

i.V.R. Constructions Ltd. Vs. Sukdevraj Sharma and Bros and Others

i.V.R. Constructions Ltd. Vs. Sukdevraj Sharma and Bros and Others

SooperKanoon Citation : sooperkanoon.com/443248

Court : Andhra Pradesh

Decided On : Sep-11-1998

Reported in : 1998(6)ALD467; 1998(6)ALT245

Judge : N.Y. Hanumanthappa and ;Neelam Sanjiva Reddy, JJ.

Acts : [Constitution of India](#) - Articles 14, 19(1), 26 and 226; Orissa Sales Tax Act - Sections 14

Appeal No. : WA No. 973 of 1998 and Batch

Appellant : i.V.R. Constructions Ltd.

Respondent : Sukdevraj Sharma and Bros and Others

Advocate for Def. : Mr. M.R. Harsha, Adv. and ;B. Adinarayana Rao, SC for the Central Govt.

Advocate for Pet/Ap. : Mr. C.V. Nagarjuna Reddy, Adv.

Judgement :

ORDER

N.Y. Hanumanthappa, J.

1. All these three appeals have been filed against the order of this Court dated 1-5-1998 passed in WPNo.3912of1998.

2. Since the question involved in these appeals is one and the same, they are heard together and disposed by a common judgment.

3. WP No.3912 of 1998 was filed by M/s Sukhdevraj Sharma and Brothers against four respondents, namely (1) Union of India, Department of Telecommunications, (2) Executive Engineer, Telecom, Civil Division-I, (3) Chief Engineer, Telecom, Civil Zone and (4) M/s. IVR Constructions Ltd., seeking a direction to the 2nd respondent to accept the petitioner's tender which is the lowest.

4. After hearing both sides, the learned single Judge passed the impugned order directing the respondents-authorities to retender the work and allot it to the successful bidder. Aggrieved by this, the Respondent Nos. 1 to 3 filed WA No.982 of 1998, the 4th respondent filed WANO.973 of 1998. Also the petitioner WA No.980 of 1998 aggrieved by this order in so far it not granting the relief sought by him, namely to accept the petitioner's tender being the lowest one.

5. For purpose of convenience, the rank of the parties is as in the writ petition.

6. The facts which are not in dispute are as follows: The petitioners are 'S' Class contractors. The 2nd respondent issued a notice inviting tenders for construction of Gateway Technical Building for Videsh Sanchar Nigani Ltd., at Madhapur, Hyderabad. Seven contractors submitted their tenders. The petitioner firm and the 4th respondent firm are among them. The department (2nd respondent) opened all the 7 sealed tenders in the presence of the contractors and read out the rate of each item of the schedule for the information of the tenderers present. The same was noted by them. The 2nd respondent also read out the total amount of each tender and the rates/ quantum quoted by the various tenderers as noted herein:

1) M/s. Sukhdevraj Sharma

& Bros .. Rs. 1,89,21,685-00

2) M/s. Lakshman Singh

& Bros .. Rs. 2,64,44,645-00

3) M/s.V.K.Bhat

.. Rs. 1,98,02,335-00

4) M/s. Janardhan Rao

.. Rs. 1,86,90,795-00

5) M/s. A. NarahariRao (Conditional)

.. Rs. 2,33,84,345-00

6) M/s. IVR Constructions

.. Rs. 1,93,71,099-00

7) M/s. Kwaliti Constructions

.. Total amount not given.

