitrariness. In the matter on hand, we do not find any illegality, arbitrariness, irrationality or unreasonableness on the part of the expert body while in action. So also, we do not find any bias or *mala fides* either on the part of the corporation or on the part of the technical expert while taking the decision. Moreover, the decision is taken keeping in mind the public interest and the work experience of the successful bidder.

36. As held in ***Tata Cellular*** (*supra*), the terms of the tender are not open to judicial scrutiny as the invitation to tender is a matter of contract. Decisions on the contract are made qualitatively by experts. M/s Eco Save Systems Private Limited [respondent no.2 in Civil Appeal arising from SLP (C) No. 11967/2016] is a project consultant and technical advisor of the Ujjain Municipal Corporation. It provides technical consultancy and advisory services. The documents produced along with the counter affidavit filed by respondent no.2 would show that respondent no.2 is an expert in municipal solid waste management. It is brought to our notice that respondent no.2

has developed a Detailed Project Report (DPR) cum Master Plan of Ujjain City for up-gradation, systematization and abidance of the Municipal Solid Waste Rules, 2000 for the period 2012 to 2042, and the Jawaharlal Nehru National Urban Renewal Mission is stated to have sanctioned 35.88 crores for the purpose. There is no dispute by any of the parties that respondent no.2 is an expert in municipal solid waste management. We also hasten to add that there are no allegations of bias or *mala fides* against the technical committee, though grounds are taken by BVG India Limited before the High Court that the decision of the expert committee is not proper.

37. In the subject NIT, out of the 9 eligibility criteria governing capability, expertise and efficiency of tenderers, criteria 1 to 5 have a graded marking system based on unit-measurement of municipal solid waste quantities handled and the time period of such work, duly supported by certificates mentioned in Annexure-7 of the tender document. All the participants in the tender process have followed the said procedure for technical eligibility evaluation. The eligibility parameters for the participants are prescribed in Article III of NIT and criteria 6 and

7 mentioned therein are based on the submission of relevant information, required data, write ups and disclosures proving the tenderer's expertise, experiences and responsiveness to the NIT. The eligibility criteria is based on "track record of good performance, responsiveness for SWM tender obligations and free of backouts/defaults during last 3 years", for which details have to be furnished by the participants in the process as per Annexures 12 and 13. Furthermore, Annexure 13 is very specific regarding information on litigations, show-cause notices, delays, work suspension etc., and is required in the form of an undertaking duly stamped on a Non-Judicial Stamp Paper of Rs.100/-.

38. Records reveal that the evaluation of technical eligibility was completed by the technical expert between 3.6.2015 and 6.6.2015 and copies were submitted to the Executive Engineer, Ujjain Municipal Corporation. Thereafter, financial bids of all the three technical qualified bidders were opened on 16.06.2015 and financial results were communicated to the project consultant for further analysis. The final scores dated 18.06.2015 arrived at by the technical expert of all the three bidders are as under:

1. **Evaluation of Technical Bid:**

Sl.No.	**Name of Tenderer**	**Marks obtained out of 95**	**On 100% basis**	**After weightage Factor of 80%**	**Rating as Technical score TL**
1.	M/s Global Waste Mgt.	80.00	84.21	67.36	TL1
2.	M/s BVG India Ltd.	70.00	73.68	58.94	TL2
3.	M/s Earth Connect Transway	65.00	68.42	54.73	TL3

Evaluation of financial bid:

Sl.No.	**Parameters**	**Tenderer: M/s Global Waste Mgt.**	**Tenderererer: M/s BVG India Ltd.**	**Tenderererer: M/s Earth Connect Transway**
1.	Price quote Rs./NT of MSW	1710.00	1454.00	1978.00
2.	Marks obtained in out of 20 max	17.00	20.00	14.67

2. **Combined overall score:**

Sl.No.	**Parameters**	**Tenderer: M/s Global Waste Mgt.**	**Tenderererer: M/s BVG India Ltd.**	**Tenderererer: M/s Earth Connect Transway**
5.	Combined	84.36	78.94	69.40

	overall score (Tech + Fin)			
6.	Highest marks = L1	L1	L2	L3

39. Since Global Waste Management Cell Private Limited, i.e., Appellant in Civil Appeal arising from SLP (C) No. 11967 of 2016 secured the highest score, i.e., 84.36, it emerged as the overall eligible bidder for awarding the project as per the terms of NIT. Global Waste Management Cell Private Limited has experience of 10 years and has demonstrated an ability for good responsiveness to tender. Consequently, it was declared L 1 as per the terms of the NIT. As a decision was qualitatively arrived at by the technical expert respondent no. 2, the High Court need not have gone into the merits of such decision as an appellate authority, especially when there was no bias or *mala fide*.

