Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.370/2024

Date of Decision: 09.06.2025

Sterlite Interlinks Limited ….. Petitioner

Vs.

1. The State of Meghalaya represented by its Principal Secretary, Energy Government of Meghalaya, Shillong-793001.

2. Meghalaya Power Transmission Corporation Limited, through its Chief Engineer (Transmission) having office at Lumjingshai, Short Round Road, Shillong-793001.

3. Meghalaya Power Transmission Corporation Limited, through its Director (Transmission) having office at Lumjingshai, Short Round Road, Shillong-793001. ….. Respondents

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner:	Mr. R. Jain, Sr. Adv with Mr. S.K. Hassan, Adv Ms. M. Rahman, Adv
For the Respondents:	Mr. A. Kumar, AG with Mr. A. Kharwanlang, Addl.Sr.GA Ms. S. Laloo, GA

JUDGMENT AND ORDER

By way of the present writ petition, the petitioner a public limited company is assailing the letter dated 03.04.2024 issued by the respondent No.3 whereby, a Letter of Award dated 29.11.2023 issued in favor of the petitioner had been cancelled. The cancellation had been impugned as being wholly arbitrary and in violation of Article 14 of the Constitution of India.

2. The brief facts are that the petitioner was the highest bidder for selecting the exclusive operating partner for the Optical Ground Wire (OPGW) Passive Fibre Infrastructure of MePTCL pursuant to a tender dated 25.09.2023 and a Letter of Award (LOA) dated 29.11.2023, was issued in favour of the petitioner. It is the case of the petitioner that once the LOA had been issued in his favour, the same constituted a formation of a contract and the parties therefore, are understood to have entered into a binding contract as per the terms contained therein. The cancellation of the LOA is thus being assailed on the ground that it is arbitrary, irrational and illegal.

3. Mr. R. Jain, learned senior counsel assisted by Mr. S.K. Hassan, learned counsel on behalf of the petitioner has submitted that clause 5.1. of the LOA itself, has amounted to a formation of contract by the parties, inasmuch as, the clause has specifically provided that notwithstanding anything stated in the bidding documents, the LOA would constitute the formation of the contract. The learned senior counsel submits that it is well settled law, that a tender is an invitation to offer, the bid is an offer and a Letter of Intent is an acceptance, and

these factors being satisfied it was not open to the respondent No.3 to cancel the said LOA. He further submits that as per clause 5.2 of the LOA, the parties were required to enter into a formal contract agreement within 15 days of issuance of the LOA, and an Infrastructure Asset Management Agreement (IAMA) as per the proforma given in the schedule to the tender was required to be executed between the parties.

4. At that stage, he submits though some issues with regard to the amendment to the draft of the IAMA, which was to do with the maintenance of all optical fibre assets of the Corporation had arisen the same, was agreed to by the petitioner by way of a letter dated 11.12.2023, along with a request to close the agreement and to proceed with the execution of the IAMA.

5. Learned senior counsel submits that even though the petitioner had completed all formalities under the bidding documents and the LOA, the respondent No.3 failed to execute the IAMA for a long time and inspite of further oral request, there was no response from the respondent No.3. It is submitted that though meetings were held with the Chairman of the respondent No.3 on revenue/billing sharing process, however, the signing of the IAMA was not done, and instead the impugned communication was received whereby, the unilateral decision

of the respondent No.3, for cancellation of the LOA was intimated to the petitioner. Learned senior counsel has reiterated the submission that clause 5.1 of the LOA creates a binding contract on the acceptance of the petitioner's bid by the respondent No.3. The cancellation it has been urged, is in violation of the tender terms as given in clause 3.25.1 which make it incumbent upon the respondent No.3, to award a contract to the successful bidder and also clause 3.28 which designates the LOA as a contract document, making its unilateral cancellation impermissible.