7. The grievance of the petitioner is that on 23-1-1998 he enquired with the 2nd respondent as to who was the lowest tenderer and the petitioner was informed that his tender would be accepted. While so, the petitioner heard on 6-2-1998 that the 2nd respondent was likely to accept the tender of the 4th respondent, who quoted higher price than the petitioner. According to the petitioner, the 4th respondent quoted Rs.21/- per kg for item No.20. The 2nd respondent misled the petitioner and informed that the 4th respondent quoted Rs. 19/- per kg for item No.20, but in fact he quoted Rs.21/- per kg as noted by all the persons present at the time of opening the tenders. Immediately, the petitioner got issued a telegram through his Counsel calling upon the 2nd respondent to reject the tender of the 4th respondent and accept its tender being the lowest. It was alleged by the petitioner that the entire exercise of finalising the tender was a preplanned, fraught with suspicion, doubt and appears to be very carefully stage-managed at the behest of the 4th respondent. The 2nd respondent gave reply on 9-2-1998 to the telegram sent by the petitioner. The petitioner also replied to the departmental authorities on 9-2-1998 pointing the mischief played on the petitioner and the gross irregularity committed by the authorities in accepting the tender of the 4th respondent, when the petitioner was the lowest tenderer. The petitioner lastly submitted that the petitioner is working for the department of Telecommunications for the past 15

years carrying on prestigious constructions all over India. The finalisation of the present tender in favour of the 4th respondent was the result of mischief, fraud and collusion between the 4th respondent and the official respondents.

8. The 2nd respondent denied the allegations made by the petitioner by way of filing counter. According to the 2nd respondent, the tender of N. Janardhan Rao was rejected as it was conditional tender as the said Janardhan Rao requested for supply of power and water free of cost by the department. In the tender of the 4th respondent, for item No.20, the 4th respondent quoted Rs.19/- in figures and words. These rates were encircled with initials. The 4th respondent also quoted Rs.21/- for the same item in figures and words. The amount corresponding to this item has not been worked and written in the amount column either with Rs.19/- or with Rs.21/-. Thus, for one item there were two rates mentioned by the 4th respondent. In view of the ambiguity arose due to mentioning of two rates for one item, the matter was referred to the legal Adviser, Ministry of Law and Justice and Company Affairs, Bangalore on 2-2-1998. On this, the Law Ministry advised that encircling the rate is irregular way of correction. They had further advised that as being the mode of correction not beyond doubt, so it might be in the interest of the department to treat Rs.19/- as the final rate. Following the advice of the Ministry of Law, the rate of Rs. 19/- was taken into consideration and, thus, the total amount of the tender of the 4th respondent was worked out to Rs.1,86,72,084/-. According to the 2nd respondent, the following is the status of the tenderers in the ascending order of amount of tenders.

No.	Name of tenderer	Tendered Amount
-----	------------------	-----------------

1.	M/s. IVR Constructions Ltd. considering rate of Rs.19/- for item No.20	Rs. 1,86,72,084/-
2.	Sri N. Janardhana Rao amount after adding the value of conditions to the tender	Rs. 1,89,07,568/-
3.	M/s. Sukhdevraj Sharma & Bros.	Rs.; 1,89,21,685/-
4.	M/s. Kwaliti Constn.	Rs. 1,97,52,859/-
5.	M/s. V.K. Bhat	Rs. 2,00,15,111/-
6.	M/s. Lakhman Singh & Bros.	Rs. 2,04,07,645/-
7.	M/s. Sri A Narahari Rao	Rs. 2,30,37,261/-

Thus the 4th respondent had become the lowest tenderer and, hence, the same was accepted. The 2nd respondent further submitted that even if this item No.20 is

deleted in all the tenders, still the 4th respondent continues to be the lowest tenderer. The 3rd respondent being the competent authority had accepted the tender of the 4th respondent after exercising due diligence and care and after taking the legal advice from the Law Ministry to protect the interest of the department, but not otherwise as alleged by the petitioner. It was further submitted that the petitioner never enquired with the 2nd respondent about the lowest tender nor the petitioner was ever informed that his tender would be accepted.

