

R.K. Aneja Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : May-16-1988

Reported in : AIR1989Delhi17; 1988(2)ARBLR167(Delhi); 35(1988)DLT294; 1988(16)DRJ345

Judge : P.K. Bahri, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : Civil Writ Appeal No. 2494 of 1985

Appellant : R.K. Aneja

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : N.S. Sistani,; G.S. Sistani,; Raj Guru,;

Judgement :

P.K. Bahri, J.

(1) In this petition the petitioner has prayed for a writ of certiorari for quashing the award letters (copies annexures 'O', 'P' & 'Q', by which three contracts have been awarded to respondent No. 5 by respondent No. 1 and a writ of mandamus directing respondents 1 to 4 to call the petitioner for negotiation and if he is found to be lowest after negotiation, the aforesaid three contracts be awarded to the petitioner.

(2) The petitioner has been registered as Class II Electrical Contractor with respondent No. 1 since 1969 and in 1972 he was enlisted as Class 1 Electrical Contractor and according to the petitioner, he had executed various works of respondent No. 1 to the entire satisfaction of respondent No. 1. Respondent No. 1 had invited tenders for the electrification work in the multistoreyed building to be constructed at Bhikaji Camaji Bhawan, R.K.Puram, in September 1984 and the petitioner being found the lowest tenderer Shri M, Gandhi, the then Superintending Engineer in charge of the said Circle, had awarded the said contract although Shri S.K. Sinha, respondent No. 4, who was then working as Executive Engineer, was not stated to be interested in awarding the work to the petitioner. The petitioner has pleaded that Shri S.K. Sinha had created many hindrances in the smooth progress of the said work yet the work was completed to the full satisfaction of the Superintending Engineer who used to visit the site regularly and always was appreciative of the quality of work carried out by the petitioner. The petitioner also alleged that in respect of the said work Shri S.K. Sinha, Executive Engineer, did not make running payment for the work done in between the period October, 1984 to January 1985 and had also not made the payment with regard to the material stored at the site and the petitioner had written a letter dated November 15, 1984. in which, inter alia. the petitioner reiterated that in case Shri S K. Sinha did not believe in the quality of work being done by the petitioner and believe in something else he may recommend to the higher and competent authority for rescinding the contract. According to the petitioner, he received a reply from Shri S.K. Sinha dated November 17, 1984, mentioning that no payment would be made to the petitioner until the petitioner had signed a formal agreement. It was further pleaded in the writ petition that the Superintending Engineer, however, intervened and required Shri Sinha not to harass the contractor in this manner and as the harassment at the hands of Shri Sinha did not cease, thus, the Superintending Engineer transferred the said work from the charge of Shri S.K. Sinha to the charge of another Executive Engineer.

(3) It was also averred in the petition that in the year 1982 the petitioner had quoted two tenders for the works at Alaknanda and Kilokari and during the progress of the said works Shri S K. Sinha had harassed him of which the petitioner had complained vide letter dated December 5, 1984, but later on the

said works were also transferred to some other Executive Engineer and the petitioner was saved from any further harassment at the hands of Shri.S.K.Shri but unfortunately in May 1984, Shri S.K. Sinha again look over the charge of the said works and harassment of the petitioner at the hands of Shri Sinha again revived and the same was evident from the letter dated December 5, 1984 According to the petitioner, he stopped giving any tender in respect of any works in the Division under the control of Shri S.K. Sinha, Then, the petitioner made reference to certain queries raised by Shri S.K.Sinha vide letter dated March 16, 1983, with regard to the validity of the electrical license issued by the Delhi Administration and the list of works awarded to the petitioner by the Delhi Development Authority and the other Government organisations, a copy of reference from the bankers regarding financial capability of the petitioner, a list of skilled and unskilled workers with their experiences on the rolls of the petitioner and list of degree or diploma holder engineers in employment of the petitioner and copy of the balance sheet for the last three years and the list of works which allegedly left in complete by the petitioner or the works have been rescinded in the last three years. This particular letter was initially not received by the petitioner as the petitioner's office was found locked. Efforts were made to deliver the said letter and Shri S.K. Sinha had issued a threatening lett(r)r dated April 4, 1983, that in case the petitioner did not collect the previous letter from his office then matter shall be referred to the Secretary, Contractors' Registration Board, Vikas Minar, New Delhi, for taking action against the petitioner. So, according to the petitioner, because of this hostile and adverse attitude of Shri S.K, Sinha towards it, the petitioner did not submit any tenders in Electrical Division No. Iii where Shri S.K. Sinha was working as the Executive Engineer. Petitioner has made reference to floating of two lenders in that Division and awarding of the works to respondent No. 5, who was the lowest tenderer, emphasising that no queries were made from respondent No, 5 of the nature made from the petitioner by Shri S.K. Sinha.