6. It has also been contended that the action of the respondent No.3 is a clear breach of its contractual obligations and the failure to execute the IAMA without justification, and by disregarding the binding terms and conditions, has resulted in the violation of Article 14 of the Constitution by a public authority such as the respondent No.3. In support of his arguments, learned senior counsel has placed reliance on the following judgments:

> ***(i) Subodh Kumar Singh Rathour v. The Chief Executive Officer & ors*** in ***Civil Appeal No.6741 of 2024***
>
> ***(ii) Mihan India Ltd. v. GMR Airports Ltd & ors*** in ***Civil Appeal No.3699 of 2022***

7. In reply, the learned Advocate General has submitted that the writ petition is not maintainable and is liable to be dismissed at the threshold

itself, inasmuch as, the petitioner by seeking to invoke Article 226 of the Constitution, is asking for a specific performance of the LOA conditions, when it is a settled law that this Court would not issue a writ for specific performance. It is then submitted that there exists no contractual obligation between the parties and there is no violation of any legal or fundamental rights of the petitioner, as the tender process is terminable, apart from the fact that the petitioner has raised grounds which are factual and that such disputed facts cannot be decided in a writ petition. Learned Advocate General has also submitted that the tender documents contain an arbitration clause and disputes between the parties can thus be settled by arbitration. On the grounds raised by the petitioner, learned Advocate General has taken this Court to the clauses contained in the LOA and submits that certain pre-conditions were to be fulfilled before any contractual obligation arises between the parties. In this context, reference was made to clause 3.25.4 which provides for the condition for signing of the IAMA, clause 3.2.10 which provides that the IAMA would be signed and executed between the respondent No.3 and the successful bidder and clause 3.4.2, which provides that the detailed terms specified in the IAMA shall have an overriding effect. Other clauses mentioned by the learned Advocate General are clauses

3.26.2 and 3.26.4 which provide for the submission of performance guarantee within the time limit of 15 days after the issuance of the LOA. The project therefore, he submitted, could not proceed without the signing of the IAMA and the contract between the parties can only arise from the signing of the IAMA, as this document has spelt out the entire set of obligations between the parties. He also submits that the fact is that as no IAMA had been executed between the parties, no contractual obligation therefore exists.

8. It is then contended by learned Advocate General that the letter of award, is a notice of acceptance of the bid of the petitioner and that clause 3.2.14, provides that the Letter of Award shall mean the official notice issued by the authority notifying the bidder that their bid has been accepted and further clause 3.25.2, also gives the respondent No.3 the right to accept or reject any bid or to annul the bidding process at any time prior to the award of the contract. It has also been submitted that unless the essential conditions provided in the contract are fulfilled, there is no clear unambiguous acceptance of conditions.

9. The cancelling or the decision to cancel the letter of award it is submitted, was taken by the Board of Directors of the respondent No.3 after considering the financial viability of the project, where it was

found that considering the capital expenditure and the break-even period for recovering such investment, the project would not be financially viable. It is then submitted that the decision was taken after a complete financial perspective of the project have been concluded which shows that monetization of OPGW of respondent No.3 was less favourable and there being no consensus between the parties on the material aspect of the contract, no contractual obligation can be said to have taken effect.

10. Learned Advocate General has also contended that all the alleged grievances raised in the writ petition are purely contractual in nature which makes the writ petition not maintainable. He concludes his arguments by submitting that the Court cannot create or make a contract but can only interpret a contract between the existing parties and that the prayers of the writ petitioner if granted, would amount to a formation of contract when in fact the LOA contemplates execution of a further agreement. In support of his arguments, learned Advocate General has relied upon the following judgments:

(i) State of Gujarat vs. Meghji Pethraj Shah Charitable Trust (1994) 3 SCC 552

(ii) Kerala SEB vs. Kurian E. Kalathil (2000)6 SCC 293

(iii) M/s RKI India Limited vs. State of Meghalaya & Ors. passed in WP(C)No. 116 of 2024 decided on 20.08.2024.