9. The Director of the 4th respondent firm filed counter denying the allegations made by the petitioners. He submitted that when the tender schedule which was filled up by their office staff, was placed before him for his approval, their Managing Director noticed two rates written against Item No.20 and when he questioned the office staff about the same, they explained to him that initially they had written the rate of Rs.19/- and that later doubting the feasibility/workability of the said rate, another rate of Rs.21/- was written above the rate of Rs.19/-. Being satisfied about the feasibility of Rs.19/- he finalised the said rate of rounding off the said rate written both in figures and words and he put his initial to authenticate the correction. However in a hurry, he forgot to score out the rate of Rs.21/- which was intended to be deleted. It was only when the present writ petition was filed that they came to know about this bona fide mistake. This lapse was purely unintentional and unfortunate. The petitioner is seeking to derive undue advantage from a bona fide inadvertent mistake committed by the office of the 4th respondent while filling up the tender schedule. The 4th respondent supported the stand taken by the 2nd respondent in seeking the advice of the Law Ministry to finalise the tender. He also stated that by accepting the rate of Rs. 19/- the department has saved a substantial amount of Rs.3 lakhs. The petitioner had not made out specific allegation of mala fides against the 2nd and 3rd respondent nor they were impleaded in their personal capacity. Such vague and unsubstantiated allegations of mala fides cannot be countenanced. He lastly submitted that the 4th respondent firm had already commenced the work which is in full swing. As such any interference by this Court would affect the interest of the 2nd and 4th respondent. Thus contending, he sought the writ petition be dismissed.

10. One Mr. Janardhana Rao, a third party to this writ petition, filed affidavit stating that he was one of the tenderers for the contract in question. He submitted his tender along with others. The tenders were opened on 22-1-1998 at 3.30 p.m. The respondents announced the rates quoted by the tenderers. The 4th respondent quoted Rs.21/- in respect of Item No.20 and if Rs.21/- is calculated, it would be about Rs.1,93,71,099-00. His tender was not accepted being the conditional tender. He supported the allegations made by the petitioner in showing favour to the 4th respondent by the department.

11. The learned single Judge after hearing the arguments and after examining the record summoned by him found that the contractors other than the 4th respondent had calculated the amount under Col.No.6 also, but surprisingly the 4th respondent had not calculated these amounts against each item, he had only quoted the rates. He found that at Item No.20 under column of 'Rate' the 4th respondent stated:

'Rs.21-00

(Rs.Twenty one only)

Rs.19-00

(Rs.Nineteen only)'

Rs.19/- both in words and figures has been encircled; Rs.21/-has not been crossed and at the end of the contract papers the 4th respondent in his own handwriting had given the total amount which comes to Rs. 1,93,71.099/- only. As such, the learned single Judge observed that where the total amount given by the 4th respondent in the tender schedule which was calculated on the basis of the rates quoted against each item, Rs. 1,93,71,099/-, it reflects that the 4th respondent had quoted the rate of Rs.21/-against Item No.20, but not Rs.19/- as contended by him. Thus, the 4th respondent quoted higher rate than the petitioner. The teamed single Judge further observed that though the stand taken by the 4th respondent that they quoted two rates and they had not crossed one of the two rates by mistake; and then the opinion of the Law Ministry was sought and the Law Ministry

advised to consider the rate of Rs.19/- in the interest of department may be true, but it appears that quoting of two rates namely Rs. 19/- and Rs.21/-by the 4th respondent was only to oust the others from competition. Had the 4th respondent been the lowest tenderer than the others on the basis of Rs.21/- there was nothing to stop the department from giving him the contract on the basis of the rate of Rs.21/-quoted by him against the Item No.20. Thus, the learned single Judge observed that this was a fishy exercise by the 4th respondent in collusion with other official respondents. The learned single Judge also observed that it appears that the 4th respondent was allowed to manage to the exclusion of every other competitors in a dubious manner and since he had not quoted a clear rate against Item No.20, his tender was liable to be rejected. The 4th respondent did not quote two rates for any one of the 49 items except for Item No.20. This is aimed purposefully to oust the others from competition and this method was adopted by the 4th respondent in collusion of the official respondents to become the lowest tenderer by illegal methods. Thus observing allowed the writ petition directing the official respondents to re-tender the work to the successful bidder. While allotting the writ petition, the learned single Judge made certain observations in the operative portion of the judgment which are extracted herein:

'Therefore, this writ petition is allowed and the respondents are directed to re-tender the work and allot it to the successful bidder. While entertaining this petition this Court had directed on 19th February, 1998 that if the 4th respondent chooses to go on with the construction work it will be solely at his own risk and he will be bound by the final orders to be passed by this Court in these proceedings. Therefore, if any work has been done in the intervening period by respondent No.4, he shall not be entitled to any payments for that. The matter needs an enquiry by the Union of India into the conduct of the officers who have finalised these tenders, therefore the Chief Engineer, Telecom Civil Zone, Hyderabad is directed to conduct enquiry in the matter and examine as to whether any officer of the department is involved in this deal and if during the enquiry it is found that some officials of the department have made this deal possibly by illegal methods appropriate action may be taken against them. No order as to costs.'

Aggrieved by this, these three appeals have been filed. Though the writ petition was allowed, the petitioner preferred WA No.980 of 1998 for not granting the relief sought by him, namely to accept his tender being the lowest.

12. Sri C.V. Nagarjuna Reddy, learned Counsel appearing for the 4th respondent attacked the findings of the learned single Judge on several grounds. According to him, the learned single Judge erred in not noticing that in matters of awarding contracts by the State or an authority to an individual, the Court cannot interfere with the decision taken by the authorities in that respect unless the decision making process is arbitrary, biased or suffers from procedural irregularities. The finding of the learned single Judge that the intention of the 4th respondent to quote two rates namely Rs.19/- and Rs.20/- against Item No.20 of the tender schedule colluding with the officers of the 2nd respondent was with a view to oust the others from the competition, has no substance. The learned Judge should have noticed that mentioning of two rates for Item No.20 by the 4th respondent was occasioned inadvertently in the 4th respondent's office in that the staff of the 4th respondent while highlighting the rate of Rs.19/- by encircling it, by mistake failed to strike off the rate of Rs.20/-. Further such mentioning of two rates was by mistake or otherwise, is purely a question of fact which cannot be gone into the writ proceedings. Before holding that the acceptance of 4th respondent's tender was the result of collusion between the 4th respondent and the 2nd respondent, the learned single Judge should have noticed whether such acceptance has caused any loss or prejudice to the public at large. The learned Counsel further contended that (i) the procedure followed by the official respondents in accepting the tender of the 4th respondent was with the best intention to safeguard the interest of the department that too on the basis of the legal opinion obtained from Law Ministry; (ii) the acceptance or refusal of the tender in question is bound by the terms and conditions which give discretion to the department either to accept or reject the tender without assigning any reasons; (iii) by accepting the tender of the 4th respondent, the department could save a sum of Rs.5,00,000/-; (iv) the 4th respondent had already commenced the work which is in progress and on equity it is not proper and reasonable to disturb the same at this juncture. Thus contending, he sought the appeal filed by the 4th respondent be allowed and the appeal preferred by the petitioner be dismissed.

13. The learned Standing Counsel appearing for the Union of India while supporting the action of the Government in accepting the tender of the 4th respondent, the department saved a sum of Rs.3,00,000/-. According to him, the acceptance or rejection of a tender is the discretion of the department. The writ petitioner in no way affected as he was not the lowest tenderer in the competition. On the other hand, it was one Mr. Janardhana Rao who quoted lowest price and as such the grievance, if any, be made by that Janardhana Rao but not by the writ petitioner. It was further contended that the petitioner is neither aggrieved nor has any locus siancii to challenge the action of the respondents in accepting the tender of the 4th respondent. There was no collusion between the department and the 4th respondent in accepting the tender as alleged. According to the learned Counsel the writ petition was filed with a view to pressurise the department and thus to stall the execution of the project work which is more important and has urgency. Thus contending, he sought the appeal filed by the department be allowed and the appeal of the petitioner be dismissed.

14. On the other hand, Sri Malta Reddy, learned senior Counsel appearing for the writ petitioner while reiterating the contentions made in the writ petition, he supported the findings of the learned single Judge that (i) the acceptance of the tender of the 4th respondent was the result of collusion between the fourth respondent and the department, (ii) the two rates mentioned by the 4th respondent in his tender was only to oust the others from the competition, (iii) the procedure followed by the department a dubious one. Further the grievance of the petitioner is that the learned Judge should have allowed the writ petition in toto granting the relief of accepting his tender while rejecting the tender of the 4th respondent.