(4) In May 1985, the Delhi Development Authority floated tenders for three works which are in question to be executed at pocket No. 9, Sector B, Vasant Kunj. The petitioner Along with four other persons submitted their tenders. The petitioner quoted the rate of 50 Paise above with a further rebate of 2.5% whereas respondent No. 5 quoted the rate of 80 Paise above with rebate of 25% and the

tenders were opened on June 5, 1985, in the presence of all the contractors and at that time Shri M.P. Gandhi was the Superintending Engineer of that Division and the tender of the petitioner was found to be lowest whereas respondent No. 5 was the second lowest. Emphasising that there was no condition in the notice inviting tenders that any negotiation could be held for awarding any work, still without rejecting the tender of the petitioner, it appears that after having some negotiation with respondent No. 5 the said works were awarded to respondent No. 5. The petitioner has alleged that at the time the tenders were opened and the tender of the petitioner was found to be lowest, Shri M.P. Gandhi, Superintending Engineer, verbally instructed the petitioner to commence the work without waiting for issuance of formal award letters or execution of formal agreements and the petitioner in compliance with the said directions carried out some work at the site but in the meanwhile Shri S.K. Sinha was appointed as Superintending Engineer in place of Shri M.P. Gandhi and Shri Sinha started making irrelevant inquiries from the petitioner and asked the petitioner to extend the validity of its tender till September 30, 1985, and later on negotiating with respondent No. 5 the work was awarded to respondent No. 5 and the award letter issued to respondent No. 5 itself showed that the petitioner had carried out some work at the site under the verbal instructions of the Superintending Engineer. The petitioner has mentioned that on June 21, 1985, Shri S.K. Sinha had issued a letter to the petitioner requiring the petitioner to furnish the information within three days, the information was solicited with regard to the list of works Along with their values which are presently being executed by the petitioner, list of staff including engineers which are in employment of the petitioner and lastly the proof of financial capability of the petitioner to execute the works. The petitioner failed to respond to this letter. Shri Sinha issued a reminder dated July 11, 1985 and the petitioner is stated to have given a detailed reply on July 19, 1985, in respect of the said queries mentioning that the petitioner is capable of carrying out the work up to the value of Rs. 5 crores and the petitioner has already employed the required staff including technical staff at the site of the work and had also arranged engineering staff for the ensuing work. The petitioner also highlighted in that letter that in spite of delayed payment of running bills by the Delhi Development Authority all his works are progressing smoothly and no financial difficulty has been experienced or

brought home to the petitioner by the engineering wing of the Delhi Development Authority at any time.

(5) Petitioner also averred that as the inquiries with regard to the disputed three works were still in progress, the petitioner had been awarded two more works on May 14, 1985 and two more works on July 11, 1985, under the same Electrical Division No. V and those works were allotted to him by Shri M, Gandhi, Superintending Engineer, as the tenders of the petitioner were found to be lowest, it is mentioned that the Superintending Engineer is the competent authority to accept the tender in respect of a work of which estimated cost is more than Rs. 3 lakhs whereas the Executive Engineer is competent to accept the tender in respect of the works on which estimated cost is up to Rs. 3 lakhs. The petitioner has mentioned that in spite of the fact that the petitioner had extended the validity of its tender up to 30th September 1985 as desired by the Superintending Engineer, still the petitioner did not receive any letter awarding the contract of the said works to it and, therefore, on 25th September 1985, the petitioner took up the matter with the Chief Engineer in which he highlighted the role of Shri S.K.Sinha vis-a-vis the petitioner in creating hurdles in the progress of different works being carried out by the petitioner and requested that the contracts in question should be awarded to the petitioner otherwise the petitioner shall move the appropriate court for necessary relief.

