

## RAJASTHAN HIGH COURT

Doshi Ion Exchange and Chemical Inds. Ltd.

Vs.

Union of India

Special Appeal No. 1173 of 2000

(Dr. Ar. Lakshmanan, C.J. and Bhagwati Prasad, J.)

17.04.2001

### JUDGEMENT

**Bhagawati Prasad, J.**

1. A writ petition was preferred by the appellant being S.B. Civil Writ Petition No. 3767/2000 and the learned Single Judge of this Court vide judgment dated 6-12-2000 dismissed the same. Being aggrieved by the aforesaid decision the present appeal has been preferred by the appellant petitioner before this Court.
2. The learned Single Judge vide his judgment has held that the petitioner company has challenged the grant of tender in favor of respondent No. 3. According to the learned Single Judge the acceptance or grant of tender is purely a contractual obligation with the State performance in discharge of its commercial or sovereign function. According to the learned Judge, if it is felt that the Government has committed any breach then civil suit is the proper remedy and no writ petition can be held to be maintainable in such matter.
3. Learned counsel for the petitioner has urged in the appeal that the learned Single Judge was not justified in dismissing the writ petition *in limine* by saying that the question relates to contractual obligation because the State or its instrumentalities cannot act arbitrarily. In the instant case the respondent has not considered that the respondent No. 3 was not the person qualified to be awarded the contract. This was the admitted case of the parties that the respondent No.3 is not a manufacturer. The mandatory requirement of the tender was that only a manufacturer could come forward to bid and submit the tender. The appellant petitioner in his writ petition has set up a case that the tenders were invited in terms of a notice inviting tenders (Annex. 1) and in this it was clearly mentioned that manufacturers certificate is required for

manufacturing unit. The petitioner had submitted a certificate itself as Annex. 2 which shows that Doshi Ion Exchange and Chemical Industries Ltd. has a license of running a factory. According to the petitioner in Annex. 3 the essential mandatory requirements have been mentioned for the tender. This requirement is mandatory for considering the quotations. Clause (e) reads as under:-

"(e) Registration Certificate of your manufacturing and fabrication unit from Industry Department along with the address of location of the Fabrication Unit/Factory. This requirement is mandatory for considering the quotations."

4. The case made out by the petitioner is that the respondent No.3 is not a manufacturer and is, therefore, not qualified to bid for contract and, therefore, the award of contract in its favor is *per se* illegal. The petitioner had submitted in its writ petition that having given the contract to an unqualified bidder, the State has acted arbitrarily and, therefore, the contract in favor of the respondent No. 3 should not have been granted and could not have been saved by the learned Single Judge. It was only the petitioner alone who was entitled to be awarded the contract.

5. The writ petition has been contested and in reply to it the contesting respondent No. 3 has submitted a reply before the learned Single Judge. It has been submitted that the writ petition was not maintainable. The dispute raised by the petitioner is in relation to a contractual matter and no writ can be maintained in this regard. It has been contended on behalf of the respondent No. 3 that the tender was invited not only from the manufacturers but it was clearly mentioned in Annex. 1 the notice inviting tenders that the manufacturer/dealers can submit their tenders. This has further been emphasized by the respondent No. 3 in its reply that certain conditions were imposed regarding reputation and experience of the manufacturers/dealers and there was a clear emphasis in the notice inviting tenders on fabrication/erection/commissioning of the items. Since the emphasis of the notice inviting tenders was on fabrication/erection/commissioning, the contention of the petitioner that the production of manufacturers certificate was necessary is wrong. The respondent No.3 has attached various documents of its experience in supplying the requirements of the respondents No. 1 and 2 and Annex. R.3/1 to Annex. R.3/11 are certain such documents. The respondent No.3 has claimed in Annex. R. 3/11 that they have completed the supply, erection and commissioning of Reverse Osmosis Desalination plant at Bhabha Atomic Research Centre, Trombay.

6. The respondents No. 1 and 2 in their reply have submitted that Annex. 1 notice inviting tender clearly states that the contract was for fabrication of the Reverse

Osmosis based water purification system and in Annex.1 it was made clear that the tenderer should be by manufacturer/dealer. It was also made clear that parties who give tender should have an experience in fabrication/erection/commission of the above system/machine. Eight tenders were submitted. On examination it was found that only four tenders were eligible and as such only four tenders were considered by the Technical Evaluation Committee. While considering tenders submitted by the four tenderers/companies two firms i.e. petitioner and respondent No.3 were considered to be eligible for getting the work. In ultimate analysis the evaluation was made of the offers made by the petitioner and respondent No. 3. The respondents No. 1 and 2 have further clarified that the tenders were invited not only from the manufacturers of the aforesaid Reverse Osmosis based water purification system but were also invited from one who can fabricate the said Reverse Osmosis based water purification system. The stand of the petitioner that only manufacturers could submit their tenders was not a correct interpretation of the contents of Annex. 1.