15. Sri Malla Reddy also submitted that in the matter of allotment of contracts or accepting the tenders, the authorities shall follow the openness, transparency and fairness, the absence of which gives scope to suspect the bona fides of the authorities concerned in allotting the contracts or tenders. To support his contention he placed reliance on a decision in the case of Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd, : (1997)1SCC53 , wherein the Supreme Court held as follows :

'We reiterate that whatever procedure the Government proposes to follow in accenting the tender must be clearly stated in the tender notice. The consideration of the tenders received and the procedure to be followed in the matter of acceptance of a tender should be transparent, fair and open. While a bona fide error or error of judgment would not certainly matter, any abuse of power for extraneous reasons, it is obvious, would expose the authorities concerned, whether it is the Minister for Excise or the Commissioner of Excise, to appropriate penalties at the hands of the Courts, following the law laid down by this Court in Shiv Sagar Tiwari v. Union of India (re.: Capt-Satish Sharma and Smt. Sheila Kaul)'

16. The learned Counsel for the petitioner further contended that there is no substance in the contentions of either the 4th respondent or the department that the petitioner has no locus standi in challenging the action of the department in awarding the contract in favour of the 4th respondent. He submitted that any one having experience in the concerned field can maintain the writ petition if it is shown that acceptance or rejection of such contract is arbitrary or discriminatory, which is causing loss to the State. Therefore, the petitioner being one of the rival tenderers having rich experience in the field, has locus standi and, thus, he can maintain the present writ petition. To support his contention, he placed reliance on a decision of this Court in the case of Margadarsi Horewells v. Singareni Collieries Co. Ltd., 1997 (2) ALD 209 wherein the learned single Judge held as follows:

'All the petitioners are individual proprietary concerns carrying on drilling operations for several years. They were also entrusted with the work of drilling by R-3 Corporation in the coal mines of the Company, along with the 16 partners of R-4 firm. They could have also formed into a firm and applied for the tenders issued by the Company quoting even lesser bids than the bid amount quoted by the R-4 firm. By virtue of the impugned action of the Company, the valuable right of the petitioners under Article 19(1)(g) of the Constitution is affected. Thus, the petitioners have locus standi to file the writ petition and question the action of the Company.'

The learned single Judge in the above judgment also referred to a decision of the Supreme Court rendered in the case of Ramana Dayaram Shetty v. The

International Airport Authority of India, : (1979)IILLJ217SC .

17. Whereas the learned Counsel for the respondents 2 and 4, to highlight that the writ does not lie in the matter of contractual obligations and when once it is allotted, the scope of judicial review under Article 226 of the [Constitution of India](#) to interfere with such decision is impermissible unless it is shown that such contract is bias or a mala fide one, placed reliance on a decision in Tata Cellular v. Union of India, 1994 (6) SCC 651, wherein the Supreme Court dealt with the Judicial Review on administrative action and bias, which will be discussed a little later.

18. The work that was entrusted by way of tender was to carry on the work of the Telecommunication Department. The acceptance or rejection of the tender is governed by the conditions of the tender. As per the terms of the tender a discretion is given to the department either to accept or reject the tender without assigning any reasons. It is settled principle that there cannot be any interference by the High Court under Article 226 of the [Constitution of India](#) in contractual obligations unless it is shown such an entrustment of contract is violative of Article 14 of the [Constitution of India](#) or it results in depriving of fundamental right or at least a statutory right, as held by this Court in the case of Siva Sankara Rao v. Principal Secretary to Government, Hyderabad, : 1998(2)ALD154 (DB) which was rendered by one of us (Justice N. Y. Hanumanthappa) as follows:

'Since the claim relates to one of contract entered into between the parties, we have to see whether the same can be resolved or decided under Article 226 of the [Constitution of India](#). Time and again it is said that in a breach of contract or failure to perform a contract not arising out of a statute or a contract which has deprived the fundamental right resulting in violation of Article 14, the writ petition does not lie. In the case of Burmah Construction Co. v. State of Orissa, : AIR 1962 SC1320 while considering the contractual obligation when Article 26 of the [Constitution of India](#) was invoked the Supreme Court held as follows: 'The High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant and leaves it to the aggrieved party to agitate the question in a civil suit filed for that purpose. But an order for payment of money may sometimes be

made in a petition under Article 226 of the Constitution against the State or against an officer of the State to enforce a statutory obligation. Where the petition under Article 226 is for enforcement of the liability of the Collector imposed by Section 14 of the Orissa Sales Tax Act it can only be allowed subject to the restrictions which have been imposed by the proviso. It is not open to the claimant to rely upon the statutory right and to ignore the restrictions subject to which the right is made enforceable."

In the case of *Lekhraj v. Dy. Custodian, Bombay*, : [1966]1SCR120 rights relating to contract and scope of Article 226 of the [Constitution of India](#) to issue a writ of mandamus the Supreme Court held as follows:

'A writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by the statute and to keep the subordinate Tribunals and officers exercising public functions within the limits of their jurisdictions, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution.'

In the case of *Har Shankar v. Dy. Excise and Taxation Commissioner*, : [1975]3SCR254 , the Supreme Court reiterated the proposition made in the case of *Lekhraj* (supra) holding that a writ petition is not an appropriate remedy for impeaching validity of a contractual obligations. In the subsequent decision also, the Supreme Court reiterated the same principle.

Again in the case of *Kulchinder Singh v. Hardayal Singh*, : (1976)1ILLJ204SC , the Supreme Court took the similar view which is extracted hereunder :

'The remedy of Article 226 is unavailable to enforce a contract qua contract. A mere contract agreeing to a quota of promotions cannot be exalted into a service rule or statutory duty. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction. Although Article 226 is of wide amplitude to correct manifest

injustice, but contractual obligations in the ordinary course without even statutory complexion cannot be enforced by this short, though, wrong cut. Hence a writ petition merely to enforce an agreement entered into between the employees and the Co-operative Bank about giving certain percentage of promotions to existing employees is not maintainable.'

In Bihar EOF Co-op Society v. Sipahi Singh, : [1978]1SCR375 , making reference to the earlier decisions of the Supreme Court, it held as follows:

'A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by the statute and to keep subordinate Tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.'

Again the case of United Commercial Bank v. Bank of India, : [1981]3SCR300 , the same view has been followed subsequently.

19. As far as Judicial Review is concerned, the Supreme Court time and again held that it is not the concern of the Court to substitute its opinion to the one reached by the experts in either accepting the tender or rejecting the same, since the Judges are not supposed to have expertise knowledge in respect of the matters other than those relating to judicial one, as held by the Supreme Court in the case of H.B. Gandhi v. Gopinath & Sons, 1992 Supple II SCC 392, which is extracted hereunder:

'Judicial review is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which

it is authorised by the law to decide a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.'

20. Likewise when once a decision is taken by the department or an authority by exercising its administrative powers, it is not open for the Court to interfere with such decision as an Appellate Authority as held by the Supreme Court in the case of U.P. Financial Corporation v, M/s Gem Cap (India) Pvt. Ltd., AIR 1993 SC 1435, wherein the Supreme Court observed as follows:

'In a matter between the Corporation and its debtor, a writ Court has no say except in two situations: (1) there is a statutory violation on the part of the Corporation, or (2) where the Corporation acts unfairly i.e., unreasonably. Acting unfairly or unreasonably does not mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the Corporation and seek to correct them. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ Courts into appellate authorities over administrative authorities. The constraints self-imposed undoubtedly -- of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

The High Court in the judgment under appeal have dealt with the matter as if they were sitting as an Appellate Authority over the Corporation. The decision of the High Court is therefore liable to be set aside.'