40. It is necessary to note that in Annexure 1 to the NIT at serial no. 11, the bidder was required to set out details of any other company/firm involved as a consortium member to which respondent no.1 – BVG India Limited replied in the negative, which means no other company/firm was involved as a consortium member with BVG India Limited in the process in question. In other words, BVG India Limited submitted the bid on

its own unaccompanied by any of the consortium member. Despite the same, BVG India Limited (respondent no.1) furnished the experience certificate of BVG Kshitij Waste Management Services Private Limited. No information whatsoever was given of the relationship/linkage of BVG Kshitij and respondent no.1 – BVG India Limited. Therefore, reliance placed by the respondent no.1 on the purported experience certificate issued in the name of BVG Kshitij Waste Management Services Pvt. Limited would not come to the help of the respondent no.1 to show its work experience. The Pimpri Chinchwad Municipal Corporation (PCMC) Certificate dated 24.10.2013 is in Marathi and the same discloses that the work order was issued on 2.3.2012. The PCMC Certificate thus neither shows three years' experience of BVG India Limited nor that BVG India Limited was carrying out garbage/waste collection of more than 300 MT per day. Since respondent no.1 has categorically mentioned in its bid under the column "basic information about tenderer" that no other company (either joint venture or consortium) is involved with BVG India Limited, respondent no.1 – BVG India Limited could not have relied upon the purported experience certificate issued in the name of BVG Kshitij Waste Management Services Pvt. Ltd.

Other certificates submitted by the respondent no.1 also did not satisfy the eligibility requirement.

41. Moreover, the certificate dated 21.4.2015 relied upon by the High Court in paragraph 16 of the impugned judgment was not part of the original bid document submitted by BVG India Limited and it was submitted before the High Court for the first time as per annexure P6 of the writ petition. Since such certificate was not part of the original bid document, the High Court was not correct in relying upon such certificate produced by BVG India Limited for the first time before it. The Courts will not permit any of the participants in the tender process to alter or supplement the bid document. In the absence of any document evidencing the experience in the field in question in favour of BVG India Ltd., the appellants are justified in contending that the High Court is not correct in increasing the marks from 5 to 7 under the head of number of years of experience and expertise. So also, the High Court was not correct in increasing the marks from 10 to 15 so far as the quantity of municipal solid waste handled per day through door to door collection is concerned. In para 26 of the impugned order, the High Court has evaluated technical eligibility on its

own as if the appellate authority and has increased the marks of respondent no.1 for experience from 5 to 7 and for quantity handled per day from 10 to 15, as mentioned *supra*. The High Court's observation in para 18 that the certificate issued by PCMC ought to have been considered because it shows the collection of 335 MT per day of municipal solid waste, appears to be incorrect in the light of our discussion made in the afore-mentioned paragraphs. So far as the three documents relied upon by respondent no.1 in respect of CIDCO are concerned, those documents do not state that BVG India Limited was handling 300 MT per day municipal solid waste on door to door basis.

42. The High Court was also not justified in increasing the marks for responsiveness from 5 to 10. The High Court relied upon the documents pertaining to BBMP and PCMC and has increased the marks from 5 to 10. In our considered opinion, the High Court could not have increased the marks for responsiveness as BVG India Limited had suppressed the fact that it had received show cause notices from BBMP and other corporations. The format of Annexure-13 on page 26 of the NIT indicates that the fourth column is reserved for "nature of

litigation" that the tenderer is or has been involved in. Point 4- of the same Annexure-13 states as follows, "In how many of your MSW handling/processing projects, show cause notices have been issued for breach of contract:" BVG India Limited, while submitting Annexure-13, left the litigation column blank, despite the fact that admittedly, 73 show-cause notices were issued to it by the BBMP. The fact that these notices were issued is not disputed by BVG India Limited. It instead claimed that the issuance of show-cause notices does not form part of the litigation.