7. Respondents No. 1 and 2 have further submitted that neither the petitioner nor the respondent No. 3 are the manufacturer of the Reverse Osmosis based Water Purification System. They are only capable of fabrication/erection/commission of Reverse Osmosis based water Purification System. Their certificates and documents relating to their work experience and financial data regarding previous 3 financial years were examined. Such examination by the Technical Evaluation Committee was made. The report of the Technical Evaluation Committee was submitted before the Court at the time of arguments. After considering the dates and various documents it was found that the tender of the petitioner was for a sum of Rs. 56 lacs and the respondent No. 3 was for 42 lacs. In further negotiations the respondent No.3 brought down the price to 39.75 lacs. The petitioner brought it down to Rupees 48,79,942/-.

8. The grievance of the petitioner that the respondent No. 3 was ineligible, was considered by the Technical Evaluation Committee and the Tender Purchase Committee for complete evaluation. Both the Committees came to the conclusion that the tender price of the respondent No. 3 is lowest and it has the capacity to fabricate, erect and commission the plant. The respondents have submitted that the Technical Evaluation Committee has considered the objections raised by the petitioner regarding the eligibility of respondent No. 3. All questions raised by the petitioner were also considered by the Committee.

9. It has been stated that the stand of the petitioner with regard to the production of the manufacturers certificate was not correct. It was only necessary for the manufacturing

Units and not for fabricators. According to the respondents No.1 and 2 the stand of the petitioner that the respondents No.3 having not submitted the certificate was not qualified is, incorrect. According to the reply of the respondents No.1 and 2 even the petitioner is not a manufacturer as such, of the complete system and he is also a fabricator. Since the tender of the respondent No. 3 was lowest it was approved.

10. Learned counsel for the parties apart from submitting oral arguments have also submitted written submissions.

11. According to the petitioner, the tender has been awarded by the respondents No. 1 and 2 to the respondent No.3, an ineligible tenderer. Respondent No. 3 was not a manufacturer and it has also not produced the manufacturers certificate as required by Annex. 1. The requirement of production of manufacturers certificate as contained in clause (e) is an essential condition of tender. It has been claimed by the appellant that they are manufacturers of the Reverse Osmosis based Water Purification System as required by the respondents No.1 and 2. They have installed so far more than 450 Reverse Osmosis based water purification system/plants in India and abroad. According to the argument of the learned counsel for the appellant the respondent No. 3 is not a manufacturer though it has projected itself to be a manufacturer. When the Tender procurement Committee was considering the question the objections were submitted by the appellant that the respondent No. 3 is not a manufacturer and he has placed on record some documents pertaining to Quality Engineering Products, a separate independent and distinct company alleging that they have a memorandum of understanding with that company which has been filed on the paper-book. The memorandum of understanding is not capable of being given full credits to the respondent No. 3. The respondent No. 3 not being a manufacturing unit, it should have been kept out of consideration.

12. The appellant has placed reliance on a Supreme Court decision rendered in *Ramana Dayaram Shetty v. The International Airport Authority of India reported in <sup>1</sup>* and has relied upon the following observations of the Hon'ble Supreme Court :- at page 1633

"It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them."

".....the Government is not like a private individual who can pick and choose

the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largesse and it cannot, without adequate reason, exclude any person from dealing with it or take away largesse arbitrarily ....."

".....the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transaction....."

".....It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, 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 the standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licenses etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

13. The appellant has further placed reliance on a decision of the Hon'ble Supreme Court in the matter of *Harinder Singh Arora v. Union of India reported in* <sup>2</sup> and has emphasized that the terms and conditions of the tender do not permit a deviation then the same could not be deviated and emphasized that the respondent No. 3 being not a manufacturer no tender could be awarded in his favor.

14. The petitioner has further placed reliance on a Supreme Court decision rendered in the matter of *Raunaq International Ltd. v. I.V.R. Construction Ltd. and others reported in* <sup>3</sup> and has relied upon the following observations of the Hon'ble Supreme Court at Page 400; of AIR:-

"In the present case, it was submitted that the terms and conditions of the tender specified the requisite qualifying criteria before a person could offer a tender. The criteria which were so laid down could not have been relaxed because such a relaxation results in a denial of opportunity to others....."