21. In the case of Tata Cellular v. Union of India (supra), the Supreme Court in respect of Judicial Review -- its scope to review the administrative action, and in respect of bias, dealt at length as to when the action of an authority or department can be said as Bias or made with mala fide intention; and further when can the Court interfere with the orders of allotment of contracts in respect of contractual matters and the scope to review the same.

22. As far as Judicial Review is concerned, the Supreme Court in the above case, after elaborate discussion laid down the following principles for judicial review as at para 94 of the Judgment:

'The principles deducible from the above are:

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

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be opened to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

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

23. To reach the above conclusion, the Supreme Court took support of some of the authorities of the English Laws and also Indian Laws and observed in the following manner;

'It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent

arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review Government is the guardian of the finance of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14, if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Ofcourse, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (Para 70)

Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political innature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review (Para 71)

Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the Court's ability to quash an administrative decision on its merits. These restraints bear the hall marks of judicial control over administrative action. (Para 73)

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. (Para 74)

24. Some of the authorities of England Laws the Supreme Court referred to are asfollows:

In Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, 154, Lord Brightman said : 'Judicial review, as the words imply, is not an appeal from a decision but a review of the manner in which the decision was made...Judicial review is concerned, not with the decision, but with the decision-making process.

Unless that restriction on the power of the Court is observed the Court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.'

In *Amin v. Entry Clearance Officer*, (1983) 2 All ER 864, Lord Fraser observed that:

'Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made...Judicial review is entirely different from an ordinary appeal. It is made effective by the Court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate Tribunal substitutes its own decision on the merits for that of the administrative officer.' (Para 75)

The duty of the Court is to confine itself to the question of legality. Its concern should be :

1. whether a decision-making authority exceeded its powers ?
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable Tribunal would have reached or,
5. abused its powers.

Therefore it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. (Para 76)

25. The Supreme Court also referred to some of its pronouncements which are as follows:

In *Food Corporation of India v. Kamdhenu Cattle Feed Industries*, : AIR 1993 SC1601 , it was observed thus:

'In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and adopt a procedure which is 'fair play in action'.' (Para 91)

26. In *Sterling Computers Ltd. v. M & N. Publications Ltd.*, (1993) 1 SCC 445, it was observed as follows:

'In contracts having commercial element, some more discretion has with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by Courts while dealing with public property. It is not possible for Courts to question and adjudicate every decision taken by an authority because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of 'play in the joints' to the executive.' (Para 93)

27. While conferring a contract, States' acts shall be fair, reasonable and non-discriminatory as held by the Supreme Court in *Union of India v. Hindustan Development Corporation*, : AIR 1994 SC 988. Therein it was held thus:

'.. the Government had the right to either accept or reject the lowest offer but that of course, if done on a policy, should be on some rational and reasonable grounds.' (Para 93)

In *Erusian Equipment & Chemicals Limited v. State of West Bengal*, : [1975]2SCR674 , it was held thus:

'When the Government is trading with the public 'the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so, fairly without discrimination and without unfair procedure.' (Para 93)

28. As far Bias is concerned, the Supreme Court referred to some of the English Laws as well as Indian Laws as follows:

In the case of *R v. Rand*, (1866) 1 QB 230, Mr. Blackburn, J said:

'..that to disqualify a person from acting in a judicial or quasi-judicial capacity on the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceedings, a real likelihood of bias must be shown. This Court is, further, of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

29. In *Metropolitan Properties Co (FGC) Ltd- v. Lannon*, (1968) 3 All ER 304, 310 = (1969) 1 QB 577 = (1968) 3 WLR 694, it was held thus:

'... in considering whether there was a real likelihood of bias, the Court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does not sit his decision cannot stand. There must be circumstances from which a reasonable man would

think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking. 'The Judge was biased.' (Para 108)

30. In *Monak IM v. Dr. Prem Chand*, : [1957]1SCR575 , it was held thus:

'But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. 'The principle' says Halsbury *nemo debet esse jidex in causa prophet sita* precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein'. In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all Tribunals and bodies which are given jurisdiction to determine judicially the right of parties.' (Para 109)