(6) According to the petitioner, it was revealed on 27th September 1985 that the aforesaid contracts have been awarded to respondent No. 5 at the instance of Shri Sinha. The petitioner challenges the said award of the contracts asserting that respondents 1 to 4 have acted arbitrarily in awarding the said contracts to respondent No. 5 when the petitioner has submitted the lowest tender and Shri S.K. Sinha has abused his power in denying these contracts to the petitioner. The said award of the contracts is liable to be quashed as the petitioner had already carried out some work at the site in pursuance to the verbal directions of the previous Superintending Engineer inasmuch as on the promise made by him that the works are to be awarded to the petitioner, the petitioner had entered into agreements with the suppliers for supply of necessary material for executing the said works and thus respondents 1 to 4 are estopped from awarding the contracts

to anyone else except the petitioner. The petitioner has alleged that Shri S.K. Sinha had acted malafide in seeing that these contracts are not awarded to the petitioner and are awarded to respondent No. 5 in order to show favor to respondent No. 5, The petitioner pleaded that there is no reason disclosed as to why respondent No. 5 being the second lowest was preferred to the petitioner inasmuch as the petitioner has got vast experience in executing electrical works of the department and there is no reason why the petitioner was not called personally for negotiating the rates and for explaining any suspicion and surmises which the authorities might be nursing against the petitioner. So, the petitioner has pleaded that the said act of the respondents in not awarding the contracts in question to the petitioner is in clear violation of petitioner's fundamental rights guaranteed under Articles 14 & 19 of the [Constitution of India](#).

(7) The admission order made by the Division Bench dated December 17, 1985, reads as follows :

'MR.Sibal states that castigating his work performance as not satisfactory and then negotiating with the second lowest quotation in fact amounts to black-listing which obviously could not have been done without giving an opportunity to the petitioner. Admitted only on this point. No stay.'

(8) The above admission order of this writ shows that only point to be decided is whether the petitioner is deemed to be black-listed for non-awarding of contracts in question on the basis that performance of the petitioner in executing the previous or the present works was not satisfactory when no opportunity of hearing has been afforded to the petitioner meaning thereby that the petitioner could not have been deprived of his right to get the works in question being the lowest tenderer on the basis of any adverse material collected by the authorities at his back which was never brought to the notice of the petitioner and the authorities having not followed the principles of natural justice which includes the opportunity of hearing i.e. principle of audi alterm partem. Although only a short legal point is involved in this writ because of the aforesaid order of the Division Bench admitting this writ for hearing only on one point, still in order to complete the factual picture it is necessary to refer to the various pleas taken by both the parties in detail.

(9) After the counter had been filed in the shape of affidavit of Shri S. K. Sinha by the respondents, the petitioner filed an application seeking amendment of the writ petition in order to incorporate certain more facts which came into existence after the filing of the writ petition showing alleged malafide of Shri Sinha. Those facts pertain to rescinding of certain contracts of the petitioner in respect of certain works already awarded to the petitioner. The amendment was allowed vide order dated March 3, 1987, by Sunanda Bhandare, J. in absence of counsel for the respondents. An application was moved by the respondents for recalling the aforesaid order highlighting that the facts sought to be pleaded by way of amendment have no bearing on the point for decision arising in this writ but vide order dated March 17, 1987, Sunanda Bhandare, J. rejected the application. Shri S K. Sinha filed the counter affidavit in opposing the amended writ petition as well. A preliminary objection has been raised in this counter that the writ petition is not at all maintainable inasmuch as clauses 10 & 16 of the conditions of the tender reserved the right for rejecting any tender without assigning any reasons but, however, in the present case 'here were good reasons for not accepting the lowest tender of the petitioner. Reference is made to Civil Writ Petition No. 1885/83, M/s. Peepal Co-operative Labour Construction Society v. Delhi Development Authority, which was dismissed by a Division Bench of this Court on December 13, 1983. at the stage of show cause notice itself. Objection has been raised to the incorporation of paras 19 to 36 in the amended writ petition on the ground that they are not germane for deciding the point arising in the writ as circumscribed in the admission order. Inter alia, it was also pleaded that the three contracts referred to in paras 19 to 36, which have been rescinded by the respondents, there appears arbitration clause and the petitioner has already stated to have taken resort to the said arbitration clause for appointment of arbitrators. It was controverted that those contracts have been rescinded on account of malafide on the part of the answering respondent.

