

# DELHI HIGH COURT

Jai Narain Modi

Vs.

State of Rajasthan

Civil Writ Petn. No. 3245 of 2003

28.08.2003

## ORDER

**B. Prasad, J.**

1. The petitioner has filed this petition claiming that in Rule 32 of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as 'the Rules of 1986') there is a Chapter IV which deals with the Royalty Collection Contract or Excess Royalty Collection Contract. Rule 32 of this Rule provides that royalty collection contract may be given in respect of such area and such mineral as the Director may by a general or special order direct. Rule 35 of the Rules of 1986 *inter alia* gives a procedure for inviting tenders.

2. The case of the petitioner is that pursuant to the powers conferred under Rules 32 and 35 of the Rules of 1986, respondent No. 3 invited tenders vide tender notice dated 4-6-2003 for the purposes of granting Excess Royalty Collection Contract on minor mineral 'marble' for the areas comprising in *Tehsil Banswara, Gaddi of District Banswara and Tehsil Aaspur of Dungarpur*. A copy of the tender notice is produced with the writ petition as Annexure 1. In this notice, the tenders were required to be submitted on 21-6-2003 in the office of the Additional Director Mines, Udaipur Zone, Goverdhan Vilas, Udaipur and the office of the Directorate, Mines and Geology Department, Rajasthan, Udaipur. The date advertised as 21-6-2003 was postponed to 27-6-2003 without assigning any reasons.

3. Petitioner purchased the tender form on 18-6-2003 on payment of prescribed fee, filled the tender form by offering Rs. 531 lacs per year as the contract price and also obtained the requisite Demand Drafts of different denominations totaling to Rs. 26 lacs. He affirmed on oath that he has submitted the tender in question and there were no outstanding dues against him or his family members. Petitioner when proceeded to

submit the tender on 27-6-03 at about 10.30 a.m. at the Directorate Office, Mines and Geology Department, Udaipur, an agitation was going on of the marble cutters of the area. The agitation was also at the office of the Additional Director right from the opening hours of the office. Tempers were running high and the agitators were raising slogans. The agitators were not permitting anybody to enter the office including the employees of the department. Petitioner also suffered at the hands of the agitators wherein, he was not permitted to go inside the office. The local administration utterly failed to provide any shelter and protection to those who wanted to submit their tenders. A chaos was created by surrounding the whole area and petitioner and other persons were prevented from entering the office under threat and were threatened to leave the area. The law and order was there, for casualty. Petitioner searched for a hide out but there stones were being thrown, therefore, petitioner had no option than to leave. Petitioner inquired as to what is the position at the office of the Additional Director, he learnt that the same situation is obtaining there also. He has relied on newspaper report in this regard.

4. The allegation of the petitioner is that these agitations were pre-planned and engineered. The authorities of the department and local administration were fully aware about the same. So much so that the Directorate vide its letter dated 26-6-03 had requested S.H.O. Bhopalpura, Udaipur to arrange for police from 2:00 p.m. to 8:00 p.m. on 27-6-03. Superintending Mining Engineer had also expressed the same feelings vide his letter dated 20-6-2003 and asked for maintenance of law and order from 10:00 a.m. to 5:00 p.m. The Additional Divisional Commissioner also wrote in this regard to the District Magistrate on 27-6-2003. According to the petitioner, the different communications sent by the Mining Department smack of some prior decision and connivance. According to the petitioner, such inference can be drawn from Annexures 4 and 6 of the writ petition.

5. Petitioner has further averred that Superintending Mining Engineer wrote at about 2:00 p.m. on 27-6-03 to S.H.O., Hiranmagri about the prevailing conditions. The letter is produced with the writ petition as Annexure 7. The police had even resorted to lathi charge. When the petitioner learnt that the crowd has disbursed, he went to the office of the Directorate, raised protest and grievance about his inability to submit his tender. Respondent authorities refused to look into the grievance on the pretext that by that time, it had been 3:15 p.m. and the time had gone for submission of tenders. Petitioner learnt that the agitation had been at the instance of respondent No. 5 and for the benefit of respondent No. 5 and he has been awarded the tender for a sum of Rs. 351

lacs. Petitioner has also mentioned that for the same contract, there had been tenders invited on earlier dates i.e. 10-3-2003, 28-3-03 and 20-5-03. In this process, the petitioner and respondent No. 5 had participated. On the previous date of bidding i.e. on 20-5-03 which ultimately got cancelled, petitioner's bid was to the tune of Rs. 516 lacs and that of respondent No. 5 was 526 lacs. It is strange to note that a party which had offered 526 lacs on 20-5-2003 has been awarded the contract on 27-6-03 for a sum of Rs. 351 lacs making out a total difference of Rs. 1.65 crores per annum. The difference smacks of *mala fide* and connivance.

6. Petitioner has further averred that on 28-6-03, he submitted his complaint in writing with the Secretary, Mines, Govt. of Rajasthan, Jaipur and to the Director, Mines and Geology Department, Udaipur, inter alia, stating that the petitioner has been forcibly prevented from submitting his tender by the agitators. Petitioner submitted that he was prevented from submitting his tender of Rs. 531 lacs as against Rs. 351 lacs which has been accepted. According to the petitioner, the whole situation has been engineered at the instance of respondent No. 5. Petitioner claims that there could not be any reason for respondent No. 5 to reduce his bid from Rs. 516 lacs to Rs. 351 lacs unless, there was some design. A complaint was lodged by the petitioner on 28-6-03. Petitioner also submitted a representation and all through maintained his stand that he is prepared to take the contract for Rs. 531 lacs.

7. Petitioner has further alleged that in order to fulfil the evil designs without obtaining requisite sanction within 24 hours of the acceptance of the tender, respondent No. 5 was awarded the contract. It is important to note here that earlier contractor M/s. B. S. Associates had already been given extension up to 30-6-03 vide order of the Directorate dated 31-5-03, yet respondent No. 5 was awarded the contract on 29-6-03 even before expiry of the earlier extended term. It is also important to note that it has come to fore that B. S. Associates while being granted extension, were told that they will have to adhere to the rate which are going to be one for which the contract will be awarded in future. Thus, respondent State was assured of the income which was likely to come out by acceptance of a fresh tender on any date. Petitioner has claimed that the conduct of the petitioner wherein, he has filed the tender and purchased requisite drafts shows his bona fides and existence of agitation and other factors only indicate that this was to benefit the private contractors as against the interest of State.