In *Ashok Kumar Yadav v. State of Haryana*, : AIR 1987 SC454 , it was held thus:

'This Court emphasised that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reason, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.' (Para 109)

31. The Supreme Court referred to the observation of Lord 'O' Brien in *King (DE VOSC1) v. Justice of Queen 's Country*, (1908) 2 IR 285, as follows:

'By bias I understand a real likelihood of an operative prejudice whether conscious or unconscious. There must be in my opinion be reasonable evidence to satisfy us that there was a real likelihood of bias. I do not think that their vague suspicions of whimsical, capricious and unreasonable people should be made a standard to regulate our action here. It might be a different matter if suspicion rested on reasonable grounds -- was reasonably generated -- but certainly mere flimsy, elusive, morbid suspicions should not be permitted to form a ground of decision.'

(Para 109)

32. In *Union Carbide Corporation v. Union of India*, : AIR 1992 SC248 , the Supreme Court observed as follows:

'But the effects and consequences of non-compliance may alter with situational variations and particularities, illustrating a 'flexible use of discretionary remedies to meet novel legal situations'. 'One motive' says Prof Wade 'for holding administrative acts to be voidable where according to principle they are void may be a desire to extend the discretionary powers of the Court: As observed by Lord Reid in *Wiseman v. Bomeman*, 1971 AC 297 = (1969) 3 All ER 275, natural justice should not degenerate into a set of hard and fast rules. There should be a circumstantial flexibility.'

33. In the light of the decisions referred to above which were relied upon by both the parties in support of their rival contentions, in our view the reasoning adopted by the 'learned single Judge is incorrect as the reasons given by him refer to hold an enquiry on factual position which are to be agitated before appropriate forum by leading evidence and not to be examined under Article 226 of the [Constitution of India](#). The petitioner has not shown how, by accepting the tender of R-4, his right has been affected and such acceptance is violative of Article 14 of the [Constitution of India](#). However, if there is any impropriety, fraud or mischief alleged to have been played by the authorities in accepting the tender of the fourth respondent and rejecting his tender the petitioner has to agitate the same before appropriate forum by leading evidence and Article 226 is not the proper remedy.

34. The decision relied upon by Sri Malta Reddy in *Dutta Associates Private Limited v. Indo Merchandiles Private Limited* (supra) on the question of openness,

transparency and fair dealing on facts has no application. That was a case where the authorities while accepting the tender to supply of Rectified Spirit who quoted the price at Rs.11.14 ps., per LPL ignoring the offer of the tenderer who was supplying the spirit at the rate of Rs.9/- per LPL for nearly two years, had to accept the highly rated tender i.e., Rs. 11.14 ps. in order to maintain 'viability range'. In the case on hand, by accepting the tender of the fourth respondent, the department saved some amount as he quoted lowest rate. Apart from this as per the tender conditions, the acceptance or rejection of tender is left to the discretion of the authorities. If the department feels that the work can be entrusted even by negotiations and not by calling tenders, by exercising its discretion, it is difficult to agree how the petitioner is aggrieved in not accepting his tender.

35. Since we have reached the above conclusion, we have to hold that the order passed by the learned single Judge so far as it relates to the cancelling the allotment of work to the 4th respondent by accepting his tender and directing the authorities to call for fresh tenders is incorrect and the same is quashed. His Lordship's second direction is not disturbed. In view of this order, it is needless to state that the 4th respondent is entitled to get his bills for the work executed pursuant to the acceptance of the tender.

36. Accordingly, the Writ Appeal Nos.982 of 1998 and 973 of 1998 filed by the respondents 1 to 3 and respondent No.4 respectively are allowed and the Writ Appeal No.980 of 98 filed by the Writ Petitioner is dismissed. In case the writ petitioner desires to agitate the matter before the competent Court, it is observed that the observation made herein shall not influence the authorities concerned in deciding the matter. No costs. Office to return the original records to the concerned forthwith.