

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.21972 OF 2024

Between:

GKR Infracon (India) Private Limited & Another

... Petitioners

And

Telangana Mineral Development Corporation Limited (TGMDC) (A
Telangana State Government Undertaking) and Others

... Respondents

JUDGMENT PRONOUNCED ON: 28.10.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes.
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

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... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioners : Sri Tarun G.Reddy

^Counsel for Respondent Nos.1 & 2: Sri B.Ramulu, learned standing counsel

^Counsel for Respondent No.3 : Sri B.Chandrasen, learned senior designated counsel representing learned counsel on record.

? Cases Referred:

- i) 2004 Vol.3 SCC, page 553.
- ii) 2022 SCC Online SC 574
- iii) 1993 Vol.1 SCC, page 445,
- iv) 1994 Vol.6 SCC, page 651,
- v) in (2010) 9 SCC 496
- vi) (1990) 3 SCC 280,
- vii) (2015) 8 SCC 519,
- viii) 1978 (1) SCC 405

ix) The judgment of the Division Bench of High Court for the State of Telangana at Hyderabad, dated 13.08.2024 in a batch of Writ Appeal Nos. 953, 954, 956, 957, 958, 959, 960, 961, 962, 970, 971, and 973 of 2024.

ix) (2022) 2 SCC 1,

x) (1980) 4 SCC 1,

xii) Recent judgment of the Apex Court in Bansidhar Construction Private Limited Vs. Bharat Coking Coal Limited & Others, dated 04.10.2024 in Civil Appeal No. 11005 of 2024

xiii) (2023) 2 SCC 703.

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.21972 OF 2024

ORDER:

Heard Sri Tarun G. Reddy, learned counsel appearing on behalf of the petitioners, Sri B.Ramulu, learned Standing Counsel for State Mineral Development Corporation Limited appearing on behalf of the respondent Nos. 1 & 2 and Sri B.Chandrasen Reddy, learned senior designated counsel representing Sri. B.Vamshidhar Reddy, learned counsel appearing on behalf of the respondent No.3 on record.

2. The petitioners approached the Court seeking prayer as under in W.P.No. 21972 of 2024 :

"...to issue any appropriate writ, order, or direction more particularly one in the nature of Writ of 'Mandamus':

a) Declaring the action of Respondent No. 1 and 2 in unlawfully and illegally rejecting the tender bid of the Petitioners (Bid No. 881966-0) in respect of tender no TGMDC/S&M/DSLT/JB/2024/225 dated 14.06.2024 floated by Respondent No. 1 herein for desiltation of 10,80,000 MT of sand from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District without assigning any reasons as being arbitrary, illegal and unconstitutional, apart from being in violation of principles of natural justice

and in contravention of the law laid down by the Honble Supreme Court and set aside the same and

b) Consequently, set aside the award of tender no TGMDC/S & M/DSLT/JB/2024/225 dated 14.06.2024 floated by Respondent No. 1 herein for de-siltation of 10,80,000 MT of sand from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District in favour of Respondent No 3 and;

c) Direct Respondent No. 1 and 2 to call for fresh bids in respect of tender no TGMDC/S and M/DSLT/JB/2024/225 dated 14.06.2024 floated by Respondent No 1 herein for desiltation of 10,80,000 MT of sand from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District and pass....."

3. This Court vide its order, dated 12.08.2024 observed as under:-

"The finalisation of the subject tender shall be subject to the result of the present Writ Petition."

4. The case of the petitioners, in brief, as per the averments made by the petitioners in the affidavit filed by the petitioners in support of the present Writ Petition is as under:-

a) It is the case of the petitioners that, the 1st petitioner herein is a private limited company incorporated in the year 2012. Thereafter, the 2nd respondent herein had floated tender no. TGMDC/S & M/DSLT/JB/2024/225 dated 14.06.2024 for de-siltation of 10,80,000 MT of sand from Brahmanapalli/2024/2 sand reach at JayashankarBhupalpally District and that the said tender was floated for a contract value of approximately Rs.10,47,60,000/-. In the view of the same, the petitioners' company herein submitted its bid for the said tender on 01.07.2024 vide bid no. 881966-0 along with all the required documents.

b) Further, as per Clause 3.2 of the tender document issued by the Respondent No.1, one of the qualifications for a potential bidder was that the bidder was required to have satisfactorily completed at least one work of Mining/Civil/irrigation work of value not less than Rs.8,38,08,000/- involving excavation and removal of any earth/mineral including sand in State/Central Government undertakings during the last three years. Accordingly, the petitioners' company has been successfully executing two coal drilling and excavation contracts with the Singareni Collieries Company Limited. Thus, by the date of

submission of the petitioners' bid, the petitioners' company was fully in compliance with Clause 3.2 of the tender document.

c) While things stood thus, the 1st Respondent released the bid results, wherein the petitioners' company's bid was rejected stating that "Clause 3.2 of the Tender Conditions were not fulfilled." The said rejection of the petitioners' bid was arbitrary and unlawful and the same was rejected without assigning any reasons. Further, the respondents herein have wrongfully awarded the tender in favour of Respondent No. 3. Therefore, aggrieved by the action of Respondent Nos. 1 and 2 in rejecting the petitioners' bid, the present Writ Petition is filed.