(10) It has been averred that the contracts in question pertain to the work of electrification in the flats to be constructed at Vasant Kunj under Self Financing Scheme under which there was a time bound programme fixed and the allottees of the flats had already deposited full amounts and in case the flats were not to be completed/ in time and handed over to the allottees the Delhi Development

Authority was bound to pay interest @ 7% per annum to the said applicants. It is averred that in order to safeguard the interests of the Delhi Development Authority and also of the applicants, it was necessary for the Delhi Development Authority to take extra precaution in order to ensure that the execution of the works is entrusted to such persons who are financially and technically sound and possessed sufficient management capabilities and office letter dated 10th June 1985 of the Chief Engineer, Delhi Development Authority, has been issued to the officers concerned, who were to accept tenders that sufficient inquiries be made so that only competent contractors who could deliver the goods in time are selected. It was also emphasised in the affidavit that it is not respondent No. 4 who had rejected the lowest tender of the petitioner but in accordance with the rules the matter was referred to the Chief Engineer who has taken the decision for rejecting the lowest tender of the petitioner for valid reasons and for giving the contracts to respondent No. 5, the second lowest tenderer after negotiating with him in order to see that no financial loss is caused to the Delhi Development Authority. As a matter of fact, in the negotiation respondent No. 5 brought his tender to the level of the tender of the petitioner. It was averred that right from the stage of promotion of the petitioner to Class I category of contractors, its performance has been wanting and has been considered unsatisfactory and all of the works already allotted to the petitioner as per Ex. R2 except for one work of said works of similar nature entrusted to the petitioner, had to be rescinded and got executed departmentally or through some other agency. It appears that on that score the petitioner was also black-listed on 9th December, 1976 but the petitioner went up to the High Court and the High Court had issued a writ quashing the said order black-listing the petitioner and said order was revoked vide letter dated November 15, 1982. It is alleged that the petitioner was given contracts of the value of Rs. 35.55 lakhs thereafter but the petitioner's performance has been unsatisfactory and a committee was constituted for reviewing his performance which in its meeting held on March 8, 1984, decided to debar the petitioner and one of the members of the said Committee was said to be Shri M, P. Gandhi, Superintending Engineer, whose opinion the petitioner claims to rely upon in the writ petition as to his satisfactory performance. It was controverted that there had been any delay on the part of the officer of Delhi Development Authority in making payments to the

petitioner. It was emphasised that the petitioner had neglected to execute a proper contract in absence of which the petitioner could not be given payments as secure advance. It was denied that respondent No. 4 had at any time harassed the petitioner and acted in any malafide manner ; rather it was pleaded that respondent No. 4 acted in the best interest of the Delhi Development Authority and had carried out the directions of his superior officer. It was controverted by respondent No. 4 that the work of the contract in Bhikaji Camaji Bhawan being performed by the petitioner was transferred from his charge on any complaint of the petitioner, rather it was pleaded that respondent No. 4 was over-worked being put in charge of extra work and thus, on his request in writing, copy Ex. R8 and also on his verbal request, the said Division was transferred from him. It was again controverted that the work of the petitioner in different contracts was being carried out smoothly. It was pleaded that the information was collected from all Class I Electrical contractors on the points on which information was also sought from the petitioner and the petitioner did not care to furnish the necessary information. It was reiterated that respondent No. 4, in fact, had issued letter dated March 16, 1983, in order to improve the quality of work and the petitioner instead of furnishing the information, as required, had raised frivolous objections so that his over-all performance could not be properly judged. It was pleaded that in pursuance with the letter of the Chief Engineer the letters were sent to the officers under whom the various works of the petitioner were in progress and information was received from the Superintending Engineer (Electrical), Circle No, II, Executive Engineer of Electrical Circle I and the Executive Engineer and Superintending Engineer of Circle III and the reports, of which copies are Exs, R9 to R12 annexed with the affidavit, show that overall performance of the petitioner was not up to the mark inasmuch as the petitioner had not even engaged sufficient technical staff for supervising the work. It was pleaded that even the two works awarded to the petitioner, one or two months prior to the contracts in question, were not being carried out by the petitioner to the satisfaction of the officers. It was controverted that at any time the petitioner had been asked verbally by Shri M.P. Gandhi to commence the work of the contracts in question or the petitioner had performed any sort of work in respect of the contracts in question. It was pleaded that it was not any legal right of the petitioner to get awarded the