11. In rejoinder reply to the arguments advanced by the learned Advocate General, the learned senior counsel for the petitioner submits that the writ is not seeking specific performance and even if alternative remedy is available, constitutional courts can exercise the jurisdiction when the action of the respondents is arbitrary, unfair and contrary to the principles of natural justice. It is also submitted that though the IAMA is an integral part of the contract document however, under the terms of the bid document at clause 3.28, it has been stated that the term contract documents shall also include the IAMA. It is also contended that nowhere in the scheme or tender documents, the Board of the respondent No.3 is empowered for cancelling the awarded contract or there are any powers have been vested for the examination of the evaluation criteria.

12. Heard learned counsel for the parties.

13. Shorn of all other details, the core issue in the instant writ petition is with the justifiability and legality of the cancellation of the LOA for selecting the exclusive operating partner of the OPGW Passive Fibre Infrastructure of the respondent No.3. As per the facts recorded above, it is undisputed that the writ petitioner had emerged as the highest bidder and had been issued the LOA dated 29.11.2023, wherein certain

conditions had been given which required fulfillment for the work to commence. Though the bid of the writ petitioner was accepted and it was given therein at paragraph 5.1 of the LOA itself, that the LOA will constitute a formation of the contract, what transpired thereafter, has been assailed by the petitioner on the ground that there was no scope for the respondent No.3 to retract or to annul the process once the bid has been accepted and the LOA had been issued. However, to the mind of this Court before embarking upon examining the details of the dispute that led to the cancellation of the tender process, what needs to be examined first, is the nature of dispute, and whether it calls for the interference by this Court in exercise of extraordinary powers under Article 226 of the Constitution.

14. It is first to be noted that the dispute has emanated from a commercial transaction that though the petitioner contends is a binding contract, the respondent No.3 on the other hand, refutes the same by maintaining that the contract agreement was yet to be executed fully and as such, it was open to the respondent No.3 to annul the same. At this stage, it would therefore be expedient to refer to the general conditions of contract contained in the tender dated 25.09.2023, wherein at clauses

3.25.1, 3.25.2, 3.25.3, 3.25.4, 3.26.2, 3.26.4 and 3.26.5, it has been provided as follows:

"**3.25.1. Award Criteria**

The MePTCL will award the Contract to the Successful Bidder, whose bid has been determined to be responsive and has been determined as the highest evaluated bid, complying with the criteria as set out under this RFP/Tender. The MePTCL's evaluation of Bidders and decision to award shall be the final. The MePTCL shall be the sole judge in this regard. In case the required price to award the contract is not viable, then MePTCL may explore auction methods for rationalization of floor price.

3.25.2 MePTCL's right to accept any bid and to reject any or all bids

(a) The MePTCL reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the MePTCL's action.

3.25.3 Notification of award

(a) Prior to the expiration of the period of bid validity and extended validity period, if any, the MePTCL will notify the Successful Bidder in writing by registered letter or cable or telex or FAX, to be confirmed in writing by registered letter, that its bid has been accepted.

(b) The notification of award will constitute the formation of the Contract.

(c) Upon the Successful Bidder's furnishing of performance guarantee pursuant to relevant Clause the MePTCL will promptly notify each unsuccessful Bidder and will discharge its bid security pursuant to Clause 3.13.

3.25.4 Signing of contract and other documents pursuant thereto

(a) At the same time as the MePTCL notifies the Successful Bidder that its bid has been accepted, the MePTCL will send the Successful Bidder the detail of Award, incorporating all agreement between the parties.

(b) Within 15 (Fifteen) days of receipt of the details of Award, the Successful Bidder shall sign the same with date and return it to the MePTCL along with a clear acceptance letter.