5. PERUSED THE RECORD:

A. Counter affidavit filed by respondent Nos.1 & 2 in present W.P.No.21972 of 2024 and in particular para Nos. 9 and 12 read as under:-

9. It is respectfully submitted that, to the above notification for desiltation of sand total (22) bidders are participated in the tender for Brahmanapalli-2 sand reach under e-procurement including petitioner i.e., M/s. GKR Infracon (India) Pvt.Ltd.

12. It is most respectfully submit that while scrutinization of the tender documents for the technical bids **the**

committee found deficit in the petitioner tender documents with regard to eligibility, the same has been informed/communicated to the petitioner through proper channel. The same has been sent through e-procurement website. The technical bids were finalized hence principle of natural justice duly complied. As the Corporation adopting this method for finalization of technical bids.

B. Counter affidavit filed by respondent No.3 in W.P.No.21972 of 2024 and in particular para Nos.6 and 10 are extracted hereunder:-

6. In reply to para Nos.1 and 2, it is submitted that the petitioner has alleged the respondent Nos.1 and 2 arbitrarily and unlawfully rejected the tender bid of the petitioner in respect of tender No.TGMDC/S&M/DSLT/JB/2024/225, dt. 14.06.2024, the same is false and baseless. It is pertinent to mention here that all the bids required to be submitted through the online portal along with all required documents as part of the bidding process. In the event if a bidder fails to meet the criteria outlined in the tender document, the online portal automatically does not accept the bid. In the instant case of the petitioner when the bid was submitted online, the portal displayed that "Clause 3.2 of the Tender conditions not fulfilled", hence the bid of the petitioner was not accepted. The respondent No.3 has submitted its bid online on 22.06.2024 vide bid No.874506-0 along with all the required documents. The

respondent No.3 having qualified with all the terms and conditions including clause 3.2 has been emerged as successful bidder. Accordingly, a letter of intent vide Ref No.TGMDC/GM (S&M)DSLTT/JB/Brah/2024/2/354,dt.10.07.2024 was issued by the respondent No.1 in favour of the respondent No.3.

10. In reply to para Nos. 15 to 19, it is submitted that it is false and baseless to state that the respondent No.1 herein has rejected the tender bid submitted by the petitioner without assigning any reasons or passing a reasoned order. As stated earlier, all the bids required to be submitted through the online portal along with all required documents as part of the bidding process. In the event if a bidder fails to meet the criteria outlined in the tender document, the online portal automatically does not accept the bid. In the instant case of the petitioner when the bid was submitted online, the portal displayed that "Clause 3.2 of the Tender conditions not fulfilled", hence the bid of the petitioner was not accepted. The petitioner contended that the contractor with Singareni collieries is executed in phases, with each phase representing a separate segment of work. While the petitioner states that they have completed work worth Rs.290 crores, the total value is Rs.367 crores. **The petitioner himself admits that the contract with Singareni Collieries has not been fully completed, with part of the work is still pending. The work done certificate dated 12.05.2023 clearly states the project status a "Work in Progress" and the same is**

contradicting clause 3.2 of the tender document, which requires bidders to have satisfactorily completed at least one relevant project.

C. Rejoinder filed by the petitioners to the counter affidavit filed by respondent Nos.1 & 2 and in particular para Nos. 9, 11, and 12 are extracted hereunder:-

9. It is respectfully submitted that the contents of Paras 11 and 12 are denied as being wholly false and incorrect. That Respondent No.1, in an attempt to justify the unlawful rejection of the Petitioners' tender bid, is now contending that the petitioners have not completed any work in the last three years and that the experience certificates relied upon by the petitioners reflect that the work is still in progress. This justification, which is being provided for the first time in the counter affidavit, is in violation of the settled principles of law **that any action undertaken or order passed by a statutory authority must stand on the reasons originally assigned at the time of the said action, and such reasons cannot be supplemented subsequently much less by way of a counter affidavit filed in Court.**

11. It is respectfully submitted that this Hon'ble Court, while exercising jurisdiction under Article 226 of the Constitution of India, is primarily concerned with examining the legality and validity of the decision-making process undertaken by the statutory authority. It is a

settled principle of law that in judicial review, the Court does not delve into the merits or soundness of the decision itself but is rather concerned whether the decision was arrived at in accordance with due process and settled principles of law.