works in question and as no legal right of the petitioner has been infringed by awarding of the contracts to respondent No. 5, the petitioner has no right to file the writ. It was also mentioned that even earlier some works had been awarded to the petitioner by negotiation even when the tenders were called and so the petitioner cannot have any grievance if the work had been awarded to respondent No. 5 after negotiation with him when it was thought fit not to accept the lowest tender of the petitioner on account of his performance being not up to the mark and the petitioner was at that time having more than sufficient work which the petitioner could properly handle. Reference has been made to letters issued to the petitioner in respect of the works already awarded and failure of the petitioner to start the work promptly. It was pleaded that the petitioner has raised certain disputed facts and thus, writ was not the proper forum to decide those complicated disputed facts. Then detailed reply has been given with regard to the reasons for rescinding the three contracts of the petitioner controverting that those contracts had been rescinded due to any malafide reasons.

(11) In the rejoinder affidavit the petitioner reiterated its pleas but significantly enough the petitioner failed to controvert the material fact regarding his not signing a particular contract. So, the petitioner did not meet the point that his payments were not released on account of petitioner's failure to sign a formal contract. That was the only instance cited in detail in the writ petition showing the malafide of respondent No. 4 but when respondent No. 4 has given a very good reason for not releasing the payment to the petitioner in respect of certain contract as the petitioner failed to sign the particular contract, the petitioner did not at all state in the rejoinder affidavit that the reason given by respondent No. 4 is not correct.

(12) Merely making vague and wild averments imputing a malafide to a high officer of the Delhi Development Authority, to say the least, was not proper. The charge of malafide is easy to make but is difficult to establish. A party imputing malafide must give in detail the facts from which a prudent person can draw an inference malafide. Mere fact that a particular high officer has been sending letters to the petitioner making certain inquiries would not mean that the officer was acting malafide. It is significant to mention at the outset that no malafide has been imputed by the petitioner to the Chief Engineer who, in fact, had taken the decision

in the present case for not accepting the lowest tender of the petitioner and for awarding the contracts to respondent No. 5. In my view, this Court is not to go into the facts pertaining to the rescinding of the other contracts of the petitioner after the filing of this writ petition because what this Court has to see whether respondent No. 4 had acted in a malafide manner towards the petitioner in respect of the contracts in question or on any matter anterior to the said contracts. For that purpose there is hardly any material brought on record which could show that respondent No. 4 was acting in a mala fide manner towards the petitioner or was harassing the petitioner in any way.

(13) Counsel for the petitioner has vehemently argued that the material collected in the shape of performance reports from different officers in respect of the petitioner's work performance of the past and pending contracts and not disclosing the said material to the petitioner amounts to blacklisting the petitioner for awarding any future contracts and the said blacklisting could not be restored to without giving a show cause notice to the petitioner and also an opportunity of hearing to it. It is now established law that no contractor can be blacklisted without following the rules of natural justice which require the service of show cause notice coupled with an opportunity of hearing. Reference has been made to *M/s Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Another*, in which it was laid down that blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the other order of blacklisting indicates that the relevant authority is to have an objective satisfaction, and fundamental of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. It was emphasised that the blacklisting order involves civil consequences as it casts a slur. Counsel for the petitioner also referred to *Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi & Others*. In this judgment the legal position with regard to applicability of rules of natural justice has been analysed vis-a-vis the administrative orders. I may quote the illuminating observations of the Supreme Court in this respect appearing in paras 43 to 48:

'43.Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a deed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam and of Kautilya's Arthashastra the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these depths of the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

44. The dichotomy between administrative and quasi-judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescent after *Kraipak* in India and *Schmidt*. 45. *Kraipak* marks the watershed, if we may say so, in the application of natural justice to administrative proceedings. Hegde, J., speaking for a bench of five judges observed, quoting for support Lord Parker in *In re : H.K.(an infant)* : 'It is not necessary to examine these decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding.' '... 'The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it.' 'The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent mis-carriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this court in *Suresh Koshy George v. The University of Kerala*, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply

to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.' 46. It is an interesting sidelight that in America it has been held to be but fundamental fairness that the right to an administrative hearing is given. (See Boston University Law Review Vol. 899). Natural justice is being given access to the United Nations (See American Journal to International Law Vol. 67 p. 479). It is notable what Mathew, J. observed in *Indira Gandhi* ; 'If the amending body really exercised judicial power that power was exercised in violation of the principles of natural justice of *audi alteram partem*. Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance.'

Lord Morris of Borth-y-Gest in his address before the Bentham club concluded;

'We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying those principles which we broadly classify under the designation of natural justice. Many testing problems to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a 'majestic' conception I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed to give a gloss of assurance I believe that it is very much more. If it can be summarised as being fair play in action who could wish that it would ever be out of action It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled if it lacks more exalted inspiration.'

47. It is fair to hold that subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play. 48. Once we understand the soul of the rule as fairplay in action and it is so-we must hold that it

extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more-but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.'

(14) In the cited case the Election Officer had, without giving any opportunity of hearing to the contesting candidates, passed an order of repoll. One of the questions, which arose for decision, was whether such an order which was definitely an administrative order could be passed without following the rules of natural justice. It was held by the majority decision in this case that the rules of natural justice were applicable and repoll could not be ordered without giving an opportunity of hearing to the affected candidates contesting the election. It was clarified in this judgment that to what extent an opportunity of hearing should be granted to the affected person would depend on the facts of each case ; in some cases of urgency such an opportunity has to be a brief one but not illusory. It was authoritatively laid down in this judgment that where the civil rights of a party are affected by any administrative order the rule of natural justice should be followed and the principle of *audi alteram partem* becomes applicable. It was noticed in this judgment that civil rights in U.S.A. are such as belong to every citizen of the State or country or in a wider sense to all its inhabitants and are not connected with the organisation or administration of Government and they include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury etc. or as otherwise defined civil rights are rights appertaining to a person by virtue of his citizenship in a State or community. It was also laid down that rights capable of

being enforced or redressed in a civil action and also a term applied to certain rights secured to the citizens of the United States by 13th and 14th amendments to the Constitution and by various Acts of Congress made in pursuance thereto.

(15) Counsel for the petitioner has vehemently argued that to get a contract awarded after quoting the lowest tender is the civil right of the petitioner and as it was being adversely affected by the orders of respondents 1 to 4 by not accepting its lowest tender on the ground of poor performance of the petitioner in past or present, the material regarding such performance collected by respondents 1 to 4 at the back of the petitioner amounted to petitioner being denied its dues and thus, such adverse decision cannot be taken even administratively against the petitioner without following the rules of natural justice. He has also made reference to *Amritsar Sugar Mills Co. Ltd. v. Union of India*. Herein reliance has been placed to the above judgments of the Supreme Court and it was held that principles of natural justice not only apply to judicial or quasi-judicial actions or decisions but the said principles would also be applicable to administrative decisions which adversely affect civil rights of the parties. Counsel for the petitioner also referred to the well-known case of *Ramana Dayaram Shetty v. The International Airport Authority of India & Others*. It was held in this judgment that 'he Government when it acts in the matter of granting largess, it cannot act arbitrarily and it was emphasised that where the Government is dealing with the public whether by way of giving jobs or entering into contracts or issuing awards or licenses or granting other forms of largess, the Govt. cannot act arbitrarily at its sweet will... ..and its action must be in conformity with the standard or norm which is not arbitrary, irrational or irrelevant. In this judgment a reference was also made to *Trilochan Mishra v. State of Orissa & Others*, which laid down the law that the Government can prefer one tender to another and on that score no complaint can be entertained as the Government certainly has a right to enter into contract when a person well-known to it and especially one who has faithfully performed its contracts in the past in preference to an undesirable or unsuitable or any tried person. It was observed that for relevant reasons the Government could prefer one tenderer to another so that judgment in the case of *Trilochan Mishra* was not dissented in the case of *International Airport Authority of India*.