8. Petitioner asked for details of the various proceedings which culminated into acceptance of the tender. The letter was not initially accepted by the P.A. of the Officer. However, such a letter was sent by registered post. Petitioner has further

submitted that he has been willing and still ready to take the aforesaid contract at the sum of Rs. 531 lacs offered by him in tender and in the contemporaneous complaints. This would mean that there would be a loss of Rs. 360 lacs to the State Exchequer in two years, an amount which is more than the amount offered by respondent No. 5 for one year contract. Thus, propriety demands that the contract should be awarded to the petitioner. Petitioner has claimed that the situation as was obtaining on the relevant date was such that the petitioner was prevented from making his bid and in such circumstances, a second look at the situation is required by the respondent authorities. From the aforesaid facts, petitioner claims that on account of nuisance created by marble cutters, the petitioner has been deprived of submitting his tender. State authorities have failed to control the situation. In such circumstances, there had been a gross violation of the clauses of Constitution of India contained in Articles 14 and 19.

9. Petitioner has further claimed that respondent No. 5 had earlier given bid of Rs. 526 lacs and subsequently, he had been awarded the contract for Rs. 351 lacs, which smacks of arbitrariness. Mining is a source of revenue for the State and such contracts are given to augment revenue of the State. The very purpose has been frustrated by accepting the tender of respondent No. 5 and this will result into a loss of Rs. 360 lacs in two years. Petitioner has prayed that on the aforesaid facts, the contract awarded to respondent No. 5 be cancelled and he be awarded the contract.

10. The learned counsel for respondent State in his reply has stated that the royalty collection contract for Banswara-Dungarpur area has already been sanctioned in the name of private respondent No. 5, M/s. Navkar Associates. Pursuant thereof, an agreement as per Rules has also been executed. It is pertinent to note that after execution of the contract, possession of the contract area has also been handed over to the private respondent No. 5 in the midnight of 29th and 30th June, 2003. After taking possession, the said firm has also started collection. The respondent State has also filed Photostat copy of the sanction order dated 28-6-2003. It has also been claimed by the respondent State that the petitioner has not come with clean hands. He has made many allegations in the writ petition that he was prevented from submitting tender on account of nuisance created by marble cutters of the area. In another writ petition, which came up before this Court, the matter was referred to the Chief Secretary for enquiry and pursuant thereto, an Enquiry Committee has been constituted comprising of:- (a) Divisional Commissioner, Udaipur; (b) Dy. Inspector General of Police, Udaipur Range, Udaipur and (c) Financial Advisor, Excise Department, Udaipur.

11. The said Enquiry Committee after enquiring into the matter has prepared a report

and according to this report, it is obvious that there was no problem of law and order situation on 27-6-2003 which would have resulted in preventing the petitioner from submitting the tender. It has been found by the Enquiry Committee that the allegations leveled by the petitioner are baseless and are afterthought. The petitioner has made reckless and baseless allegations in the writ petition and, therefore, the petitioner has not come with clean hands. The allegations of the petitioner are unwarranted and unjustified and such a person is not entitled to be heard by this Court under Article 226 of the Constitution of India.

12. It has been further submitted that the petitioner was himself a defaulter in submitting the tender before the authorities concerned. The services of police department were obtained and there was proper arrangement of the mining authorities and proper care was taken that nobody should be prevented from submitting his tender. The tenders could be submitted at two places.

13. It is significant to note that on that date, as many as six tenders were submitted for Banswara-Dungarpur area in the office of Additional Director (Mines), Udaipur Zone, Goverdhan Vilas, Udaipur and six tenders were submitted for Rajsamand area in the office of Additional Director. This shows that the tenders were not prevented from submitting the tenders. It also does not stand to reason that why the petitioner alone was prevented from submitting the tender when other tenderers have submitted their tenders.

14. It has also been submitted that no application was filed before the authorities on that day. It was only on the next day that the petitioner submitted his written submissions. The communications addressed by the petitioner are not dated 27-6-2003. They are of 28th or 30th June, 2003. This shows that this was an after thought. According to the respondent State, the petitioner has in his writ petition submitted that he has approached the respondents around 3:15 p.m. This shows that the petitioner did not reach the department in due time that was 3:00 p.m. All the allegations of the petitioner are thus, baseless and concocted lies.

15. Apart from the aforesaid preliminary objection, parawise reply has also been submitted by the respondent State and it has been submitted that inviting of tenders fixed for 21-6-2003 was postponed for administrative grounds and the next date was fixed as 27-6-2003. It has also been submitted by the State Government that matter with regard to the pattern of collecting the royalty on Makrana pattern was under consideration before the State Government. For introduction of the said pattern for

Banswara and Rajsamand Districts, the earlier date was fixed as 21-6-2003. It was postponed and fresh date was fixed and notified as 27-6-2003. This has been denied that the postponement from 21-6-2003 to 27-6-2003 was on account of whims of the department, but it was for, administrative reasons. It has been asserted that the petitioner was duty bound to submit his tender on the appointed date. If the petitioner after knowing the rates quoted in other tenders, filled up his tender and showed higher rates, then this cannot be permitted.

16. The State Government is bound by the law and they cannot ignore the Rules and Act illegally. No irregularity or fault has been committed in the manner in which the question was dealt with. The respondent State has in its reply emphasized that there was no hurdle of any type in entering the offices of the Director and Additional Director where the forms could be submitted. Even the Executive Magistrates were there watching the situation and ensuring to maintain the law and order.

17. It is wrong to say that the petitioner was prevented from entering the office of Additional Director. Adequate arrangements for safety were made and the S.H.O., Police Station, Bhupalpura and S.H.O., Police Station, Hiran Magri were requested to maintain the law and order. The A.D.M. (City), Udaipur, was present in the campus of Director along with S.H.O., Police Station, Bhupalpura with complete Bandobast. The other S.H.O. Police Station, Hiran Magri was present with adequate police officers at the office of Additional Director. With the proper police arrangements, the agitators were removed from both the places. There was no difficulty and hurdles for the tenderers to come and submit the tender. All necessary arrangements of police force were made by the Mines and Geology Department so that the tenderers could participate in the proceedings. The doors were kept open to enable the other tenderers to enter into the department and the tender boxes were kept to facilitate the tenderers.

18. Though the allegations have been made that it is the connivance and pre- design of respondent No. 5 to create problem but no material has been placed by the petitioner to establish his claim and, therefore, they cannot be considered to be relevant facts in question.