12. Pertinently, Court will not entertain disputed questions of facts or enter into an inquiry as to whether the Petitioners met the tender requirements or not and are only concerned whether the decision-making process culminating in the rejection of the petitioners' tender bid is in conformity with the settled principles of law. **In the present case, Respondent No.1 and 2's failure to provide any reasons for the rejection of the Petitioners' tender bid, as required under law, is an action that is patently illegal and arbitrary and as such is required to be set aside by this Hon'ble Court.**

D. Rejoinder filed by the petitioners to the counter affidavit filed by the Respondent No.3 and in particular para Nos.13 and 14 are extracted hereunder:-

13. It is respectfully submitted that the contents of para 5 are denied for want of knowledge, and Respondent No.3 is put to strict proof thereof. However, it is pertinent to note that, as per the averments in the said paragraph, **Respondent No.3 was issued a Letter of Intent on 10.07.2024, whereas the information made available**

by Respondent No. 1 and 2 on the e- procurement website indicates that Respondent No. 3 was declared the successful bidder and awarded the tender only on 19.07.2024. Therefore, when the award of the tender in favour of Respondent No. 3 took place on 19.07.2024, no Letter of Intent could have been issued in favour of Respondent No. 3 on 10.07.2024. This discrepancy in the award of tender in favour of Respondent No. 3 fortifies the lack of transparency and the arbitrary and illegal manner in which the entire tender process has been conducted by Respondent No. 1 and 2 and the entire tender process is tainted by malafides and impropriety rendering such actions arbitrary, illegal and unconstitutional. In this regard, the Hon'ble Supreme Court in a catena of decisions has categorically held that any government largess must be based on the principles of fairness, transparency, good faith and accountability. Notwithstanding the fact that the rejection of the Petitioners' bid is in itself a nullity in law and in violation of Principles of Natural Justice, even the bid now awarded lacks the fundamental principles governing government largess, rendering the entire bid process arbitrary, illegal and a nullity in law.

14. It is respectfully submitted that the contents of Para 6 are denied as being wholly false and incorrect. The bid submitted by the Petitioners is in conformity with all the tender requirements including Clause 3.2 of the

tender conditions. However, the Petitioners' tender bid came to be rejected by Respondent No. 1 and 2 without assigning any reasons, in complete contravention of the Principles of Natural Justice and the law laid down by the Hon'ble Supreme Court of India. Notwithstanding the same, Respondent No. 3, having no role in the decision-making process, lacks any authority in law to comment on the Petitioners' bid or its compliance with the tender conditions.

6. Instructions to Bidders issued by the Government of Telangana, Telangana Mineral Development Corporation Limited in respect of Tender No.TGMDC/S&M/DSLT/JB/2024/225, dated 14.06.2024, pertaining to the work of De-siltation of sand 10,80,000 MT from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District from submergence area in the Village limits of Brahmanapalli of Mahadevpur Mandal on right side of Medigadda Barrage at Jayashankar Bhupalpally District.

A. Clause 3.2 of the tender conditions pertaining to the qualifications of the Bidder is extracted hereunder:-

3. Qualification of Bidder	3.2 The bidder shall have satisfactorily completed at least one work of Mining/Civil/Irrigation
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	<p>work of value not less than Rs.8,38,08,000/- (Rupees Eight crore Thirty Eight lakhs Eight thousand only) (80% of value of work involving excavation and removal any Earth/mineral including sand in State/Central Government Undertakings during the last three (3) years.</p>
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B. Current Tender Details:

Tender ID	519663	Enquiry/IFB/ Tender Notice Number	TGMDC/S&M/DSL T /JB/2024/225, Dt.14.06.2024
Name of Work	De-siltation of Sand 10,80,000 MT from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District from submergence area in the village Limits of Brahmanapalli of Mahadevpur mandal on right side of Medigadda Barrage at jayashankar Bhupalpally district and transport same quantity of sand to nearby stockyard (Bidder has to identify stock yard near to motorable road) and again loading of sand into the Lorries at Stockyard.	Tender Category	Products
Tender Type	OPEN-NCB	Estimated Contract Value	104760000
Bid Submission Closing Date	01/07/2024 5:00 PM	Tender Evaluation Type	Item Wise

**Select Schedule: DESLTATION SAND FROM
BRAHMANAPALLI 20242**

Item awarded Details:

Item name	Awarded to	Awarded on
De-siltation of sand from Brahmanapalli/2024/2	Sudhakara Infratech Private Limited	19/7/2024 2:19PM

7. The learned Standing Counsel appearing on behalf of the 1st and 2nd respondent placed reliance on the averments made in the counter affidavit filed on behalf of the respondent Nos.1 and 2 (referred to and extracted above) and contended that the present case warrants no interference.

