A TEJAS CONSTRUCTIONS & INFRASTRUCTURE PVT. LTD.

v.

MUNICIPAL COUNCIL, SENDHWA & ANR.

(Civil Appeal No. 4195 of 2012)

B

MAY 4, 2012

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

Administrative Law:

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Judicial review of award of contract by municipality – Scope of – Acceptance of bid of a contractor for construction of Integrated water supply scheme by Municipal Council challenged by the unsuccessful bidder – Held: The findings D *recorded by the High Court with regard to the requirements as per the notice inviting tenders and the eligibility and experience of the successful bidder, are in no way irrational or absurd – Besides, the Municipal Council had the advantage of aid and advice of an empanelled consultant, a technical hand, who could well appreciate the significance of* E *the tender condition regarding the bidder executing the single integrated water supply scheme and fulfilling that condition of tender by reference to the work undertaken by them – Therefore, there is no reason to interfere with the view taken by the High Court of the allotment of work made in favour of* F *the successfully bidder – In the light of the settled legal position and in the absence of any mala fide or arbitrariness in the process of evaluation of bids and the determination of the eligibility of the bidders, the Court does not consider it to be a fit case for interference – Tenders – Award of construction* G *contract.*

The respondent-Municipal Council invited tenders for construction of an Integrated Water Supply Scheme, in terms of the conditions stipulated in the notice inviting

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tenders (NIT). Out of the four bidders, including the appellant and respondent no. 2, found eligible, respondent no. 1 accepted the bid offered by respondent no. 2. The appellant filed a writ petition challenging the eligibility of respondent no. 2 on the grounds: (1) that respondent no. 2 had not filed the requisite certified balance-sheets for five years immediately preceding the issue of NIT; and (2) that respondent no. 2 did not have the requisite experience of executing a single integrated water supply scheme of the required value. The High Court dismissed the writ petition.

Dismissing the appeal, the Court

HELD: 1. A challenge to the award of the project work in favour of respondent No.2 involved judicial review of administrative action. The scope and approach to be adopted in the process of any such review is well settled. [para 8] [198-D]

Tata Cellular v. Union of India **1994 (2) Suppl. SCR 122 = (1994) 6 SCC 651;** *Raunaq International Limited v. I.V.R. Construction Ltd. & Ors.* **(1999) 1 SCC 49;** *Reliance Airport Developers (P) Ltd. v. Airports Authority of India & Ors.* **2006 (8) Suppl. SCR 398 = (2006) 10 SCC 1;** *Sterling Computers Ltd. v. M & N Publication Ltd.* **1993 (1) SCR 81 = (1993) 1 SCC 445;** *Air India Ltd. v. Cochin International Airport Ltd. & Ors.* **2000 (1) SCR 505 = (2000) 2 SCC 617;** *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. & Ors.* **2005 (3) SCR 666 = (2005) 6 SCC 138 and** *Jagdish Mandal v. State of Orissa* **2006 (10) Suppl. SCR 606 = (2007) 14 SCC 517 – referred to.**

1.2. As regards the plea that respondent No.2 had not satisfied the requirement of filing audited balance sheets for the five years preceding award of the contract, it is significant to note that the date of submission of tender was initially fixed upto 25.3.2011 but the same was

A extended upto 7.4.2011. That being so, 5 years immediately preceding the issue of the tender notice would have included the year 2010-2011 also for which financial year, audit of the company's books, accounts and documents had not been completed. Such being the B case, respondent No.2 could not possibly comply with the requirement of the tender notice or produce certified copy of the audited balance-sheet for the said year. All that it could possibly do was to obtain a certificate based on the relevant books, registers, records accounts etc. C of the company, which certificate was indeed produced by the said respondent. The High Court has rightly observed that the appellant had not disputed the correctness of the turnover certified by the Chartered Accountant for the year 2010-2011 nor was it disputed that the same satisfied the requirement of the tender notice. D In that view, therefore, there was no question of respondent No.2 being ineligible or committing a deliberate default in producing the requisite documents to establish its eligibility to offer a bid. [para14-15] [204-F-H; 205-A-B; 203-A]