(c) The Successful Bidder will prepare the Infrastructure Asset Management Agreement as per prescribed proforma and the same will be signed within fifteen (15) days of notification of Award, or within such period as extended beyond fifteen (15) days as agreed amongst the Parties but nor more than thirty (30) days after the notification of award. Failure to do so may be construed as the Successful Bidder’s default.

3.26.2. The Performance Guarantee will be given by the Successful Bidder at the time of signing of the IAMA and the same shall be kept valid until the termination or expiry of the IAMA.

3.26.4 The Successful Bidder shall have to submit the Performance Guarantee within 15 days from the date of issuance of Letter of Award (LoA). Extension of time for submission of beyond 15 days and up to 60 days from the date of issue of LoA may be given by MePTCL, who is competent to sign the contract agreement. However, a penal interest of 15% per annum shall be charged for the delay beyond 30 days, i.e. from 31st day after the date of issue of LoA. In case the Bidder fails to submit the requisite Performance Guarantee even after 60 days from the date of issue of LoA, the contract shall be terminated duly forfeiting EMD and other dues, if any, payable against the contract. The failed Bidder shall be debarred from participating in re-tender for that work.

3.26.5 The Performance Guarantee shall be submitted by the successful Bidder after the LoA has been issued, but before signing of the contract agreement. The IAMA agreement should be signed within 15 days after the issue of LoA and the

> Performance Security shall also be submitted within this time limit. This Performance Guarantee shall be initially valid up to the stipulated tenure of the IAMA date plus 60 days beyond that. In case, the time limit for handing over of assets gets extended, the contractor shall get the validity of Performance Guarantee extended to cover such extended time for handing over of assets plus 60 days."

15. A perusal of the above noted clauses clearly shows the steps necessary that have to be performed or fulfilled, for the execution of contract agreement and it is relevant to note that the same involves different stages with the final stage being the submission of performance guarantee by the successful bidder after the LOA had been issued but before signing of the contract agreement, and that further the IAMA agreement should be signed within 15 days after issuance of the LOA.

16. Coming to the Letter of Award dated 29.11.2023, it is also important to note the conditions contained therein at clause 5.0 with regard to the contract agreement. For the sake of convenience, the same is reproduced hereinbelow:

> "**5.0 Contract agreement:**
>
> 5.1 Notwithstanding anything stated anywhere in the bidding document, this LOA will constitute the formation of the Contract.
>
> 5.2 You shall enter into a formal contract agreement with MePTCL within 15 (fifteen) days of issuance of this Letter of Award of contract. The Infrastructure Asset Management Agreement (IAMA) shall be prepared by you in two copies and completed at your cost as per the proforma given in Schedule 04 of the bidding documents."

17. From what has been noted above, as the Letter of Award had been issued to the petitioner, the logical progression of the matter would have been the execution of the IAMA as per the terms contained in the LOA, which would constitute the finalization of a formal contract agreement between the parties. However, the same having not crystalized, this Court has to take into account the fact that the dispute has arisen from a commercial engagement, wherein, disputed facts have been raised. The availability of alternative remedy as given in the General Conditions of Contract (GCC) at clause 3.18.1 by way of arbitration cannot be simply overlooked. Further, though not admitted by the petitioner, it is apparent from the pleadings itself, that enforcement of a contract or specific performance, is being sought for in a writ proceeding. The only aspect to the mind of this Court to warrant any interference therefore, would be if the action of the respondent was without jurisdiction, against all set norms, arbitrary on the face of the record, absurd or has resulted in the violation of Article 14 of the Constitution or other fundamental rights of the petitioner.