8. The learned senior designated counsel appearing on behalf of the 3rd respondent put forth his submissions on the basis of the counter affidavit filed on behalf of the 3rd respondent (referred to and extracted above) and relied upon the following judgments:-

i) The judgment of the Supreme Court, dated 21.06.2019 in Silppi Constructions Contractors Vs. Union of India and another reported in (2020) 16 SCC 489 at para Nos. 30 to 34.

ii) The judgment of the Bombay High Court, dated 22.06.2021 in Sai Agencies, Jalna Vs. State of Maharashtra and Others. Reported in 2021 SCC Online Bom 13960 at para Nos. 25 to 37.

iii) The judgment of the Supreme Court, dated 09.12.1998 Raunaq International Ltd. Vs. I.V.R. Constructions Ltd. and Others reported in (1999) 1 SCC 492

iv) The judgment of the Bombay High Court dated 28.10.2010 in Reliance Infrastructure Ltd., Mumbai and Others Vs. Maharashtra State Road Development Corporation Ltd. Mumbai and others reported in 2010 SCC OnLine Bom 1679 at para Nos. 52 to 62.

v) The judgment of the Bombay High Court dated 02.09.2024 in Just Universal Pvt.Ltd. Vs. State of Maharashtra, Through Food, Civil Supplies, and Consumer Protection Department and Others reported in 2024 SCC OnLine Bom 2848 at para Nos. 63 to 81.

DISCUSSION AND CONCLUSION :-

DISCUSSION:

9. It is the specific case of the petitioners that the 1st petitioner herein is a Private Limited Company incorporated in the year 2012 under the provisions of the Companies Act, 1956 and in response to the floating of tender Notification No.TGMDC/S &M/DSLT/JB/2024/225, dated 14.06.2024 for de-siltation of 10,80,000 MT of Sand from Brahmanapalli/2024/2 Sand reach at Jayashankar Bhupalpally District by the 1st respondent herein the petitioners' company submitted its bid for the said tender on 01.07.2024 Vide bid No.881966-0 and also submitted all the necessary documents as required under the Rules as per Clause 3.2 of the tender document issued by respondent No.1. One of the qualifications for a potential bidder was the said bidder was required to have satisfactorily completed at least one work of Mining /Civil/Irrigation work of value not less than that of Rs.8,38,08,000/- involving excavation and removal of any earth/mineral including sand in State/Central Government undertakings during the last three (03) years and as on the date of submissions of petitioners' bid, the petitioner's company was in satisfactory compliance with Clause 3.2 of the tender document issued by Respondent

No.1 and also in full compliance with all the requirements as stipulated by Respondent No.1 for being awarded the tender floated by Respondent No.1 and was hopeful of being declared as the successful bidder but however on the online portal maintained by Respondent No.1 rejection of the bid of the petitioners were undertaken and it was displayed on the said online portal that “Clause 3.2 of the Tender Conditions not fulfilled” (referred to and extracted above)

SCHEDULE DETAILS:

Schedule name	Desiltation sand from Brahmanapalli20242	Schedule Description	De-siltation of Sand 10,80,000 MT from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District from submergence area in the Village limits of Brahmanapalli of Mahadevpur Mandal on right side fo Medigadda Barrage at Jayashankar Bhupalpally District and transport same quantity of sand to nearby stockyard.
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Technical Parameters List:

Parameter name	Parameters Description	Operator	Date Type	Min Value	Max Value	Parameter Value	Fulfilled	Remarks	Evaluation comments
As per tender document	As per tender document	-	Text	0.00	0.000	Yes	Yes	As per Tender Docs	Clause 3.2 of Tender conditions not fulfilled

10. This Court takes note of the fact as borne on record and as extracted above that as per respondents own online portal information pertaining to Technical parameters list, the Remarks clearly project the petitioners' company as qualified as per eligibility criteria of Tender Documents but the Evaluation comments however indicate Clause 3.2 of Tender Conditions as not fulfilled by the petitioners.

11. Clause 21.1 relating to clarification of Bids reads as under:-

21.1 Clarification of Bids	21.1 To assist in the examination, evaluation, and comparison of Bids, the Employer may, at the Employer's discretion, ask any bidder for clarification of the Bidder's Bid, including breakdown of unit rates. The request for clarification and the response shall be in writing,
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	but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with ITB Clause 23
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12. A bare perusal of Clause 21.1 (referred to and extracted above) indicates that it was at the Respondents discretion to ask the petitioners for Clarification of petitioner's bid and seek petitioner's assistance in the examination, evaluation and comparison of Bids and curiously though the remarks had clearly indicated the petitioners as qualified as per eligibility criteria of Tender documents but unilaterally without issuing any notice to the petitioners, without seeking any clarification from the petitioners the Evaluation Committee vide its comments held that petitioners' bid failed to fulfil clause 3.2 of Tender Conditions.