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1.3. The High Court has, while examining the question of eligibility of respondent No.2 by reference to the execution of the single integrated water supply scheme, recorded a finding that the nature of the work F executed by respondent No.2 for Upleta satisfied the requirement of the tender notice. That finding is in no way irrational or absurd. The certificate sufficiently demonstrates that respondent No.2 had designed, and executed an integrated water supply scheme for Upleta G which included raw water transmission from intake wells and transmission of treated clear water from WTP including providing, supplying and laying of pipelines, construction of E.S.Rs, Sumps, Pump houses and providing erecting pumping machinery. [para 18] [207-E-H G]

1.4. It is also noteworthy that in the matter of evaluation of bids and determination of eligibility of the bidders, Municipal Council had the advantage of the aid and advice of an empanelled consultant, a technical hand, who could well appreciate the significance of the tender condition regarding the bidder executing the single integrated water supply scheme and fulfilling that condition of tender by reference to the work undertaken by them. Therefore, there is no reason to interfere with the view taken by the High Court of the allotment of work made in favour of respondent No.2. [para 19] [207-H; 208-A-B]

1.5. It is pertinent to note that out of a total of Rs.19.5 crores representing the estimated value of the contract, respondent No.2 is certified to have already executed work worth Rs.11.50 crores and received a sum of Rs.8.79 crores towards the said work. More importantly the work in question relates to a drinking water supply scheme for the residents of a scarcity stricken municipality. The project is sponsored with the Central Government assistance under its urban infrastructure scheme for small and middle towns. The completion target of the scheme is September 2012. Any interference with the award of the contract at this stage is bound to delay the execution of the work and put the inhabitants of the municipal area to further hardship. Interference with the on-going work is, therefore, not conducive to public interest which can be served only if the scheme is completed as expeditiously as possible giving relief to the thirsting residents of the area concerned. This is particularly so when the allotment of work in favour of respondent No.2 does not involve any extra cost in comparison to the cost that may be incurred if the contract was allotted to the appellant-company. [para 20] [208-C-F]

A **1.6. In the light of the settled legal position and in the absence of any mala fide or arbitrariness in the process of evaluation of bids and the determination of the eligibility of the bidders, this Court does not consider it to be a fit case for interference. [para 21] [208-G-H]**

B **Case Law Reference:**

1994 (2) Suppl. SCR 122	**referred to**	**para 9**
(1999) 1 SCC 49	**referred to**	**para 10**
C **2006 (8) Suppl. SCR 398**	**referred to**	**para 11**
1993 (1) SCR 81	**referred to**	**para 12**
2000 (1) SCR 505	**referred to**	**para 12**
D **2005 (3) SCR 666**	**referred to**	**para 13**
2006 (10) Suppl. SCR 606	**referred to**	**para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4195 of 2012.

E From the Judgment & Order dated 20.05.2011 of the High Court of Madhya Pradesh bench at Indore in W.P. No. 3427 of 2011.

Vikas Singh, Samit Malik, Lakshmi Raman Singh for the F Appellant.

Jayant Bhushan, K.V. Vishwanathan, Pragati Neekhra, Suryanarayanm Singh, Ajay, Dharmendra Kumar Sinha, Adeeba Mujahid for the Respondents.

G The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

2. This appeal arises out of an order passed by the High Court of Madhya Pradesh at Indore whereby Writ Petition H No.3427 of 2011 filed by the appellant was dismissed and the

allotment of the project work involving design, construction and commissioning of a single integrated water supply at Sendhwa (Madhya Pradesh) in favour of M/s P.C. Snehal Construction Company-respondent No.2 upheld.

3. In terms of notice inviting tenders (NIT for short) Municipal Council Sendhwa, in the State of M.P., invited tenders from eligible contractors for the construction of an Integrated Water Supply Scheme at an estimated cost of nearly rupees twenty crores. Clause (1) of the said NIT as amended by addendum dated 23rd March, 2011, stipulated the following essential conditions of eligibility for the intending bidders:

"1. Registered Contractors have to produce valid Registration certificate in the category of S-V or equivalent in any State/Central Government Department or Government undertaking.

(a) Registered Contractors/Firms of Repute/Joint Venture firms have to produce certificate for executing single work of integrated water supply scheme comprising of intake well, raw/clear water pumping main, pumps, OHTS, Distribution system completed and running successfully at present, having value equal to 60% of the cost of the proposed works in last 5 years. This certificate should clearly mention amount of contract, completion period as per Tender and actual completion period. (In case of WPI adjustment for cost of works the same may be furnished along with a certificate of Chartered Accountant). The certificate shall be issued from the officer not below the rank of Executive Engineer or equivalent.