15. This has further been submitted on behalf of the appellant that terms of the contract cannot be relaxed as has been held by the Hon'ble Supreme Court in the case

of *West Bengal Electricity Board v. Patel Engineering Co. Ltd. reported in* <sup>5</sup> He has relied upon the following observations of the Hon'ble Supreme Court at page 333-334 ; of AIR SCW :

"The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of the care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender /bid and also award of a contract. The appellant respondents Nos.1 to 4 and respondent Nos. 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfill pre-qualification alone are invited to bid, adherence to the instructions cannot be given a go-bye by branding it as a pendentic approach otherwise it will encourage and provide scope for discrimination, arbitrariness and favoritism which are totally opposed to the Rule of law and our constitutional values. The very purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver or a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favor of one bidder would create justifiable doubt in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules. We have, therefore, no hesitation in concluding that adherence to ITB or Rules is the best principle to be followed which is also in the public interest."

16. The appellant has submitted that the price offered is only one of the criteria and cannot be considered to be a fool proof criteria. Proper performance of the contract and good quality work is as much in public interest as a low price is and has supported its contention on the basis of the observation of the Hon'ble Supreme made in the case of *Air India Ltd. v. Cochin International Airport Ltd. reported in* <sup>5</sup>

17. He has also placed reliance on a Supreme Court decision rendered in the matter of *New Horizons Limited and another v. Union of India reported in* <sup>6</sup> and has relied upon the following observation of the Hon'ble Supreme Court has observed :-

".....The action of the State in the matter of award of a contract has to satisfy this criterion. Moreover, a contract would either involve expenditure from the State exchequer or augmentation of public revenue and consequently the discretion in the matter of selection of the person for award of the contract has to be exercised keeping in view the public interest involved in such selection. The decisions of this Court, therefore, insist that while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, 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 the standards or norms which are not arbitrary, irrational or irrelevant."

18. The appellant has further relied upon a Supreme Court decision rendered in the case of *Tata Cellular v. Union of India reported in* <sup>7</sup> and has relied upon the following observations of their Lordships of the Hon'ble Supreme Court at Page 28; of AIR :-

".....(1) It is open to the Court to review the decision maker's evaluation of the facts. The Court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way cannot be upheld. (2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as different classes."

19. The appellant has submitted that the respondent No.3 has applied as a manufacturer without his being a manufacturer. Such kind of deviation is not permissible to the respondents No.1 and 2. Respondent No.3 was only showing its competence on behalf of the Quality Engineering products a unit with which a memorandum of understanding has been produced by it. That being the position the contract could not have been awarded to the respondent No.3 and has prayed that awarding of contract be quashed and the petitioner be granted the contract.

20. Respondent No.3 in its written submissions has submitted that it has never submitted that it was a manufacturer. The tender was never meant to be awarded to manufacturers alone. It was for the manufacturer or supplier as mentioned in Annex. 1. In the cases relied upon by the petitioner in the matter of *Raunaq International Ltd. v. I.V.R. constructions Ltd.* (supra) the Hon'ble Supreme has laid down the principles as below at page 396-397 :-

"The award of a 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 importance are commercial considerations. These would be :

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

21. Considering all these relevant considerations, the Technical Evaluation Committee found that the respondent No. 3 is entitled to be awarded the contract. The memorandum of understanding produced by the petitioner is a valid consideration as has been held by this Court in *Tej Singh Saruparia v. Rajasthan State Mines and Minerals Ltd. reported in* <sup>8</sup> The respondent No. 3 has submitted that it had quoted the lowest price and had submitted a number of certificates showing the successful fabrication of Reverse Osmosis based Water Purification System. The appellant had not submitted a single such certificate. Therefore, a preference was claimed by the respondent No. 3 and it is alleged that the contract was rightly awarded to it.

22. It was also submitted by the respondent No.3 that much capital has been tried to be made out by the appellant in relation to the non-submission of a certificate by the respondent in relation to the manufacturing. It is important to note that the certificate submitted by the petitioner appellant itself is not a certificate of manufacturer of the plant in question. Annex. 2 a document in Gujarati only pertains to be a certificate showing manufacturing of chemical. It nowhere says that it evidences that the petitioner is a manufacturer of Reverse Osmosis based Water Purification System. Thus, the case set up by the petitioner itself that no such certificate was produced by the respondent No.3 can be read against the petitioner itself also. The respondent No. 3 never claimed itself to be a manufacturer.