(16) On the other hand, counsel for the respondent has vehemently argued that rules of natural justice are not applicable where the parties' civil rights are not affected by any administrative order. He has emphasised that mere fact that a party has given a tender does not vest him with any civil right so that before his tender is rejected that party should be given an opportunity of hearing. He has cited *The State of Orissa & Others v. Harinarayan Jaiswal & Others*. In this case the bids were invited for selling eight country liquor shops. The bids were rejected on the ground that they did not offer adequate price. Then the Excise Commissioner called for tenders and the Government accepted the tenders in respect of one shop and rejected the tenders of others and then the seven shops were sold by negotiations. It was held by the highest court that the Government had the power to reject the tenders and so long as there was no concluded contract the bidders had not acquired any vested rights. It was also held that Article 19(i)(g) or Article 14 could not be invoked for challenging the order of the Government not accepting the tenders or bids. It was held that assuming that the question of arbitrary or unguided power can arise in a case of this nature it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State which is expected to safeguard the finances of the State and such a power cannot be considered as an arbitrary power. Only if that power is exercised for any collateral purposes, the exercise of the power will be struck down. It may be mentioned that in the cited case the Government had formed the opinion that the bidders had colluded and thus proper price was not offered. The Supreme Court held that such opinion of the Government was not open to judicial review so long as it is not proved that it was a make-believe one. In this judgment it was also laid down that if the Government refuses to accept the highest bid, the Government is free to have recourse to other methods for selling the shops, and one of those methods can be by negotiation. He has also cited *Jaidev Jain & Co. v. The Union of India & Another*, in which it was held that even if there is a breach of rules or regulations in accepting or rejecting the tenders that would at best come within the domain of contract and no writ would lie for enforcement of contractual rights. It was also held that a tenderer cannot claim any hearing before cancellation of his tender, it was observed that mere submission of a tender does not create any right to property in favor of the tenderer and the fact

that the tenderer had quoted the lowest rate also does not entitle him to a hearing especially when one of the terms specified in the tender form is that railway administration reserved the right to reject any tender without assigning any reason and does not bind itself to accept the lowest or any tender or to assign any reason for doing so.

(17) Next ruling brought to my notice by the learned counsel for the respondents is *Purxotoma Ramanata Quenim v. Makan Kalyan Tandel & Others*. In this judgment also it was held that the Government is not bound to accept the tender of the person who offers the highest amount. It was held that a clause appearing in the tender, by which the Government reserves the right to select any tender or reject all tenders without assigning any reason, is not violative of Article 14 of the Constitution. Lastly, he has cited a Division Bench judgment in *Sri Rama Engineering Contractors v. Construction Engineer, Civil Engineering, Department of Space*, which is on all fours on the facts of the present case. The points arising in this case have been thrashed out after considering plethora of judgments appearing on the subject, three categories were formulated vis-a-vis the application of rules of natural justice. These categories are as follows :

(A) forfeiture cases where there is a decision which takes away some existing right or position of the applicant ; (b) application cases where the decision merely refuses to grant the applicant the right or position that he seeks such as admission into a club; and (c) expectation cases where the applicant has some legitimate expectations such as renewal of licenses from what has already happened that his application would be granted.