(b) Certified copy of audited balance sheet of last 5 years showing annual turnover equal to estimated cost of the work and average net worth equal to 40% of the cost of works."

A 4. In response to the above NIT several applications were received by respondent No.1 for purchase of the tender forms. It is common ground that only six out of the said applicants eventually participated in the pre-bid meeting arranged by respondent No.1. It is also not in dispute that out of the said B six bidders only four were eventually found to be eligible. These four included the appellant-Tejas Construction & Infrastructure Pvt. Ltd. and respondent No.2-M/s P.C. Snehal Construction Company, Ahmedabad.

5. The tender conditions, *inter alia*, provided that the bid C documents shall comprise three envelopes to be submitted by each of the bidders. Envelope A was to contain the earnest money deposited, Envelope B was to contain the technical bid including qualification documents while Envelope C was to contain the price bid of the bidders. The process of evaluation D of the bids started on 7th April, 2011 with the opening of envelopes in the above order. Opening of envelope A was uneventful as all the bidders had furnished the earnest money stipulated under the terms of NIT. The appellant's case, however, is that when envelope B was opened a request was E made to respondent No.1 to show the technical bid received from respondent No.2 which request was granted. The appellant's further case is that upon perusal of the technical bid of respondent No.2, the appellant had raised an objection as to the eligibility of the said to participate in the bid process on F the ground that it did not have the requisite experience of executing a single integrated water supply scheme of the requisite value. Respondent No.2 is said to have claimed eligibility to offer a bid on the basis of clubbing of different water supply scheme projects at Vyara and Songadh which was G impermissible according to the appellant. The appellant also raised an objection to the effect that respondent No.2 had not submitted certified copies of audited balance-sheets for the last five years and that the net-worth certificate produced from a Chartered Accountant for the financial year 2010-2011, did not according to the appellant, satisfy the said requirement. H

Despite the objection raised by the appellant, respondent No.1 considered all the bids and accepted the bid offered by respondent No.2. The appellant appears to have approached the concerned authorities in Gujarat and obtained a certificate to the effect that Vyara and Songadh projects were two different projects and not a single integrated water supply scheme and based thereon dispatched a telegram to respondent No.1 asking for rejection of the bid offered by respondent No.2, but to no avail.

6. Aggrieved by the allotment of work in favour of respondent No.2, the appellant filed Writ Petition No.3427 of 2011 before the Indore Bench of the High Court of Madhya Pradesh. The challenge to the eligibility of respondent No.2 and eventually to the allotment of the project work to the said respondent in the Writ Petition was confined to two distinct grounds, namely (1) that respondent No.2 had not filed the requisite certified balance-sheets for five years immediately preceding the issue of tender notice and (2) that respondent No.2 did not have the requisite experience of executing a single integrated water supply scheme of the required value.

7. The Writ Petition was opposed by the respondents who asserted in their respective affidavits that requirement of submission of requisite balance-sheets was substantially complied with inasmuch as certified copies of the balance-sheets for four years had been filed but since the audit for the fifth year i.e. 2010-2011 had not been completed, the certificate issued by the Chartered Accountant for the said year sufficiently complied with the said requirement. It is also asserted that respondent No.2 satisfied the requirement of having executed single integrated water supply scheme for Upleta which included raw water transmission from intake well and transmission of treated clear water from WTP including providing, supplying and laying of pipelines, construction of E.S.R.s, Sumps, Pump houses and providing and erecting pumping machinery. The certificate issued by the Upleta Municipal Council and by the Gujarat Urban Development

A Mission (GUDM) was relied upon in support of that claim. The High Court has, by the judgment and order under challenge before us, examined both the grounds urged in support of the writ petition and clearly come to the conclusion that respondent No.2 was eligible to offer a bid in as much as it had substantially
B complied with the requirement of filing the certified copies of audited balance-sheets for the previous period of five years immediately preceding the issue of tender notice and that it had the requisite experience of executing a single integrated water supply project of the requisite value.