18. The Hon’ble Supreme Court in a series of judgments had laid down principles for the purposes of judicial review of contractual disputes and distinction that was to be drawn in appreciating such

matters, founded on the touchstone of arbitrariness or unreasonableness. It has also been held that there is no absolute bar to the maintainability of writ petitions even in contractual matters, but the courts were to examine the issue as to whether it has some public law character attached to it. In this context, it is not necessary to underline the fact that the State is bound to act fairly and reasonably even in matters of entering into a contract, as has held in the case of ***Subodh Kumar Singh Rathour v. The Chief Executive Officer & ors*** in ***Civil Appeal No.6741 of 2024*** while relying the decision in ***M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd & ors*** reported in ***(2023) 2 SCC 703*** with regard to exercise of writ jurisdiction at a stage prior to the award of contract. It has been held that action under writ court will lie even at the stage prior to the award of the contract, when such award is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind. For the purpose of this discussion, it would be expedient to quote paragraphs 55(v) and 56 in *Subodh Kumar Singh Rathour's* case (supra) wherein, the instances and relevant considerations for exercise of writ jurisdiction are given:

"55(v) **Other relevant considerations for Exercise of Writ Jurisdiction:-** Lastly, this Court held that the courts may entertain a contractual dispute under its writ jurisdiction where **(I)** there is any violation of natural justice or **(II)** where doing so would serve the public interest or **(III)** where though the facts are convoluted or disputed, but the courts have already undertaken an in-depth scrutiny of the same provided that it was pursuant to a sound exercise of its writ jurisdiction. The relevant observations read as under:-

> *"xiii. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.*
>
> *xiv. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.*
>
> *xv. Violation of natural justice has been recognized as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. [See Sudhir Kumar Singh and Others (supra)].*

56. What can be discerned from the above is that there has been a considerable shift in the scope of judicial review of the court when it comes to contractual disputes where one of the parties is the State or its instrumentalities. In view of the law laid down by this Court in ***ABL*** (supra), ***Joshi Technologies*** (supra) and in ***M.P. Power*** (supra), it is difficult to accept the contention of the respondent that the writ petition filed by the appellant before the High Court was not maintainable and the relief prayed for was rightly declined by the High Court in exercise of its Writ jurisdiction. Where State action is challenged on the ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article 14 of the Constitution and not act in an arbitrary, unfair and

unreasonable manner. This is the constitutional limit or their authority. There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. With the rise of the Social Service State more and more public-private partnerships continue to emerge, which makes it all the more imperative for the courts to protect the sanctity of such relations."

19. In another judgment that has been pressed into service by the petitioner namely, ***Mihan India Ltd. v. GMR Airports Ltd & ors*** in ***Civil Appeal No.3699 of 2022***, in paragraphs 42, 43 and 46 it has been held as follows:

"42. Now, as per the material available and discussed hereinabove, it is clear that the appellants were aware of the procedure which is being adopted. After completion of the bidding process, GAL was declared as a selected bidder on offering highest revenue share and on issuance of LoA, it has been declared as a concessionaire and at the stage of execution of Concession Agreement, all these formalities are not relevant and it amounts to arbitrary exercise of the power by the authorities which is not permissible under law. The said approach is fortified with the view taken in the judgment of this Court in ***Union of India and others v. Dinesh Engineering Corpn. and another (2001) 8 SCC 491***, wherein while dealing with the rejection of bid of the respondent therein by Railways in a tender floated for procurement of certain items of spare parts for use in GE governors, this Court has held that power to reject bids cannot be exercised arbitrarily merely because Railways has the power to do so. Any arbitrary exercise of power to reject bids has been held violative of Article 14. Paragraphs 15 and 16 of the aforesaid judgment are relevant and reproduced thus:

> “15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept or not to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer. No such ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any or every offer that may be made by the writ petitioner while responding to a tender that may be called for supply of spare parts by the Railways. Mr. Iyer, learned senior counsel appearing for the EDC, drew our attention to a judgment of this Court in Sterling Computers Ltd. etc. v. M/s. M & N Publications Ltd. (1993 1 SCC 445) which has held: (SCC p. 455, para 12)
>
>> “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."

> 16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with the EDC in the supply of spare parts to be used in the governors by the Railways, ever since the year 1992, and during all this while we are told the Railways are making purchases without any tender on a proprietary basis only from the EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non- application of mind, hence, it has to be quashed as has been done by the High Court."