19. It has been claimed by the State in its reply that the allegation that the agitation was pre-planned, engineered and smacks of some prior-design and connivance, is factually incorrect. So far as the Departmental authorities and local administration are concerned, they usually and normally seek the help of the Police Department in order to avoid any kind of disturbance during the course of tender process. It is claimed by

the State that it is not for the first time that such letters were issued for seeking the help of the police force but earlier also when the tenders were invited for the areas in question for excess royalty collection contract, police help was also sought. As regards the timings in the issuance of the letters seeking police help, it is because different letters have been issued by different authorities, therefore, the variance.

20. For maintaining law and order situation, assistance of the S.H.O., Police Station, Hiran Magri, was requested by the Superintending Engineer, Udaipur. The State has claimed that there is nothing wrong in writing such letters. According to the State, 11 tenders were submitted by putting the same in the tender box placed in the office of Additional Director (Mines), Udaipur Zone, Goverdhan Vilas, Udaipur and one tender was submitted in the office of the Directorate. It was open to the tenderers to submit their tenders at either of the two places.

21. As regards the allegations made in para No. 10 of the writ petition, it has been submitted that the petitioner has not submitted the correct facts. The State has submitted that during the course of tender process, about 400- 500 persons came by buses at Goverdhan Vilas premises and they started raising slogans. When they did not leave the place for sometime, the Additional Director (Mines), Udaipur Zone tried to pacify them but they refused to leave the premises. The Superintending Engineer, Udaipur, wrote a letter Annex. 7 to the S.H.O., P. S. Hiran Magri at 2 p.m. The S.H.O., P. S. Hiran Magri, came into action and dispersed all these persons.

22. The State has further contested that it is wrong to state that the petitioner went to the office of the Director to raise the protest and grievance. The petitioner has failed to explain as to why he did not put his tender at either of the places meant for submitting the tenders. The State has emphatically submitted that no tenderer was prevented from putting his tender at either of the places mentioned. Hence, the petitioner failed to submit the tender at 3.00 p.m. There was no provision for accepting the tender at 3:15 p.m. after the appointed time.

23. Tenders were invited on last three occasions prior to the tender in question. In this process, petitioner and respondent No. 5 both participated. None of them was highest tenderer and the highest tenderer failed to deposit the security money within the stipulated period as per the rules and, therefore, the earnest money was forfeited. The process which is in question, the highest tender was of private respondent No. 5 out of the six tenders received for this area. Since the last contract was for Rs. 284.51 lacs and this time, the Department has received the rate of Rs. 351 lacs, which is more than

the reserve price of Rs. 328 lacs and the price of last term contract Rs. 284.51 lacs. As the petitioner has failed in submitting his tender, he is making a tall claim.

24. The petitioner's representations Annexures 8 and 9 were received by the State but in view of the submissions made hereinabove, it was not possible to redress the grievance raised by the petitioner. While considering the tenders, there was no haste made by the answering respondent. It has been reiterated that the rules have been adhered. Since the rules did not prevent for the grant of sanction, the sanction was made. It was clearly mentioned that it was not granted to M/s. B. S. Associates, only an extension was granted up to 30-6-2000 or up to the period the new contract comes into force, whichever is earlier. It is, therefore, clear that the contract was granted no sooner it was sanctioned.

25. The State has emphatically submitted that the petitioner has wrongly submitted that he could not submit his tender. The petitioner has failed to submit his tender on the relevant date. The petitioner is trying to create a bogey of loss to the exchequer, which is not the correct proposition. The State cannot violate the rules. Mere offer by the petitioner subsequent to the process, cannot dislodge the legal and regular process adopted by the authorities concerned. Law and order was maintained and the process was completed in accordance with the rules.

26. The State has submitted that Annexure 10 at page 38 and another at page No. 39 are the letters written by Agarwal House and one Rakesh Vyas, Manager and Authorized Signatory. Therefore, nothing could be supplied to the petitioner on the basis of these letters. Both the letters are not related to the petitioner. The State has claimed that the entire process of inviting the tenders and acceptance has been done strictly in accordance with law and, therefore, no illegality can be found. There was no violation of the equality clause enshrined in Articles 14 and 19 of the Constitution of India. The State has prayed that the writ petition of the petitioner, therefore, deserves to be dismissed.

27. Caveator respondent No. 5 has also filed its reply and has raised preliminary objection. It has been prayed on behalf of the answering respondent No. 5 that there is non-disclosure of material facts. The writ petition deserves to be dismissed. It has been claimed that since the petition raises disputed questions of facts, it cannot be entertained. The submission of the petitioner that there was difficulty in submitting the tender, has also been contested. The answering respondent has submitted that a Committee was constituted to enquire into the allegations similar to that of the

petitioner. The report submitted thereafter in that regard by the Govt. has mentioned that there was no problem of law and order situation on 27-6-2003, which could prevent any person from submitting his tender.

28. The answering respondent has submitted that in the tender, the offers are given keeping in view the existing competition, which is prevailing at the point on account of variance in rates, there is no reason to doubt the bona fides of the answering respondent. The allegations of *mala fide* and connivance are totally baseless. They have been leveled in an irresponsible manner. No one has been named who according to the petitioner acted mala fidely and with whom. There could not be any connivance in the absence of any person being involved, named and arrayed as party. The allegations of *mala fide* and connivance, therefore, cannot stand. For acceptance of tender of the answering respondent, no amount of doubt can annul a legally justified acceptance because after passing of time, the petitioner becomes miser. Then filing of writ petition cannot come to his rescue. The allegations of unrest have been blown out of proportion. Capacity to quote any higher amount subsequently is of no consequence.

29. It is claimed by the answering respondent that the petitioner has belatedly come to the Court and has filed the writ petition when notices were issued in another case filed by one Onkar Lal Joshi. Thus, this is a case where the subsequent events have made the petitioner wiser. There was no justification for the petitioner to have filed the writ petition and claim the providence on the basis of the offer, which is an after thought.

30. Learned counsel for the answering respondent No. 5 has submitted that parties including the answering respondent knew that the figures given in the writ petition were not real but fictitious. Learned counsel wants to retract these submissions because he says that he has submitted only during the course of arguments under the force.