13. This Court opines that the plea at para No. 12 of the counter affidavit filed by respondent No.1 that while scrutinization of the tender documents for the technical bids, the Committee found deficit in the petitioners'

tender documents with regard to eligibility to the petitioners and the same had been communicated to the petitioners through e-procurement website and hence, principles of natural justice had been complied with by the respondent-Corporation (TGMDC) is in fact contrary to the remarks indicated on e-procurement website pertaining to the Technical parameters, list which in fact specifically indicated that the petitioners had been qualified as per eligibility criteria of Tender documents hence, the said plea of the Respondent-Corporation is untenable and hence, rejected.

In so far as all the pleas put-forth by the 3rd respondent is concerned, this Court opines that petitioners' grievance even as per the prayer sought for by the petitioners in the present Writ Petition is confined to the actions of Respondent Nos.1 and 2 who are the tender inviting Authorities and not respondent No.3.

14. This Court also takes note of the fact as borne on record that at para No.3 of the counter affidavit filed by the respondent No.3, it is clearly averred that a letter of intent vide Ref.No.TGMDC/GM(S&M)DSLT/ JB/Brah/ 2024/2/354, dated 10.07.2024 was issued by the

respondent No.1 in favour of the respondent No.3 accepting the offer of Respondent No.3 and awarding the tender to the respondent No.3 as per the terms and conditions of the tender document, whereas the information made available by respondent Nos.1 and 2 on the e-procurement website filed as material document at page No.132 of the material papers filed by the petitioners' in support of petitioner's case indicates that de-siltation of sand from Brahmanapalli/2024/2 as having been awarded to the 3rd respondent on 19.07.2024 at 2:19 PM.

15. This Court opines that this discrepancy in the award of tender in favour of the 3rd respondent, the copy of letter of intent vide Ref No.TGMDC/GM (S&M)DSLT/JB/Brah/2024/2/354, dated 10.07.2024 filed by the 3rd respondent being contrary to the information on the e-procurement website, that the subject tender had been awarded to the 3rd respondent on 19.07.2024 at 2:19 PM fortifies the lack of transparency in the tender process conducted by Respondent Nos.1 and 2.

16. The Government Bodies/Instrumentalities are expected to act in absolutely fair, reasonable and transparent manner, particularly in the award of contract which however has not been followed in the present case by the respondents. This Court opines that the plea of the learned Senior Designate Counsel appearing on behalf of the 3rd respondent that this Court may not interfere more particularly in view of the fact that letter of intent vide Ref No.TGMDC/GM (S&M)DSLTT/JB/Brah/2024/2/354, dated 10.07.2024 had been issued in favour of the 3rd respondent cannot be accepted since this Court opines that the said decision of the 1st Respondent Corporation is contrary to their own information displayed on their website indicating the contract as having been awarded to the 3rd respondent on 19.07.2024 at 2:21 pm and hence, the said action of the 1st respondent corporation indicates lack of transparency in the conduct of entire tender process.

17. The Apex Court in the Judgment, dated 18.12.2003 reported in 2004 Vol.3 SCC, page 553 in ABL International Limited and another Vs. Export Credit Guarantee

Corporation of India Limited and others, observed as under:

"53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution."

18. The Apex Court in the Judgment, dated 09.05.2022 reported in 2022 SCC Online SC 574 in Mihan India Limited Vs. GMR Airports Limited and others, while observing that the Government contract granted by the Government bodies must uphold fairness, equality and rule of law while dealing with the contractual matters, it was observed in para 50 as under:

"50. 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.

19. The judgment of the Apex Court, dated 12.01.1993 in Sterling Computers Limited Vs. M/s.M&N Publications Limited and others reported in 1993 Vol.1 SCC, page 445, the Apex Court dealing with the scope of judicial review of Award of Contracts 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."**

20. The judgment of the Apex Court, dated 26.07.1994 in Tata Cellular Vs. Union of India reported in 1994 Vol.6 SCC, page 651, this Court had laid down certain principles for the judicial review of Administrative action.

"94. The principles deducible from the above are:

(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 negotiations 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. Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

21. The judgment of Apex Court in Kranti Associates Private Limited & Another v. Masood Ahmed Khan & Others, dated 08.09.2010, reported in (2010) 9 SCC 496 and in particular at para No. 47, it is observed as under :

Para 47 : *Summarising the above discussion, this Court holds:*

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*

(f) *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

(g) *Reasons facilitate the process of judicial review by superior courts.*

(h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

(i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) *Insistence on reason is a requirement for both judicial accountability and transparency.*

(k) *If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making,

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons, for the decision is of the essence and is virtually a part of "due process".