43. The technical expert, after an objective evaluation of the tender submitted by BVG India Limited, observed that BVG India Limited fell under the "average category". It noted thus:

> vi) Responsiveness to tender and submissions:
>
> The Tender submission by M/s BVG India is very poor, leaving many annexures unfilled up and referring as "information given separately". Not filling up even statutory and financial information in the prescribed formats.
>
> Suppression of information regarding litigations (Annex-13) and track record of Performance (Annex 12). Casualness in

description of Approach and Methodology. In view of the above, the tender gets marks for Average category i.e. **5.00 Marks.**

44. It was clearly stated in the NIT that the tenderer was required to reveal the show-cause notices against it. Despite the specific column pertaining to the same in the bid document, respondent no.1 had left the said column blank. Once there is a specific clause requiring the mentioning of the show-cause notices for the breach of contract, it was incumbent upon the tenderer to provide accurate information. As respondent no.1 has not done so, and has suppressed vital information, respondent no. 2 has rightly allotted it 5 marks for the same. As mentioned *supra*, respondent no.1 submitted an experience certificate issued by the PCMC in favour of one M/s BVG Kshitij Waste Management Services Pvt. Ltd. No material is produced before the Court to show that M/s BVG Kshitij Waste Management Services Pvt. Ltd. is the same as BVG India Limited or that it is a consortium member. In light of specific averment in the bid document by respondent no.1 that there is no other consortium member which has participated in the tender process along with BVG India Limited, the experience certificate issued in

favour of BVG Kshitij Waste Management Services Pvt. Ltd cannot be relied upon to fulfil the eligibility criteria by the BVG India Limited. Respondent no.1 has submitted its bid as an individual bidder and not as a consortium and hence the certificate of a third party could not be considered for the benefit of meeting the technical qualification of respondent no.1. In addition to the same, the respondent no.1 had suppressed 73 show cause notices issued against it by BBMP and District Panchayat, Dadra and Nagar Haveli, Silvasa in respect of the work relating to solid waste management. Despite suppression by the respondent no.1, the technical expert from its own sources gathered information and found that 73 show cause notices were issued by the BBMP and others against respondent no.1, which reveal that respondent no.1 had not shown due diligence in the work of door to door collection of solid waste. Hence, the conclusion reached by the High Court that it was not open for the technical committee to *suo motu* take into consideration the afore-mentioned 73 show cause notices issued against the respondent no.1 while evaluating the technical bid is not correct. The due diligence and experience of the expert consultant ought to have been appreciated by the High Court keeping in mind the

object to which bids were invited. 73 show cause notices issued to respondent no.1 establish that respondent no.1 did not have a good track record and therefore such notices were necessarily taken into consideration by the technical expert. In all fairness, respondent no.1 ought to have disclosed these factors in its bid. In view of the same, in our considered opinion, the High Court was not justified in increasing the marks for responsiveness from 5 to 10.

2. Evaluation of financial bid:

45. The method for evaluation of the financial bid as applied by the High Court is also not proper, and is illogical. As mentioned *supra*, the technical expert, in our considered opinion, has rightly applied the following formula in respect of the bidders so far as financial bids are concerned:

$$\frac{FL1}{FL2/FL3/FL4} \times 20$$

On the other hand, the High Court has redone the evaluating formula in which multiplication of 20 is not adopted:

$$\frac{FL1}{FL2/FL3/FL4}$$

Since the multiplication of 20 is not adopted by the High Court (the same rightly adopted by the technical expert in respect of the bidders), the same has led to unreasonableness and a travesty of justice. The formula adopted by the High Court does not stand to reason at all. The NIT has prescribed the method of calculation of marks for the financial bid. The lowest bid, i.e., FL1 will be granted 20 marks. Other parties will thereafter be given scores by the formula (prescribed in Clause 3.1.3 of Article III of the NIT), i.e., FL1/FL2 x 20 = FL2's financial score. In the matter on hand, FL1 of BVG India Limited was 1454, whereas FL2 was 1710, which was of the successful bidder, i.e., Global Waste Management Cell Pvt. Ltd. Thus, 1454 (FL1) divided by 1710(FL2), multiplied by 20 marks, gives 17 marks to Global Waste Management Cell Pvt. Ltd., so far as the financial bid is concerned. *Per contra*, the High Court has failed to multiply the ratio of financial bids with marks of 20 and thus has erroneously arrived at the score of 0.85 marks instead of 17 marks.