31. In para 11 of the reply, the learned counsel for the answering respondent has submitted that the answering respondent has given offers from time to time. In the tender system, the offers are given keeping in view the existing competition, which is prevailing at the point of time, therefore, there is of course variance in rates and on account of variance in rates, there is no reason to doubt the bona fides of the answering respondent. The allegations of *mala fide* and connivance are totally baseless and have been levelled in an irresponsible manner because no one has been named, who according to the petitioner acted malafidely and with whom there was any

connivance and in the absence of any person being named and arrayed as party, the allegations of malafide and connivance cannot stand.

32. Offers are made keeping in view the existing competition which was prevailing at the point of time of submitting the tenders. In any case, offer given by the answering respondent is much higher than the bid of the last tenderer, therefore, it is wrong to suggest that the Government has been put to loss and all the allegations have been made with a view to frustrate the tender which has since been finalized in favour of the answering respondent.

33. Thus, the argument of the learned counsel for answering respondent No. 5 in this light has to be judged whether it reflects, *bona fide* or otherwise. Mr. Onkar Lal Joshi, who was one of the tenderers in first round of the tenders, resigned and got his amount of Rs. 5 lacs forfeited. Thus, he is the person, who was out to torpedo the whole process.

34. From the pleadings of the petitioner, it has to be seen as to at what point of time, the offer was given on behalf of the petitioner. The pleadings are primarily vague in para 6 of the writ petition. The petitioner has made an offer of Rs. 531 lac per year. In support of this statement, he has filed Annexure 2. The offer of the petitioner was admittedly never put in the tender box. The offer made in Annexure 2 is, therefore, not liable to be acted or accepted, thus deserves to be ignored. The offer is clearly an after thought. Admittedly, the tenders were not put in the office of Director or in office of the Additional Director.

35. The petitioner is narrating the events as they appeared in the newspaper report. It is inadmissible in accordance with the principles enunciated in the Evidence Act. The petitioner's contention is that he was prevented from bidding. This is not supported by any cogent evidence and, therefore, without foundation. Under the orders of this Court, an investigation was ordered under the supervision of the Chief Secretary, which speaks that there were opportunities available to all those persons who wanted to give tenders and, therefore, it cannot be said that the petitioner was prevented from submitting his tender.

36. The learned counsel for the answering respondent further stated that according to the report submitted by the State Government no loss has occurred to the State. There was no law and order problem. The reserve price of the contract was Rs. 328 lacs whereas the offer of the answering respondent which has been accepted is Rs. 3.51 crores and it is much higher than the last terms tender and is sufficiently higher. As

the earlier term, it was only 2.84 crores.

37. Learned counsel for the answering respondent has also placed reliance on the case of *Tata Cellular v. Union of India, reported in* <sup>1</sup>. Para 94 of this case reads as under:-

"94. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial revision can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, *Wednesbury* unreasonableness.

(iii) Procedural impropriety."

38. The relevant law i.e. Rule 35 has been given literal meaning and has been followed in true spirit. It would not have been unreasonable if the tender was not accepted by the answering respondent. That would have meant that the State is not acting rationally or with reasonableness. As per the report of the State Government, the procedural impropriety has not been in the process and, therefore, the decision making authority was perfectly justified and the same cannot be impugned on the ground on which the petitioner has sought to impunge it. No name has been given or his designation mentioned that he was responsible for any act of *mala fide* or exercised bias.

39. The Committee had examined the tenders on 27th. The answering respondent's tender being the highest, nothing was further required to be looked into. The State Government authorities on that point of time took a rational decision in favors of the answering respondent. The conjectures at this stage of unreasonableness as defined in the principles of *Wednesbury*, would prejudice the mind of Court. That would result into frustrating the process of grant of the contract, which was been concluded in favors of the answering respondent. No consideration could have been given to the earlier tenders or earlier bids because they lost their rights. They could not have any bearing on the fourth round, where they could be of no consequences.

40. In support of his argument, learned counsel for the answering respondent has

placed reliance on the case of *Continental Construction Ltd. v. Tehri Hydro Development Corporation Ltd.*, reported in <sup>2</sup> Paras 5 and 6 of this case read as under :-

5. "The Standing Committee on pre-qualification, on detailed examination of bids submitted by various parties, had noted in regard to PCL. Intertech: Lenhydro Consortium based on information/documents furnished by them, that the annual turnover of M/s. Progressive during the year 1998-99 has been Rs. 158.11 crores. The joint venture partners, M/s. Institute Lenhydro Project, Russia have successfully completed 140 m. high concrete gravity dam on Bureya river for Bureya Hydroelectric Project, Russia involving 35 lakh cu.m. of concrete placement. The peak rate of concrete placed by the party in a single month on this project was more than the required rate of 20,000 cum. It was also noted that M/s. Progressive achieved a monthly rate of 2,50,307 cu.m. for earth and rock excavation in the month of June 1994 for Srisailam Right Bank Canal Work. M/s. Institute Lenhydro Project, having worked on Bureya HEP, Russia, have adequate experience in reinforced cement concrete technology. Based on the information provided, and documents submitted by this joint venture in response to the pre-qualification tenders, the Standing Committee recommended pre-qualification of PCL-Intertech: Lenhydro Consortium joint venture, it was intimated to the applicant that since the pre-qualifying requirements relating to concreting were being met by the Consortium of Intertech: Lenhydro Project, Intertech: Lenhydro Consortium needs to be nominated as the leader of the joint venture.

6. Based on the recommendations of the Standing Committee, the answering respondent THDC, pre-qualified seven parties in June 2001, including the joint venture of M/s. Progressive Construction Limited and Consortium of Intertech-Lenhydro, Russia, for submission of bids for the civil construction works of Koteshwar Hydro-electric Project."