23. The petitioner has claimed itself to be a manufacturer but it has not filed any

certificate of being a manufacturer of Reverse Osmosis based Water Purification System and thus, the petitioner itself is disqualified in terms of interpretation given to Annex.1 notice inviting tender, Therefore, the contract was rightly awarded to the respondent No. 3.

24. On behalf of the Union of India it has been submitted that in terms of Annex. 1 manufacturers certificate was required from the manufacturing unit and not from the supplier. A translated copy of the certificate submitted by the petitioner in Gujarati shows that the petitioner is a manufacturer of chemicals. It does not pertain to a manufacturing unit of Reverse Osmosis based water purification System. It has further been submitted by the counsel for the Union of India that Reverse Osmosis based Water Purification System is not completely manufactured by anyone in the country. Thus, it was in the knowledge of all concerned that no Indian company can come up as a manufacturer of such system. The whole basis of the writ petition is misconceived.

25. At the time of arguments the learned counsel for the petitioner has tried to show a document to say that the petitioner is a manufacturer of Reverse Osmosis skids. Such document was never filed by the petitioner till the matter was examined by the Technical Evaluation Committee. Even such certificate is not a complete answer to the requirement as alleged by the petitioner. The certificate shows that what is manufactured by the petitioner is Reverse Osmosis skid. It has been argued by the respondents No.1 and 2 that Reverse Osmosis skid is a different article/machine than Reverse Osmosis based Water Purification System machine. Reverse Osmosis skid is meant for having cover in relation to membrane which is a part of Reverse Osmosis based Water Purification System machine. An attempt was made to mislead this Court by the petitioner and on this ground the writ petition filed by the petitioner deserves to be dismissed. The writ petition has rightly been dismissed by the learned Single Judge.

26. The documents submitted by the petitioner and the respondent No.3 were considered by the Technical Evaluation Committee in the presence of the representatives of both the parties and at that time it was clearly established by the respondent No.3 that it has fabricated many machines as required by the respondents No.1 and 2. After opening of the tenders both the parties revised their offers. The offer of the respondent No. 3 was to the tune of Rs. 42 lacs and that of the petitioner was for Rs. 56 lacs. The respondent No.3 after negotiation came down to Rs. 39.75 lacs whereas the petitioner lowered down its price at Rs. 48,79,942/-. Therefore, tender of

the respondent No.3 being the lowest and considered competent to fulfill the contract it was recommended by the expert committee. No allegations of mala fides or extraneous considerations have been pressed into service. There has been no arbitrariness in the award of contract. It has been held by the Hon'ble Supreme Court in *Air India Ltd. v. Cochin International Air Port Ltd. reported in* <sup>9</sup> that the decision has to be on the basis of over all view of the transaction, after weighing various relevant factors and having regard to the commercial viability, the Court cannot interfere in the decision but it can only go into the merits of decision making process. It is not a case where a lowest tender has been rejected on technical grounds. Scope of judicial review and courts interference is very limited and the cases cited by the petitioner are of no assistance to him rather they go against him.

27. We have considered the rival submissions and have perused the record. Respondents No.1 and 2 have also placed before us the proceedings of the Technical Evaluation Committee and that of the Tender Purchase Committee.

28. The basic contention raised in the writ petition by the petitioner is that the respondent No.3 was not qualified and, therefore, he was not a person who could have been considered for award of the contract. The basis of this contention is that the tender was to be given only by the manufacturers. For this an examination of the notice inviting tenders contained in Annex.1 is necessary.

29. Annex. 1 shows that the proposals have been invited from manufacturers/dealers. Use of such expression in the notice inviting tenders if considered objectively then it will be seen that plural expression has been used i.e manufacturers/ dealers. This necessarily excludes singularity.

30. The petitioner has claimed that only manufacturers were entitled to give tenders. If this contention of the petitioner is considered to be true then the use of expression 'dealers' would be redundant. It cannot be considered that the respondents No. 1 and 2 while giving the notice inviting tender Annex. 1 have used the expression 'dealers' unnecessarily. The inference which follows, goes against the contention of the petitioner.

31. In Annex.1 there has been emphasis on fabrication, erection and commissioning. Such emphasis also eliminates the entitlement of manufacturers alone. Clause (e) requires the production of certificate of the Industry Department from the manufacturers. Therefore, there is no question of such certificate being filed by the dealers. That being the position the case of respondent No.3 was considered to be one

in the light of the fact that it is a dealer. No illegality can be seen in considering a case of a dealer because it was provided in Annex.1.