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8. We have heard learned counsel for the parties at considerable length. A challenge to the award of the project work in favour of respondent No.2 involved judicial review of administrative action. The scope and the approach to be adopted in the process of any such review, has been settled
D by a long line of decisions of this Court. Reference of all such decisions is in our opinion is unnecessary as the principle of law settled thereof are fairly well recognised by now. We may, therefore, refer to some of the said decisions only to recapitulate and refresh the tests applicable to such cases and
E the approach which a Writ Court has to adopt while examining the validity of an action questioned before it.

9. In *Tata Cellular v. Union of India* (1994) 6 SCC 651, this Court emphasized the need to find the right balance
F between administrative discretion to decide matters on the one hand and the need to remedy any unfairness on the other and observed:

"(1) The modern trend points to judicial restraint in administrative action.

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(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

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decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. A

(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. B

(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 or quasi-administrative sphere. However, the decision can be tested by the application of the "Wednesbury principle" of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by mala fides. C

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(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

10. In *Raunaq International Limited v. I.V.R. Construction Ltd. & Ors.* (1999) 1 SCC 492, this Court reiterated the principle governing the process of judicial review and held that the Writ Court would not be justified in interfering with commercial transactions in which the State is one of the parties to the same except where there is substantial public interest involved and in cases where the transaction is mala fide. The court observed: E F

"**10.** What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or G H

A goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and
B delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

C **11.** When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two
D tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial
E transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other
F tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers."

G 11. In *Reliance Airport Developers (P) Ltd. v. Airports Authority of India & Ors.* (2006) 10 SCC 1, this Court held that while judicial review cannot be denied in contractual matters or matters in which the Government exercises its contractual powers, such review is intended to prevent arbitrariness and must be exercised in larger public interest.

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12. Reference may also be made to *Sterling Computers Ltd. v. M & N Publication Ltd.* (1993) 1 SCC 445 where this Court held that power of judicial review in respect of contracts entered into on behalf of the State primarily involves examination of the question whether there was any infirmity in the decision-making process if such process was reasonable, rational and non-arbitrary, the Court would not interfere with the decision. In *Air India Ltd. v. Cochin International Airport Ltd. & Ors.* (2000) 2 SCC 617, this Court held that award of contract was essential in commercial transactions which involves commercial consideration and results in commercial decision. While taking such decision the State can choose its own method on terms of invitation to tender and enter into negotiations. The following passage from the decision is apposite:

> "The award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness.
>
> Even when some defect is found in the decision-making

process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

13. To the same effect is the decision of this Court in *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. & Ors.* (2005) 6 SCC 138 and *Jagdish Mandal v. State of Orissa* (2007) 14 SCC 517 where this Court laid down the following tests for judicial interference in exercise of power of judicial review of administrative action:

"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."

14. Let us examine the challenge to the award of the contract in favour of respondent No.2 in the light of the above legal position. In the earlier part of this judgment the challenge to the allotment of the work in question was primarily based on

a two-fold contention. Firstly, it was argued that respondent No.2, successful bidder, had not satisfied the requirement of filing audited balance sheets for the five years preceding award of the contract. That the said respondent had filed certified copies of the audited balance sheets for the years 2006-07, 2007-08, 2008-09 and 2009-10, was not in dispute. What was disputed was that the balance sheet for the year 2010-11 had not been filed, instead a certificate from the Chartered Accountant concerned, relating to the period 1.4.2010 to 22.3.2011, had been produced which did not, according to the writ-petitioner before us, satisfy the requirement of the NIT. Rejecting that contention the High Court held that since the balance sheet for the year 2010-11 had not been audited the production of relevant record of the company was a substantial compliance with the stipulation contained in the NIT. The High Court observed:

> "As regards audited balance sheet, it has not been disputed that respondent No.2 submitted audited balance sheets for years 2006-07, 2007-08, 2008-09 and 2009-2010. Respondent No.2 has further submitted certificate issued by its Chartered Accountant in respect of period from 1.4.2010 to 22.3.2011. Certificate is at page 66, which has been issued on the basis of audited books, documents, registers, records, bills and evidences produced before it for verification. Certificate is dated 23.3.2011. It has been pointed out by Shri Vijay Assudani, learned advocate appearing for respondent No.2 that by that time, the financial year 2010-11 was not complete and it was not possible to obtain certified copy of the audited balance sheet. It could not be disputed on behalf of the petitioner that the turnover as shown in the certificate of Chartered Accountant and other documents for last five years, was meeting the requirement as per the NIT. Further, it is not the case of the petitioner that the particulars and the figures mentioned in the certificate are incorrect. Petitioner, by virtue of Sections 159 and 163 of