41. Learned counsel for the answering respondent has also placed reliance on the case of *Air India Ltd. v. Cochin International Airport Ltd.*, reported in <sup>3</sup> Paras 10, 11 and 12 of the case read as under :-

"10. That only point that really falls for consideration is whether CIAL had acted fairly after it had invited fresh offers by its letter dated 13-7-98. It was forcefully submitted by Mr. Andhyarujina that after the High Level Committee

had evaluated the proposals and recommended Air India for the job it was unfair on the part of CIAL to have permitted Air India to make a fresh presentation and revise its terms. Even while conceding that CIAL had a right to enter into negotiations even at that stage, it was submitted that Cambatta also should have been invited for negotiations and informed about the revised terms of Air India, it was submitted that like Air India, Cambatta should have been given an opportunity to match the offer made by Air India. From the letter written to others also, it appears that the Board of Directors had, in its meeting held on 29-6-98, taken certain decisions and felt that in fairness all eligible agencies should be requested to give their best offers. Air India had submitted its offer on 20-7-98 and stated therein that its offer was open for negotiations. Cambatta had submitted its offer on 28-7-98. It was made on the basis of certain assumptions. CIAL had in all received five offers. The High Level Committee constituted for evaluation of offers did not consider the offer of M/s. P.S.M. Aviation Pvt. Ltd. as it had not submitted the required bank guarantee. The other four agencies, namely, Cambatta, DNATA, Air India and Ogden, were found on par as far as technical competence, organizational capacity and past experience was concerned. It, however, short listed Cambatta and Air India on the ground that they are Indian organizations, operate mainly in India and has better proven adaptability for operating in Indian conditions. It then recommended Cambatta for undertaking the ground handling services without giving any reason for its preference for Cambatta. While making the decision the Committee observed that it would be for the Board of Directors to consider whether any negotiation should be held with the qualified agencies. The Board of Directors had then met on 7-11-98 and after taking note of the minutes of the high level committee and taking note of the fact that Air India is a public sector undertaking and a national carrier, decided to have a detailed discussion with Air India before taking a final decision. It, therefore, invited the Managing Director of Air India for giving a presentation before the Board on 27-11-98. It was also felt necessary to take a final decision in its next meeting to be held on 27-11-98 as the matter was pending since long and it was necessary to solve the financial crunch of CIAL. Cambatta had protested against giving of an opportunity to Air India to make a presentation by its letters dated 12-11-98 and 23-11-98 on the ground that what was being done by CIAL was improper and in violation of global competitive bidding norms. In spite of the protest of Cambatta and Board of Directors of CIAL permitted Air India to make a

presentation for outlining in detail its ground handling capabilities, packages of services which it wished to offer and other relevant advantages including financial. Air India by its letter dated 1-12-98 recapitulated the details of the offer which it had already made, and the subsequent presentation and discussion on 27-11-98. The said letter discloses that some changes were made by Air India and other Airlines- domestic and international operations through CIAL and pointed out that only through maximization of operations this new venture can be a profitable one at an early date. Cambatta again by its letter dated 7-12-98 reiterated that its offer was the highest (most favorable to CIAL) and that it would be unfair to accept the revised bid of Air India. In spite of the protests of Cambatta, CIAL, by its letter dated 12-12-98, informed Air India that the Board of Directors had decided to accept the revised offer of Air India.

11. This narration of facts makes it clear that all along, after the High Level Committee had recommended Cambatta for awarding the contract, what Cambatta was contending was that CIAL having accepted the limited global competitive bidding norms and having decided 28-7-98 as the last date for inviting final offer, it was not open to it, thereafter to negotiate with Air India behind the back of Cambatta and permit Air India to revise its offer. Even though Cambatta had written protest letters, it had not requested CIAL to give it any opportunity to negotiate or to improve upon its offer. The decision of the High Level Committee was obviously not the final decision and certainly it was not binding on the Board of Directors who were the final authority to take the decision. The Board of Directors, at the meeting held on 7-11-98, considered the proposals of Air India and Cambatta and appears to have taken a tentative decision to award the contract to Air India and, therefore, called it for negotiations with a view to have better terms and take the final decision. The Board of Directors did take the final decision on 27-11-98 as Air India agreed to make its offer more beneficial to CIAL. That becomes apparent from Air India's letter dated 1-12-98 there was no point in calling Cambatta thereafter for any negotiation. It may be recalled that Cambatta was recommended over Air India by the High Level Committee only because Cambatta's financial rating was found higher. What is significant to note is that even the High level Committee had in its minutes noted that financial rating cannot be the sole criterion for taking the final decision. Moreover, in a commercial transaction of such a complex nature a lot of balancing work has to be done while weighing all the relevant factors and the final decision has to be taken after taking an overall

view of the transaction. It is true that even though Cambatta had called upon CIAL to produce the minutes of the meeting of the Board of Directors held on 27-11-98 the same was not made available to Cambatta. But that did not entitle the High Court to draw any adverse inference. The High Court had not called upon CIAL to produce those minutes.

12. As regards the merits of Cambatta's proposal, it was contended by Mr. Andhya-rujina that all the three offers of Cambatta were superior in terms of parameters laid down by CIAL than Air India's offer. He submitted that even after CIAL unilaterally raised the license fee of Air India from 17 per cent to 20 per cent in the 10th year to match Cambatta's offer and imposed a condition that Air India would not subcontract, it did not become comparable with the offer of Cambatta as Air India did not offer to pay 2 per cent bonus in license fee. It was also submitted that Air India's representation that it would be able to bring more traffic was illusory and for that reason also Air India's proposal cannot be regarded as superior or even comparable with the proposal of Cambatta. We do not think that CIAL did any wrong to taking into consideration the fact that Air India is an Airline and being a national carrier would be in a position to bring more traffic of Air India and other domestic lines if it was awarded the contract. As regards the merits of the rival offers, we do not think it proper to look at only the financial aspect and hold that CIAL did not accept Cambatta's offer, even though it was better, because it wanted to favor Air India or that it had acted under the influence of Air India and the Ministry of Civil aviation. In a commercial transaction of a complex nature what may appear to be better, on the fact of it, may not be considered so when an overall view is taken. In such matters the Court cannot substitute its decision for the decision of the party awarding the contract. On the basis of the material placed on record we find that CIAL *bona fide* believed that involving a public sector undertaking and a national carrier would, in the long run, prove to be more beneficial to CIAL. For all these reasons, it is not possible to agree with the finding of the High Court that CIAL had acted arbitrarily and unreasonably and was also influenced by extraneous considerations during its decision making process."

42. Learned counsel for respondent No. 5 emphasized that mere payment of higher amount cannot be the sole criteria for acceptance of tenders.

43. Respondent No. 5 has further relied on a case reported in (1993) 1 SCC 445 : (AIR 1996 Supreme Court 51) and has relied on paras Nos. 17, 18 and 19, which read

as under :-

"17. It is true that by way of judicial review the Court is not expected to act as a Court of appeal while examining an administrative decision and to record a finding whether such decision could have been taken otherwise in the facts and circumstances of the case. In the book Administrative Law, Prof. Wade has said :

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts *ultra vires*. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended. The decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits. With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority."