43. Bare perusal of the above stated case-law in light of the facts of the instant case makes it clear that merely having the power of rejection of bids does not entitle authorities to exercise the said power arbitrarily. While discussing the applicability of Clauses

2.16.1, 3.3.1 and 3.3.5, it is made clear that in pre-bid procedure prior to acceptance, the bidding process may be annulled otherwise after issuance of LoA, the annulment cannot be done. The authorities further acted arbitrarily relying upon the GoM's letter dated 16.03.2020 in reference to PMIC's meeting dated 14.10.2019 in which re-tendering was directed. Re-tendering was not possible without ignoring the bid already accepted. Therefore, the order of annulment has been directed applying Clause 2.16.1 arbitrarily.

46. In view of the above, it is apparent that in government contracts, if granted by the government bodies, it is expected to uphold fairness, equality and rule of law while dealing with contractual matters. Right to equality under Article 14 of the Constitution of India abhors arbitrariness. The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied. It is said that the constitutional guarantee as provided under Article 14 of the Constitution of India demands the State to act in a fair and reasonable manner unless public interest demands otherwise. It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest. It is specified that using a ground of public interest or loss to the treasury cannot undo the work already undertaken by the authority."

20. The facts of the quoted case though not entirely similar has again emphasised the requirements or obligations that have to be kept in mind in such matters of contracts granted by government bodies.

21. In the backdrop of the decisions aforementioned and principles as enunciated reverting back to the facts and circumstances of the instant case. firstly, it is to be noted that though the LOA at clause 5.1 provided

that the same would constitute the formation of the contract, the same, however, was contingent upon the fulfillment of other conditions such as the execution of the IAMA within 15 days of the issuance of the LOA. In the considered view of the Court, this action of annulment of the contract, would have to be examined keeping in mind the attendant circumstances that warranted this action from the part of the respondent No.3 which however, rested on disputed facts. The issuance of a writ of mandamus, therefore, to direct issuance of the work order would amount to granting the prayer for specific performance of the contract by the petitioner even in the face of the availability of alternative remedy.

22. Another aspect that is to be noted is that though undeniably the petitioner was the highest bidder and the cancellation of the contract being attributed to a decision of the Board of respondent No.3 due to unviability of financial consideration, it is not a case that there has been any initiation for re-tendering of the work but in fact it amounts to an abandonment of the tender process. Further, though the impugned cancellation has been challenged on the ground of arbitrariness, it must be kept in mind that a contract is a commercial transaction and award of contracts are commercial functions, and as held in the case of ***Jagdish Mandal v. State of Orissa*** reported in ***(2007) 14 SCC 517***, at para 22

thereof which is reproduced hereinbelow, principles of equity and natural justice stay at a distance.

> "22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:
>
> i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;
>
> OR
>
> Whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached;'

> ii) Whether public interest is affected.
>
> If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

23. Further, in the case of ***State of Gujarat v. Meghji Pethraj Shah Charitable Trust*** (supra), cited by the respondents at Para 22, it has been held as follows.

> "22. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (audi alteram partem) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was – as has been repeatedly urged by Shri Ramaswamy – a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g. where the matter is governed by a non-statutory contract."

In the considered view of this Court, it cannot be held to be an action which is arbitrary or unreasonable or otherwise patently illegal to call for interference by this Court in exercise of writ jurisdiction.

24. In conclusion, taking into account the entire facts and circumstances, the instant writ petition is held to be not maintainable on the grounds as placed and the petitioner, is therefore, at liberty to initiate

appropriate proceedings and seek alternate remedies as available in the agreement through arbitration, or before the civil courts for damages or losses, if any, has been suffered by it.

25. The writ petition accordingly stands closed and disposed of.

Chief Justice (Acting)

Meghalaya
09.06.2025
"D. Thabah-P.S."