A the Companies Act, could have obtained certified copy of balance sheets of respondent No.2 to demonstrate incorrectness, if any. The petitioner, having not chosen to place any such documents on record, cannot successfully raise any objection, when there is substantial compliance
B of the NIT in relation to turnover.

xxx xxx xxx

Audit for the year 2010-11 was not completed by that time. However, certificate was issued on the basis of the audit
C books, documents, register, records, bills and evidences produced before the Chartered Accountant for verification. This amounts to substantial compliance of the requirement with regard to submission of certified copy of balance sheet, more so, the petitioner himself could have obtained
D copies of audited balance sheet of respondent No.2 and could have demonstrated incorrectness. It is not the case of the petitioner that the said certificate depicts incorrect turnover or net worth. This being so, the process adopted by respondent No.1 cannot be said to be arbitrary or
E irrational."

15. There is, in our opinion, no legal flaw in the above finding or the line of reasoning adopted by the High Court. It is true that the date of submission of tender was initially fixed upto 25th March, 2011 but the same was extended upto 7th April,
F 2011. That being so, 5 years immediately preceding the issue of the tender notice would have included the year 2010-2011 also for which financial year, audit of the company's books, accounts and documents had not been completed. Such being the case, respondent No.2 could not possibly comply with the
G requirement of the tender notice or produce certified copy of the audited balance-sheet for the said year. All that it could possibly do was to obtain a certificate based on the relevant books, registers, records accounts etc., of the company, which certificate was indeed produced by the said respondent. The
H High Court has rightly observed that the appellant had not

disputed the correctness of the turnover certified by the Chartered Accountant for the year 2010-2011 nor was it disputed that the same satisfied the requirement of the tender notice. In that view, therefore, there was no question of respondent No.2 being ineligible or committing a deliberate default in producing the requisite documents to establish its eligibility to offer a bid. The first limb of the challenge to the finding of the High Court on the above aspect must, therefore, fail and is accordingly rejected.

16. That leaves us with the second ground on which the appellant questioned the eligibility of respondent No.2 to offer a bid, namely, the non-execution by respondent No.2 of a single integrated water supply scheme for the requisite value. The appellant's case, in this connection, is two-fold. Firstly, it is contended that the works executed by respondent No.2 for Vyare and Songadh were distinct and different works which did not constitute a single integrated water supply scheme hence could not be pressed into service to show satisfaction of the condition of eligibility stipulated under the tender notice. The alternative submission made by learned counsel appearing for the appellant in connection with this ground is that the work executed by respondent No.2 for Upleta also did not satisfy the requirement of the tender notice inasmuch as the said work did not involve the construction of intake wells, which was an essential item of work for any integrated water supply scheme. In the Counter Affidavits filed by the Municipal Council and respondent No.2, the contention that the latter was not eligible on the ground stated by the appellant has been stoutly denied. Respondent-Council has, *inter alia,* stated:

> "To satisfy this condition, respondent no.2 has placed on record the certificate issued by Municipal Council Upleta, whereby respondent No.2 was awarded construction of similar work and has completed the work on 15.8.2010 for a sum of Rs.14,96,78,721/-. Not merely this, to show his experience, respondent No.2 has filed various certificates relating to work at Bardoli, as well as certificate issued by

A Gujarat Urban Development Mission, demonstrating that he has undertaken the work of 87,21,36,172/- of the similar/somewhat similar nature.

In this regard it is worth noticing that the only requirement under this clause was to have executed single work of
B integrated water supply scheme having above referred components in it and it was not at all necessary for a bidder to have constructed all the components himself but he could have used the existing components, as such it is inconsequential as to whether respondent No.2 has infact
C constructed intake well and water treatment plant in Upleta, but it is of utmost importance that Respondent No.2 should have experience of having executed integrated water supply scheme."

D 17. To the same effect is the case set up by respondent No.2 who has stated as under:

"I say and submit that the only requirement as per the said eligibility condition was to have executed a single work of integrated water supply scheme comprising of all the
E components, such as intake well, raw/clean water, pumping main, pumps, water treatment plants, over head tanks, distribution system etc., but it was not necessary for the bidder to have himself constructed all the components of integrated water supply scheme. As such to show his
F experience in the said matter, respondent No.2 also has placed on record certificate issued by Bardoli Nagar Seva Sadan, (Annexure P/10 Page 78 of SLP), wherein respondent No.2 has constructed water treatment plant of 13.5 MLD capacity....."