But in the same book Prof. Wade has also said :

"The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may be done none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest.

There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or to have failed to take account of relevant considerations, so that its action is *ultra vires* and void."

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* 4 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 authorized 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* the Courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

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

44. Learned counsel for respondent No. 5 has then relied upon a case reported in (1995) 1 SCC 478 : (1995 AIR SCW 275) and has relied upon para 17 which reads as under :-

"17. At the outset, we may indicate that in the matter of entering into a contract, the State does not stand on the same footing as a private person who is free to enter into a contract with any person he likes. The State, in exercise of its various functions, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly

and reasonably. 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 quotes 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. It is, however, recognized that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere."

45. Respondent No. 5 has then submitted that reckless allegations have been leveled by the petitioner against respondent No. 5. There is no foundation in the writ petition whatsoever to show that there was any connivance or conspiracy hatched with the marble cutters to raise agitation. It is a plain and simple bald allegation leveled in the writ petition bereft of any evidence available on the record. Such type of attempt to prejudice this Court should not be countenanced.

46. Replying to the arguments of the respondents, learned counsel for the petitioner submits that it is not correct to submit that the petitioner has confined his petition while narrating the facts to the disturbance which continued at Director's Office, he had in so many words said that the same position was there at the Additional Director's Office. Thus, he has averred that at both the places, disturbance was there. He has referred to the FIR lodged by the police itself. It has been read in detail for establishing that the disturbance was caused at both the places. This report recites that until 2.00 p.m. no tenderer was permitted by the crowd to enter into the office. If any person attempted to get inside, he was prevented from entering by encircling him and shouting slogans and he was forced to get back from the scene. This FIR also recites using of force and pelting of stones and this has been specifically noted in the FIR that those who wanted to submit their tenders, they were also made targets of stoning.

47. This has been emphasized by the petitioner that contents of the FIR supported the case of the petitioner. Whatever allegations have been made by him in the petition are given by the law enforcing agency. The police while recording the FIR at the instance of their own officers have recorded that the disturbance has occurred in the proximity

of 3.00 p.m. the dead-line for submitting tenders. The report time has been recorded as 3.30 p.m. In the FIR it has been recorded that the time of the occurrence is 10.30 a.m. to 2.00 p.m. but in the body of the FIR, it is recorded that the disturbance was at 3.00 p.m.

48. Learned counsel for the petitioner submitted that it is provided in Rule 35 that the augmentation of state revenue should be taken into consideration while according sanction. The Director was required to look into the entire matter thoroughly. The whole process of granting contracts to the private parties is after abdicating the sovereign function in favours of the private individuals. The sole purpose of augmentation of revenue was the idea behind tendering. If this consideration is kept in mind, then the Director has deselected his duties because then he is not fulfilling the objectives for which such a procedure was adopted. He has not only acted mechanically but has not seen that the requirements of Rule 35 have not been followed. The real purpose of the rules have not been followed. Achievement of object was not looked into by the Director while according sanction.

49. Learned counsel for the petitioner has agreed with the counsel for the respondents that the highest tenders are not to be accepted as a rule. If expediency requires that another tender is required to be accepted, then Officer can use his discretion and even the judicial Courts have learned in favour of such decisions. In the interest of the State even the highest tenders have been some times rejected. Such an approach has been upheld the Hon'ble Supreme Court in the case reported in 1993 (1) SCC 445 : ( AIR 1996 Supreme Court 51).

50. Thus, it is not the rule of thumb that the highest tender alone is to be accepted. What is to be seen by the sanctioning authority is expediency and feasibility of tender. Approval of acceptance by a higher authority which is subsequent to the approval of tender at that stage the authority has to take into account various circumvening circumstances. The administrative authority has been vested with powers to look into the same and then decide whether the final sanction should be granted or not. the apprehension of the petitioner is that while sanction was accorded vide Ex. R/1, the Director (Mines) has not even cared and bothered to have noticed the tender and offer which was made by the petitioner and expressed his opinion. There is no expression of opinion as to why it was not possible, feasible and proper to accept the petitioner's offer. No reasons have been assigned in Annex. R/1. Only one line reason is given that the proposal of Superintending Engineer has been considered to be worth acceptance. The acceptance has been accorded without there being an effective and objective

consideration. Thus, Annex. R/1 by its nature itself is a document which suffers from the vice of non-application of mind.

51. Then learned counsel for private respondent submitted that a new point is sought to be raised in regard to the validity of Annex. R/1 thus he wants to reply to it. It has been submitted that in this regard there is neither any pleading nor there is any proof of the fact that Annex. R/1 can be impugned on the grounds submitted by the petitioner. He placed reliance on a judgment reported in 1988 SC 2181 and has laid emphasis on para 13 which reads as under :-

"13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petition before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Civil Procedure Code and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertain able. But, in spite of that, we have entertained it to show that it is devoid of any merit."

52. All checks which were required to be applied have been incorporated in the Rules. Something which has not been provided for not to be done has not been provided. This case was a *causes omisus* and something which has been omitted by the Legislature deliberately, cannot be enforced by the Officers.

53. Heard the learned counsel for the petitioner and respondents and perused the

record.

54. One of the points agitated by the petitioner in the present writ petition circles around the law and order problem at the place, where he was required to submit the tender on 27-6-2003. For establishing his case, petitioner has taken support of a report submitted by the State in another writ petition where petitioner has drawn attention of the Court towards the discrepant stance taken by the respondent State. The State authorities have themselves given the details of the disturbance and has in detail explained as to at what point of time the same had occurred. Petitioner submits that unrest was prevailing at the office of the Additional Director the alternative place where, tender could be submitted.

55. This Court has examined the question of lawlessness at the place where the tenders were to be submitted. A detailed examination of this aspect has been made in the writ petition filed by Mr. Onkar Lal Joshi. This Court has come to the conclusion that the situation was not as hopeless as has been portrayed by the petitioner and there was enough opportunity available to submit the tender. Thus, the reasoning given by this Court in the writ petition of Onkar Lal Joshi, regarding the law and order situation, at the point where tenders were to be submitted, also holds good for the present writ petition. It is therefore, held that the case of the petitioner cannot be accepted in its entirety regarding his allegations about the lawlessness, at the place where tenders were required to be submitted. Therefore, on this point, this petition is not liable to succeed.