In the present case as borne on record, the petitioners' bid was rejected by simply stating "Clause 3.2 of Tender Conditions not fulfilled", without assigning reasons as to how the petitioners' bid is not in conformity with the said clause, in contravention of principles of natural justice and the law laid down by the Hon'ble Apex Court, the decision of the Respondent Authority apparently as borne on record lacks justification for rejection of the petitioners' bid.

22. Full Bench of the Apex Court judgment, dated 30.04.1990 in M/s. Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Limited and Others, reported in (1990) 3 SCC 280 at the relevant para Nos. 9 and 10, it is observed as under:-

9. The question which still remains to be answered is as to whether when the highest offer in response to an invitation is rejected would not the public authority be required to provide reasons for such action? Mr. Dwivedi has not asked us to look for a reasoned decision but has submitted that it is in the interest of the public authority itself, the State and everyone in the society at large that reasons for State action are placed on record and are even communicated to the persons from whom the offers came so that the dealings remain above board; the interest of the public authority is adequately protected and a citizen knows where he stands with reference to his offer. What this Court said in *State of U.P.v. Raj Narain & Ors.*, [1975] 4 SCC 428 may be usefully recalled here:

"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its

bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public."

10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves long stakes and availability of reasons for action on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. **The submission of Mr. Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be**

made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so.

23. In the judgment of Apex Court in Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Others, dated 14.05.2015 reported in (2015) 8 SCC 519 the relevant para Nos. 21 and 24 read as under:-

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of

recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'.

24. The principles have sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

24. The judgment of Apex Court dated 02.12.1977 in Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi And Others reported in 1978 (1) SCC 405 and relevant para No.8 is extracted hereunder:-

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented

by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji [AIR 152 SC 16] "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Orders are not like old wine becoming better as they grow older:

25. The Division Bench judgment of High Court of the State of Telangana, dated 13.08.2024 passed in WA.Nos. 953, 954, 956, 957, 958, 959, 960, 961, 962, 970, 971, and 973 of 2024 and relevant para No.19 is extracted hereunder:-

19. So far as decision making process is concerned, as noticed above, it runs contrary to the principles of natural justice. There is no finding as to why the approvals given by AICTE and JNTUC were to be discarded. No reason is assigned as to why the particular

claim of the appellants could not find favour with the respondents. The 'reasons' are held to be heart beat of 'conclusion'. In absence of 'reasons', 'conclusion' cannot sustain judicial scrutiny (see M/s.Kranti Associates Pvt.Ltd. v. Masood Ahmed Khan)[(2010) 9 SCC 497]

26. The judgment of the Apex Court in Punjab State Power Corporation Ltd. and Another Vs. EMTA Coal Ltd. and Others, dated 21.09.2021 reported in (2022) 2 SCC 1 and relevant para No. 33 is extracted hereunder:-

33. It could thus be seen that while exercising powers of judicial review, the Court is not concerned with the ultimate decision but the decision making process. The limited areas in which the court can enquire are as to whether a decision making authority has exceeded its powers, committed an error of law or committed breach of principle of natural justice. It can examine as to whether an authority has reached a decision which no reasonable Tribunal would have reached or has abused its powers. It is not for the court to determine whether a particular policy or a particular decision taken in the fulfilment of that policy is fair. **The court will examine as to whether the decision of an authority is vitiated by illegality, irrationality or procedural impropriety. While examining the question of irrationality, the court will be guided by the principle of Wednesbury [(1948) 1 KB 223 (CA)]. While applying the Wednesbury principle, the court will examine as to whether the**

decision of an authority is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

27. The Judgment of the Apex Court in Kasturi Lal Lakshmi Reddy represented by its partner Shri Kasutri Lal, Ward No.4, Palace Bar, Poonch, Jammu And Others Vs. State of J&K, dated 09.05.1980 reported in (1980) 4 SCC 1 and relevant para Nos. 10 and 15 are extracted hereunder:-

10. It was pointed out by this Court in "[Ramana Dayaram Shetty v. The International Airport Authority of India](#) ors. [(1979) 3 SCC 489, 512] that with the growth of the welfare state, new forms of property in the shape of Government largess are developing, since the Government is increasingly assuming the role of regulator and dispenser of social services and provider of a large number of benefits including jobs, contracts, licences, quotas, mineral rights etc. There is increasing expansion of the magnitude and range of Governmental functions, as we move closer to the welfare state, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with

that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other. In regard to the persons who may be recipients of such largess.