32. If the case of the petitioner is considered that the production of certificate of manufacturer was a condition precedent for consideration than one thing becomes clear that the petitioner is claiming itself to be a manufacturer. Such has been his case in the writ petition also. He has filed a Certificate Annex. 2 a document in Gujarati. Its translation is available on record. The document nowhere states that holder of this certificate manufactures the equipment required by the respondents No.1 and 2 i.e. reverse osmosis based water purification system machine. An attempt made by the petitioner at the time of hearing of the arguments by showing a document. It showed that the petitioner is a manufacturer of reverse osmosis skids. Certificate of Manufacturer of reverse osmosis skids is also not a complete answer to the requirements contained in Annex. 1. The certificate has to be for a manufacturer for the complete system and not a part of it. The respondents No.1 and 2 who are the consumers of the product have clearly averred in their reply that this product is only a cover in relation to membrane which is a part of reverse osmosis based water purification system machine. Thus, the certificate produced with the petition i.e. Annex.2 is not a certificate showing that the petitioner is a manufacturer of the system to be supplied. The certificate shown to the Court at the time of hearing is also fall short of the requirement. Perhaps this was the reason that the petitioner has not chosen to produce the same on the record. What necessarily flows from the aforesaid narration of the facts is that the petitioner itself has not produced the certificate as required in the terms of clause (e) of the mandatory requirements of the tender. Thus, the weakness which it alleges for the respondent No.3 is true for the petitioner also. That being the position the argument raised by the petitioner goes against him.

33. The law in relation to the powers of the writ Court is now clearly defined by the Hon'ble Supreme Court in a recent decision in the matter of *Tata Cellular v. Union of India reported in.*<sup>10</sup> The Hon'ble Supreme Court has clearly defined the parameters as under at page 32 :-

- "(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 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 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."

34. If the arguments of the learned counsel for the petitioner are judged from the touch stones as per the law laid down by the Hon'ble Supreme Court and quoted hereinabove then it will be seen that the petitioner has not been successful in making out a case wherein any inference is called for. The tender has been awarded to the respondent No.3 because it quoted the least price, his experience evaluated by the Technical Evaluation Committee and found to be acceptable to the respondents No.1 and 2. The question of qualification has been discussed by us in detail in the foregoing paragraphs and nothing turns out in favor of the petitioner in this relation.

35. The facts of the case also do not demonstrate any arbitrariness on the part of the respondents No. 1 and 2. It had based its decision on the evaluation made by the two expert committees which after evaluating the complete facts had short listed two tenders i.e. petitioner and respondent No. 3 and has come to the conclusion which though not suited to the petitioner but cannot be said to be arbitrary. Further no mala fides has been alleged and urged by the petitioner. In this back-ground also we do not consider it appropriate to entertain the request of the petitioner.

36. We are of the considered opinion that the petitioner has not been able to bring in out his case within the ambit of the law laid down by the Hon'ble Supreme Court in Tata Cellular (supra). The other cases relied upon by the petitioner are also covered the law laid down in Tata Cellular (supra).

37. The decision on the questions raised by the petitioner require technical expertise. The Technical Evaluation Committee report has been perused by the Court. It has considered in detail the merits of both the tenderers and after careful scrutiny has favored the respondent No.3. This Court feels that the technical expertise required to

appreciate the merits is not available in the process in which the present writ petition is to be decided and, therefore, any attempt in this direction would be hazardous.

38. The learned Single Judge has refused to entertain the writ petition because it has felt that the question relates to grant of a contract and if any breach is there then the civil suit is the proper remedy. This Court has found that the basic argument raised by the petitioner is not available to it and the question of qualification raised by the petitioner is not made out in the perspective in which it has been alleged by the petitioner. That being the position, no relief can be granted to the petitioner in appeal. This Court feels that the learned Single Judge was right in not entertaining the writ petition and the writ petition was rightly dismissed by the learned Single Judge.

39. In the result, this appeal has no merit and the same is, therefore, dismissed.

Appeal dismissed.

Cases Referred.

1. AIR 1979 SC 1628
2. AIR 1986 SC 1527
3. 1999 (1) SCC 492 (AIR 1999 SC 393)
4. 2001 AIR SCW 322 (AIR 2001 SC 682)
5. 2000 (2) SCC 617: AIR 2000 SC 801
6. 1995 (1) SCC 478 (1995 AIR SCW 275)
7. 1994 (6) SCC 651 (AIR 1996 SC 11)
8. 2001 (1) RLR 239
9. 2000 (2) SCC 617 (AIR 2000 SC 801)
10. AIR 1996 SC 11