56. Petitioner has submitted that the lawlessness was created on account of connivance of respondent No. 5 who was to be awarded the contract and thus, it is a case where everything was predecided and the petitioner was excluded from consideration on account of pre-design and conspiracy. These are the questions of fact. The material available on record is not sufficient *prima facie* to make out a case of pre-design and connivance which can be said to be obtaining in the facts and circumstances of this case. In writ jurisdiction, factual position is required to be determined on the basis of the affidavits only. This Court feels that it would be hazardous to venture into realm of the kind of allegations which have been made by the petitioner. To investigate the question of connivance and conspiracy hatched by respondent No. 5 and others, no definite indication is available. Thus, this question also is not held in favour of the petitioner.

57. Thus, it is seen that on account of the alleged law and order problem, petitioner

cannot be granted any relief. During the course of arguments, it has come to the notice of the Court that while three times earlier, tenders were floated, petitioner and respondent No. 5 were contesting parties along with the highest bidder. They had offered the following bids :-

DATE OF BID	PRICE QUOTED BY PETITIONER [in Rupees]	PRICE QUOTED BY RESPONDENT NO. 5 (in Rupees)	PRICE QUOTED BY HIGHEST BIDDER WHICH HE DID NOT LIVE UPTO
10th Mar'03	4.70 crores	5.02 crores	Rs. 6 crores
28th Mar'03	5.06 crores	5.11 crores	Rs. 5.51 crores
20th May'03	5.16 crores 5.26crores	Rs. 5.51 crores	
27th June'03	petitioner could not submit his tender as claimed.	3.51 crores	

58. The highest bidder had quoted in all three occasions i.e. 10th March, 2003, 28th March, 2003 and 20th May, 2003 such a price for which he was never serious and thus, all three times, he backed out. This establishes atleast one thing that three tenders floated on 10th March, 28th March, and 20th May, 2003 were frustrated on account of some design by such bidder who never was a desirous bidder. In all three bids, respondent No. 5 was the second highest bidder. In all three biddings, he had quoted his bid for more than Rs. 5 crores. Curiously, in the fourth round, when the circumstances were a little disturbed, he had quoted Rs. 3.51 crores i.e. less than the first, second and third bidding, which was accepted. Thus, it can be seen that the

highest prices quoted were not the prices meant to be pursued. Higher prices were quoted by the petitioner and the second bidder perhaps to exclude genuinely interested parties. Subsequently, a much lesser amount has been quoted by the petitioner which was ultimately accepted by the department. Here it may be important to mention that during the course of arguments, a suggestion was made to respondent No. 5 that petitioner is making an offer of Rs. 5.31 crores, keeping his stance of increase in every bid. Respondent No. 5 was not interested in increasing his bid though in earlier bid, his stance was always on increase.

59. The amount as quoted and accepted, by respondent No. 5, is far below the amount quoted by him in the three earlier biddings. This at least gives one pointer that respondent No. 5 has shown a desire to take the contract for a sum which was more than Rs. 5 crores. But he has ultimately succeeded in getting the same for Rs. 3.51 crores. The difference is almost to the tune of 30%. This by no means can be considered to be a mean difference. May be that the authority exercising its discretion for accepting the bid was not as high an official as the Director who could have given weight age to this discrepancy. He may have presumed that he was only required to confirm the bid and therefore, did not apply his mind. Resultantly, a person who has quoted Rs. 5.26 crores price for getting the contract has succeeded in getting the same for Rs. 3.51 crores. In all eventualities, this shows that more care and caution was necessary on the part of the officials before deciding to give contract to respondent No. 5. He was the person who had calculated that transaction he is negotiating is open for manipulation. He had ultimately got the same, for a price, which is small, and is squarely to his advantage. These facts may not be sufficient to conclude that there was a preadmission in the matter. However, what assumes importance is that there was only one tender. No other tender was offered. The person offering the tender in earlier process has quoted higher price which is in the proximity of the amount pursued by the petitioner.

60. Awarding of contract for lesser price when higher was available shocks the consciousness. Something which was staked for a higher value has been claimed at lesser price. This circumstance was to be judged in the background that the State had chosen to adopt the method of royalty collection through private individuals, after it was considered that collection through its own machinery was not up to desired standards.

61. The provision of Rules 32 to 35 of the Rules of 1986 were brought on the Statute book for the augmentation of the State revenue. Granting of contract for Rs. 3.51

crores as against Rs. 5.26 crores necessary by means that the objective of augmentation stands defeated. The person who had the desire and capacity to have the contract for Rs. 5.26 crores has succeeded in getting it for Rs. 3.51 crores. The authorities of the respondent department were required to consider the question seriously that decision of abdication of sovereign function of collection of revenue was divested by State under compulsion. Because the State machinery was not considered efficient enough to collect royalty to the tune it was expected to.

62. Hon'ble Supreme Court has held in the case of Tata Cellular ( AIR 1996 Supreme Court 11) (supra) that a Court in judicial proceedings if concludes that the decision is such that authority has not properly acted, directing itself on the relevant law as they were required to them, interference is possible following the principles of Wednesbury which has been quoted in para 98 of the judgment which reads as under :-

"Wednesbury principle - A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it."

63. The grant of contract provides as a first step a provisional selection. Respondent No. 5 was provisionally selected. Thereafter, the matter went to the Director, for confirmation. This check has been envisaged to judge the correctness of the decision of the officer who has granted the provisional selection. Director was required to grant approval of this action. Approval in itself inheres an element of recognition of correctness of the provisionally selected bidder. If nothing else was required to be looked into, then, there was no question of any approval of the Director being provided. The question of approval by the Director thus assumes importance. Such approval cannot be considered to be a mere ministerial function. Director was required to judge correctness of provisional grant as a superior officer. This is a check provided by the legislature because State revenue would not be made to suffer on account of some unguided discretion being exercised by the officer making provisional selection. This argument of the learned counsel for respondent No. 5 that what is not provided in rules cannot be asked for is thus not a correct approach. Approval is provided in procedure. One cannot expect that a wrong step can be approved. If there is a mistake that will not be approved. Thus, it can be said that approval could only be of a correct decision.

64. Providing of sanction by Director, thus, was an executive function which was required to be performed with prudence and not mechanically agreeing to the junior officer's provisional selection.