46. The High Court observed in para 25 of the impugned judgment that the technical consultant had wrongly relied upon the certificate dated 16.07.2015 issued by Mira Bhayandar to qualify the successful bidder as the technical expert had

prepared the technical evaluation report on 6.6.2015. The observation of the High Court was that, on the date of technical evaluation, the certificate issued by Mira Bhayandar was not in existence. Records reveal that the technical expert had not relied upon the certificate dated 16.07.2015. The said certificate was an additional document submitted for the first time before the High Court along with the reply affidavit as per annexures R4 to R6. Whereas, the document submitted in respect of Mira Bhayandar by the successful bidder was a certificate dated 15.1.2015, which was much prior to the technical evaluation report dated 6.6.2015. The same is clear from Annexure R-21 of the counter affidavit filed on behalf of the successful bidder. Therefore, the observations and the findings of the High Court in respect of the certificate issued by Mira Bhayandar are not correct.

47. In the matter on hand, we do not find either the decision-making process or the decision to be arbitrary or irrational.

48. The authority concerned is in the best position to find out the best person or the best quotation depending on the work to

be entrusted under the contract. If a bidder had faced a number of show-cause notices from various municipal corporations in the matter of non-performance of door to door collection of garbage etc., the Court cannot compel the authority to choose such undeserving person/company to carry out the work. Ultimately, the public interest must be safeguarded. The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously and effectively. The public would also be interested in the quality of work undertaken. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work. Lethargy or tardiness in collecting door to door garbage on a day-to-day basis would definitely lead to increase collection of garbage on the roads and public properties, which leads to health hazards and also reduces the cleanliness of the city. Since the public is directly interested and would be affected if the work entrusted is not carried out appropriately, and as the technical expert has found that respondent no.1 would not be a suitable company to be entrusted the work inasmuch as it had faced 73 show-cause

notices from different Municipal Corporations, the High Court could not have interfered with the decision taken by the authority. In our considered opinion, the High Court has ignored the element of public interest involved in the matter.

49. As aforementioned, unless the Court concludes that the decision making process or the decision taken by the authority bristles with *mala fides*, arbitrariness, or perversity, or that the authority has intended to favour someone, the Constitutional Court will not interfere with the decision-making process or the decision.

50. Thus, the questions to be decided in this appeal are answered as follows:

(a) Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder;

(b) A bidder who submits a bid expressly declaring that it is submitting the same independently and without any

partners, consortium or joint venture, cannot rely upon the technical qualifications of any 3rd Party for its qualification.

(c) It is not open to the Court to independently evaluate the technical bids and financial bids of the parties as an appellate authority for coming to its conclusion inasmuch as unless the thresholds of *mala fides*, intention to favour someone or bias, arbitrariness, irrationality or perversity are met, where a decision is taken purely on public interest, the Court ordinarily should exercise judicial restraint.

51. In view of the above, the impugned judgment and order of the High Court cannot be sustained and the same is set aside.

52. The instant appeals are allowed. There shall be no order as to costs.

.....J.
(Ranjan Gogoi)

.....J.
(R. Banumathi)

.....J
(Mohan M. Shantanagoudar)

New Delhi,
March 27, 2018.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3330 OF 2018

(Arising out of SLP (Civil) No. 11967 of 2016)

MUNICIPAL CORPORATION, UJJAIN & ANR. ....Appellants

Versus

BVG INDIA LIMITED AND ORS. ....Respondents

WITH
Civil Appeal No. 3331 of 2018
(Arising out of SLP (C) No. 17201 of 2016)
&
Civil Appeal No. 3332 of 2018
(Arising out of SLP (C) No. 30776 of 2016)

O R D E R

MOHAN M. SHANTANAGOUDAR, J.

After pronouncement of the judgment learned counsel for the appellant while mentioning in the court drew the attention of the Court to typographic mistake, that while allowing Civil Appeal Nos. 3330 of 2018 and 3331 of 2018, the dismissal of the Civil Appeal No. 3332 of 2018 filed by BVG India Limited is not

mentioned in the said judgment, therefore, the same is to be corrected. On verification, we find that the said submission is justified.

Hence, Para 52 of the judgment (operative portion) is to be substituted by the following:

Accordingly, it is made clear that Civil Appeal Nos. 3330 of 2018 and 3331 of 2018 are allowed. Consequently, Civil Appeal No. 3332 of 2018 filed by BVG India Limited stands dismissed. There shall be no order as to costs.

The aforementioned clarification shall be noted by the Registry in the main judgment and necessary corrections may be effected in the judgment.

.....J.
(Ranjan Gogoi)

.....J.
(R. Banumathi)

.....J
(Mohan M. Shantanagoudar)

New Delhi,
March 28, 2018.