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in [Ramana D. Shetty v. International Airport Authority of India & Ors.](#) (supra) that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. **The law is now well established that the Government need not deal with anyone. but if it does so, it must do so fairly without discrimination and without unfair procedure.** Where the Government is dealing with the public, whether by way

of giving jobs or entering into contracts or granting other forms of largess. the Government cannot act arbitrarily at its, sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in [Art. 14](#). The Court referred to the activist magnitude of [Art. 14](#) as evolved in [E. P. Royappa v. State of Tamil Nadu \(supra\)](#) and [Maneka Gandhi's case \(supra\)](#) and observed that it must follow:

"as a necessary corollary from the principle of equality enshrined in [Art. 14](#) that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground."

This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure.

28. The Judgment of the Apex Court in **Banshidhar Construction Private Limited Vs. Bharat Coking Coal Limited & Others**, dated 04.10.2024 in Civil Appeal No. 11005 OF 2024 and relevant para No.21 is extracted hereunder:-

21. There cannot be any disagreement to the legal proposition propounded in catena of decisions of this Court relied upon by the learned counsels for the Respondents to the effect that the Court does not sit as a Court of Appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contracts. However, it is equally well settled that the decision of the government/ its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by malafides. Government bodies being public authorities are expected to uphold fairness, equality and public interest even while dealing with contractual matters. Right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process and that the entire

bidding process is carried out in absolutely transparent manner.

29. The Apex Court in the judgment, dated 16.11.2022 reported in (2023) 2 SCC 703 in M.P.Power Management Company Limited Jabalpur Vs. Sky Power Southeast Solar India Private Limited and Others at para 67 and 75 observed as under:-

67. [ABL](#) marks a milestone, as it were, in the matter of the superior court interfering in contractual matters where the State is a player even after the contract is entered into. A petition was filed under [Article 226](#) wherein the respondent which was incorporated under the [Companies Act](#) repudiated an insurance claim made by the appellant-writ petitioner. This Court undertook an elaborate discussion of the earlier case law. We find that this Court dealt with several obstacles which were sought to be posed by the respondent. They included disputed questions of facts being involved, availability of alternate remedy, and the case involving entertaining a money claim. This court went on to hold as follows:

“27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

75. We would, therefore, sum up as to when an act is to be treated as arbitrary. The court must carefully attend to the facts and the circumstances of the case. **It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness.** If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to state action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. **A total non- application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action. A wholly unreasonable decision which is little different from a perverse decision under the Wednesbury doctrine would qualify as an arbitrary decision under [Article 14](#).** Ordinarily visiting a party with the consequences of its breach under a contract may not be an arbitrary decision.

30. This Court opines that the judgments relied upon by the learned senior designated counsel appearing on behalf of the respondent No.3 do not apply to the facts of the present case, in view of the fact that the present subject issue pertains to the adjudication of the decision making process specifically challenging the rejection of the petitioners' bid without assigning any reason, and the petitioners admittedly is not challenging the Award of Tender in favour of respondent No.3, but is challenging the rejection of petitioners' bid without assigning any reason, since it is the specific case of the petitioners that petitioners' bid had been rejected despite being in conformity with the tender conditions, as indicated in the information displayed on the online portal of the respondents pertaining to Technical Parameters List that the petitioners' company qualified as per eligibility criteria of Tender documents and the respondents having even failed to seek clarification from the petitioners as provided under Clause 21.1 of the clarification of the bids unilaterally and whimsically rejected petitioners' tender.

CONCLUSION:-

31. This Court opines that the tender bid of the petitioners' was rejected by Respondent Nos. 1 and 2 without assigning any reasons and reasons are sought to be assigned by respondent No.1 by way of its counter affidavit which cannot be looked into or considered by this Court.

32. This Court while exercising jurisdiction under Article 226 of the Constitution of India is primarily concerned with examining the loyalty and validity of the decision making process undertaken by the statutory Authority. It is a settled principle of law that in judicial review, the Court does not delve into the merits or soundness of the decision itself but is rather concerned whether the decision was arrived at in accordance with due process and the settled principles of law.

33. This Court in the light of the discussion arrived at para Nos.9 to 30 is of the firm opinion that the decision making process in the present case runs contrary to principles of natural justice and fortifies the lack of

transparency in the tender process conducted by respondent Nos. 1 and 2 as explained at para Nos. 14, 15 and 6 of the present judgment, this Court in exercise of power under Article 226 of the Constitution is basically concerned with the validity and correctness of the decision making process and admittedly as borne on record in the present case no reason is assigned as to why the petitioners' bid had been rejected on the ground that the petitioner failed to fulfil Clause 3.2 of the Tender Conditions without assigning reasons as to how the petitioners' bid is not in conformity with the said clause, when it is the specific case of the petitioners that the petitioners fulfilled the said clause 3.2 of the Tender conditions and to that extent the Remarks on the online portal of the respondent website pertaining to Technical Parameters List also indicated that the petitioners qualified as per pre-eligibility criteria of tender documents and the respondents for reasons best known to them failed to exercise their discretion and call for clarification from the petitioners on the subject issue as provided under condition No.21.1 of the Tender Conditions when the exercise of Evaluation of Tenders was undertaken by

the Respondent Authority and the said action by Respondent Nos.1 and 2 clearly substantiates the case of the petitioners that the respondent Nos.1 and 2 had conducted the entire tender process hastily, malafidely, illegally in clear violation of principles of natural justice, principles of fairness, transparency, good faith and accountability.