65. Collection of revenue in past showed that administrative machinery lacked competence to execute the function of duty collection. This incapacity forced the State to agree to abdicate its powers in favors of persons who could earn for the State and also earn their livelihood. When selection of such persons was to be made, the State and its officers were required to see that the reason for which it has abdicated its powers, is not defeated. In the instant case, if the present figure is continued to operate then in two years, State would get Rs. 7.02 crores and if the highest figure quoted by the same man is taken into consideration, then the State would have got Rs. 10.52 crores. This is roughly an amount up by three crores from the one agreed by the department. Thus, there comes to be loss of at least one-third.

66. The price which State Government gets in to be examined in the light that the objective of augmentation of revenue is not lost. Augmentation of State revenue by the methods provided in Rule 32 of the Rules and Rule 35 of the Rules of 1986 was conceived after the State machinery was found to be unworthy for proper collection. The difference of money obtaining here is shocking. May be that this has happened because the decision makers for awarding the contract were part of the same machinery from which the work of revenue collection has been divested. Naturally, this leads to some kind of heart burning to those who have lost the authority to collect revenue. Therefore, in the light of the loss to the tune of one third, the provisional selection does not appear to be one which confirmed to the reasonableness, recognized by the judicial Courts through Wednesbury principle.

67. The officials of the State having oblique motives were divested of the responsibility of revenue collection and rules were amended to hand over the same to private individuals. The decision to award contract for less amount lacks good faith also. A higher amount was available, that having been lost because of improper handling of the situation, public interest has suffered. Apparent loss to the exchequer makes it lawful and relevant to hold that the provisional selection was improper.

68. The whole bidding has not received a fair treatment at the hands of the machinery who had the responsibility of granting the provisional sanction. Even if the free play in action is considered necessary then, loss of an amount equal to the bid does not confirm to the standards which can be justified as reasonable as is colloquially stated

that salt can be tolerated in flour needed for preparing the bread only to a minimal extent. But when the loss is more than the rational proportion, such decision cannot be considered as proper exercise of jurisdiction by the authority granting provisional sanction.

69. It may also be noticed that when the State considered to divest itself of the sovereign function of the revenue collection, it had suffered a daunt in its process of governance. It was not mechanical that the functions were assigned to the individuals. Had there been proper collection of revenue by State machinery, there was no reason to abdicate sovereign function. In this background, those who were responsible to see that the objectives are to be achieved, have to ask a question to themselves that can those persons be permitted to have unguided discretion to exercise, who had earlier failed in the task of collecting revenue properly? If this is permitted to happen, this would mean adding insult to injury. After self inflicted injury having been suffered by the State Government, permitting lesser collection of revenue would mean that public interest has been permitted to suffer.

70. The conscience of the officers responsible to supervise the augmentation of the revenue has also to be shaken. They are to be reminded that having failed to see that revenue is collected properly by the State machinery, the same casualty cannot be permitted to happen when this function is assigned to private individuals. The State is the guardian of the public finances. It was required to guard the same with jealousy. If the State machinery fails to perform this function properly, then Courts would be justified to see a collateral purpose in exercise of the discretion of the officers, wherein, the defined objectives of the rules is permitted to fail. At that time, protection by judicial review is necessary though judicial review will not be used as a weapon.

71. It is not understandable as to how a person having quoted a price of Rs. 5.26 crores would be considered to be an individual who can be granted contract for Rs. 3.51 crores. This sounds irrational and lacks reasonableness. The question of augmentation has become a casualty in this process. Therefore, in the process of judicial scrutiny, two figures i.e. Rs. 3.51 crores and Rs. 5.26 crores give an impression that there is a need to press Wednesbury reasonableness into action.

72. The question of grant of contract to respondent No. 5 can be viewed from another angle also. He was party to three earlier biddings. In those biddings, he had quoted higher figures than Rs. 5 crores. If these were the real figures, then, there was no

question of himself going higher and higher, every time there was a bidding. All of sudden in last bidding, a lesser price has been quoted by him. This is a question which was required to be examined by the authorities by using their imagination. If the prices quoted in earlier biddings were not real which were more than Rs. 5 crores then, respondent No. 5 could not be considered to be a *bona fide* bidder like the one who was the highest bidder and had backed out. He was also instrumental in frustrating the process. This also poses a question whether such a person can be considered to be the right person to be awarded the contract.

73. In the case of Tata Cellular ( AIR 1996 Supreme Court 11) (supra), Hon'ble Supreme Court has quoted with approval the findings of Lord Greene which according to Hon'ble Supreme Court used in countless cases. The summary is quoted herein below :-

"The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the Court can interfere. The power of the Court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them."

74. There are two facets which require attention. One that respondent No. 5 had in earlier biddings quoted higher amount, how could a lesser amount be quoted by him in the fourth round? Secondly, it is to be judged, whether he had been deceiving the department earlier or else had intention of deceiving subsequently. Variation in figures show that atleast at one point of time, he was the person who lacked bona fides. In this way, at his hand, public interest has suffered.

75. The aforesaid narration shows that State has made itself to loose the authority and has not been able to realise the compensatory price for this casualty. State has been a loser at both the ends. Such a course cannot be in the interest of the public. It can thus

be safely held that the entire process was not correct enforcement of law provided under Rules 32 to Rule 35 of the Rules of 1986. Thus, the action of the respondent officers in granting provisional sanction suffers from vice of being unreasonable, unfair and against the public interest. The offers of respondent No. 5 has not been judged by them in right perspective.

76. This Court having found that the provisional sanction granted in favour of respondent No. 5 was bad in view of Wednesbury reasonableness, it has to be quashed. It follows that subsequent sanction has also to give way as has been held by the Supreme Court's decision in the case of *Mithoo Sahani v. Union of India*, reported in <sup>5</sup> This will necessitate a substitution of new contractor. Before going in for a process denovo, the Director may hold an auction between respondent No. 5 and the petitioner. No other person having come forward, this method may be adopted. If the Director decides otherwise, then he may go for denovo proceedings also. But the whole process should be completed in two weeks hence. During the period, if no other provision is possible, then the respondent No. 5 may be permitted on the same terms as was done in case of the previous contractor pending the finalization of new arrangement.

77. In the result, the writ petition is allowed. The grant in favours of respondent No. 5 is held to be unreasonable exercise of discretion, hence, quashed. For future course of action, aforesaid direction will be available to the respondent State.

Petition allowed.

Cases Referred.

1. AIR 1996 SC 11
2. (2002) 8 SC 177: (AIR 2002 SC 3134)
3. AIR 2000 SC 801
4. (1982 (3) All England Reporter 141)
5. AIR 1964 SC 1536