G They have carried out the work of integrated water supply for Upleta Municipal Council for a sum of Rs.14.97 crores, similarly respondent No.2 have also carried augmentation water supply scheme for Bardoli Incorporation Seva Sadan of Rs.4.35 crores, integrated drinking water supply scheme
H for Vyara project of Rs.6.84 crores, Unjha Water Supply Project of Rs.13.19 crores, Jaitpur Water Project Rs.

16.25 crores, Songarh Integrated Drinking Water Supply Scheme Rs.5.21 crores, Vapi Water Works of Rs.4.00 crores, Jasadan Water Suppply Scheme of Rs.3.05 crores, Rajula Water Supply Scheme of Rs.3.83 crores, Idar Water Supply Scheme of Rs.4.74 crores, Viramgam Water Supply Project Rs.6.92 crores, Amreli City Pipeline Distribution Work Rs.6.49 crores, thus the respondent No.2 have executed works of similar nature of Rs.87.21 crores, whereas the present work was for only Rs.20.80 crores, additionally respondent No.2 is executing similar work of about Rs.40.50 crores at Dholka, Dhandhuka, Ankleshwar, Gondal, Jasdan and Dhorangdhra. Thus respondent No.2 is competent to execute the present work, a copy of list of works executed by respondent No.2 under Gujarat Urban Development Mission duly certified by the G.M. (Technical) of said organization are already annexed as Annexure P/ 8 (Page 69 of SLP). It is worth mentioning here that average turnover of respondent No.2 during last 5 years ignoring figures of 2010-11 is Rs.45.14 crores and average net worth of respondent No.2 for last 5 years ignoring figures of 2010-11 is Rs. 9.018 crores."

18. The High Court has, while examining the question of eligibility of respondent No.2 by reference to the execution of the single integrated water supply scheme, recorded a finding that the nature of the work executed by respondent No.2 for Upleta satisfied the requirement of the tender notice. That finding, in our view, is in no way irrational or absurd. We say so because the certificate relied upon by respondent No.2 sufficiently demonstrates that respondent No.2 had designed, and executed an integrated water supply scheme for Upleta which included raw water transmission from intake wells and transmission of treated clear water from WTP including providing, supplying and laying of pipelines, construction of E.S.R.s, Sumps, Pump houses and providing erecting pumping machinery.

19. It is also noteworthy that in the matter of evaluation of

A the bids and determination of the eligibility of the bidders Municipal Council had the advantage of the aid & advice of an empanelled consultant, a technical hand, who could well appreciate the significance of the tender condition regarding the bidder executing the single integrated water supply scheme
B and fulfilling that condition of tender by reference to the work undertaken by them. We, therefore, see no reason to interfere with the view taken by the High Court of the allotment of work made in favour of respondent No.2.

20. We may while parting point out that out of a total of
C Rs.19.5 crores representing the estimated value of the contract, respondent No.2 is certified to have already executed work worth Rs.11.50 crores and received a sum of Rs.8.79 crores towards the said work. More importantly the work in question relates to a drinking water supply scheme for the residents of
D a scarcity stricken municipality. The project is sponsored with the Central Government assistance under its urban infrastructure scheme for small and middle towns. The completion target of the scheme is September 2012. Any interference with the award of the contract at this stage is bound to delay the execution of
E the work and put the inhabitants of the municipal area to further hardship. Interference with the on-going work is, therefore, not conducive to public interest which can be served only if the scheme is completed as expeditiously as possible giving relief to the thirsting residents of Sendhwa. This is particularly so
F when the allotment of work in favour of respondent No.2 does not involve any extra cost in comparison to the cost that may be incurred if the contract was allotted to the appellant-company.

21. In the light of the above settled legal position and in
G the absence of any mala fide or arbitrariness in the process of evaluation of bids and the determination of the eligibility of the bidders, we do not consider the present to be a fit case for interference of this Court. This appeal accordingly fails and is hereby dismissed with cost assessed at Rs.25,000/-.

H R.P. Appeal dismissed.