34. Taking into consideration:-

- a) The aforesaid facts and circumstances of the case.
- b) The submissions put-forth by all the learned counsel on record.
- c) Duly considering the averments made in the counter affidavit filed by the 1st respondent and 3rd respondent (referred to and extracted above)
- d) The interim orders of this Court dated 12.08.2024 passed in favour of the petitioners in the present Writ Petition.
- e) Clause 21.1 of the Tender Conditions relating to Clarification of bids.
- f) The Remarks as indicated pertaining to Technical Parameters list on online portal which are in favour of the petitioners.

- g) The view of the Apex Court in the various judgments (referred to and extracted above)**
- i) The judgment of the Apex Court in ABL International Limited and another Vs. Export Credit Guarantee Corporation of India Limited and others” reported in 2004 Vol.3 SCC, page 553.**
 - ii) The judgment of the Apex Court in Mihan India Limited Vs. GMR Airports Limited and others, reported in 2022 SCC Online SC 574**
 - iii) The judgment of the Apex Court in Sterling Computers Limited Vs. M/s.M&N Publications Limited and others reported in 1993 Vol.1 SCC, page 445,**
 - iv) The judgment of the Apex Court in Tata Cellular Vs. Union of India reported in 1994 Vol.6 SCC, page 651.**
 - v) The judgment of the Apex Court in Kranti Associates Private Limited & Another v. Masood Ahmed Khan & Others, reported in (2010) 9 SCC 496**
 - vi) The judgment of the Full Bench of the Apex Court, dated 30.04.1990 in M/s. Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Limited and Others, reported in (1990) 3 SCC 280,**

vii) The judgment of the Apex Court in Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Others, dated 14.05.2015 reported in (2015) 8 SCC 519,

viii) The judgment of the Apex Court in Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi And Others reported in 1978 (1) SCC 405

ix) The judgment of the Division Bench of High Court for the State of Telangana at Hyderabad, dated 13.08.2024 in a batch of Writ Appeal Nos. 953, 954, 956, 957, 958, 959, 960, 961, 962, 970, 971, and 973 of 2024.

x) The judgment of the Apex Court in Punjab State Power Corporation Ltd. and Another Vs. EMTA Coal Ltd. and Others, dated 21.09.2021 reported in (2022) 2 SCC 1,

xi) The Judgment of the Apex Court in Kasturi Lal Lakshmi Reddy represented by its partner Shri Kasutri Lal, Ward No.4, Palace Bar, Poonch, Jammu And Others Vs. State of J&K, dated 09.05.1980 reported in (1980) 4 SCC 1,

xii) Recent judgment of the Apex Court in Bansidhar Construction Private Limited Vs. Bharat Coking Coal Limited & Others, dated 04.10.2024 in Civil Appeal No. 11005 of 2024

xiii) M.P.Power Management Company Limited
Jabalpur Vs. Sky Power Southeast Solar India
Private Limited and Others, dated 16.11.2022
reported in (2023) 2 SCC 703.

The present Writ Petition is allowed.

a) It is hereby declared that the action of the respondent Nos.1 and 2 in unlawfully and illegally rejecting the tender bid of the Petitioners (Bid No. 881966-0) in respect of tender no. TGMDC/S&M/DSLT/JB/2024/225 dated 14.06.2024 floated by Respondent No. 1 herein for desiltation of 10,80,000 MT of sand from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District without assigning any reasons is illegal and is accordingly set aside.

b) The award of tender no. TGMDC/S & M/DSLT/JB/2024/225 dated 14.06.2024 floated by Respondent No. 1 herein for de-siltation of 10,80,000 MT of sand from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District in favour of Respondent No.3 is set aside.

c) The Respondent Nos. 1 and 2 are directed to call for fresh bids in respect of tender no TGMDC/S and M/DSLT/JB/2024/225 dated 14.06.2024 floated by Respondent No. 1 herein for desiltation of 10,80,000 MT of sand from Brahmanapalli/2024/2 sand reach at Jayashankar Bhupalpally District. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 28.10.2024

Note: L.R.Copy to be marked
(B/o) *ktm*