It was held that in respect of the categories of cases in (a) & (c) are concerned. The rules of natural justice apply whereas category of cases falling in (b) the principle of natural justice is not applicable and the only duty cast on the authorities is to consider such applications fairly and honestly. In the cited case also, the lowest tender was not accepted on past poor performance and the argument was raised that it amounts to blacklisting the said party but the argument was repelled with the following observations :

'THE argument of blacklisting advanced by the petitioner, in our opinion, was afflicted with serious conceptual infirmity of wooliness. It almost amounts to saying the impossible that there is no difference between the general and particular, between rejection of a particular tender and a general blacklisting of a contractor. Blacklisting of a contractor by the Government like out-casting of a member by a community is done on the basis of his being found generally disqualified to hold that status. It is a general declaration of his disqualification and a denial of a civil right and has nothing to do with his unsuitability to do any particular job. Every refusal to enter into a marital alliance, for example, does not amount to ex-communication. Every refusal to award a particular contract is not blacklisting. Both acts of refusal are based on the ground of comparative unsuitability. The disqualification in the case of blacklisting is not comparative but positive and has no relevance to a particular work. In rejecting a tender on the ground that a better contractor is available there is no general disqualification involved at all. The decision is arrived at on the basis of comparative merit, Blacklisting is like passing a bill of attainder. In refusing to award a contract, there is no sentence passed and no element of condemnation involved as undoubtedly there would be in the case of blacklisting. These differences between blacklisting and refusing to award a contract can also be illustrated from the after-effects of blacklisting. After a contractor is blacklisted and so long he continues to be so ostracized he would cease to be eligible to be considered as contractor without any reference to the magnitude and nature of a particular work. So long as he remains blacklisted he loses his legal capacity and status to act as a contractor in relation to that particular Government. Blacklisting brings about disability not with reference to any particular contractual venture but generally in relation to an occupation. It brings about a practical metamorphosis of ineligibility over the contractor. This is wholly different from a contractor being rejected after consideration for doing a particular work on the ground that he was less suitable for that particular work as compared with some other. In the latter type of cases the contractor continues to be eligible to be considered. He undergoes no legal metamorphosis from eligibility to disqualification. He sheds no civil status. He loses no legal or social rights or lustre, Only he could not get that particular work. Another day he might get some other work from the same Department to the doing of which he would be adjudged

more suitable than others. Thus, both in conception and in consequences the act of blacklisting fundamentally differs from the act of refusal to award a particular contract. In the present case, the petitioner was not rejected on the ground that he was disqualified but only on the ground that he was found less suitable to turn the job on hand than the second respondent. The petitioner, we are told, is right now working in some other venture for the same Department. This is, therefore, no case of blacklisting and the petitioner's argument advanced on the basis of *Erusian Equipment v. State of West Bengal*, : [1975]2SCR674 that he should have been given a notice before being blacklisted must therefore fail.'

It was also held in this judgment that the rules of natural justice were not applicable and such a case would fall in category (b). It was observed that no civil rights of the party are affected by such administrative order of rejecting the lowest tender.

(18) Mere fact that in this particular matter the lowest tender of the petitioner has not been accepted does not at all mean that the petitioner has been black-listed. There was no bar placed on the way of the petitioner giving tenders in future. I do not understand how the petitioner could have any apprehension that in future all his tenders even though may be lowest would be rejected. Once it is held that the authorities have to act fairly and honestly while taking any administrative decision in our society based on rule of law there should not be any ground for having any apprehension that the authority would not act so in the case of the petitioner. Unless and until the petitioner was to bring home the charge of malafide, it was not possible for the petitioner to, in my view, challenge the administrative order of the respondents in not accepting the lowest tender of the petitioner. Mere fact that certain reports have been obtained by the authorities with regard to the performance of the petitioner in respect of his works from the officers concerned does not mean that the petitioner was being put on any blacklist. After all, in order to arrive at a fair and honest decision as to whether the lowest tender of the petitioner should be accepted or not, the only way the officers could have taken the fair and honest decision was to collect the reports of the high placed officers who are supervising the various works of the petitioner at different times, if the authorities, after taking in consideration such reports and also the fact of volume of

work already in hand of the petitioner, have come to the conclusion that the lowest tender of the petitioner in respect of the contracts in question should not be accepted does not mean that the courts should sit as a reviewing authority for questioning the said decision, I had heard the elaborate arguments of counsel for the parties and had reserved the judgment but it appeared that the petitioner was not satisfied with the arguments advanced on his behalf by his counsel. So, he moved an application for giving him an opportunity to address the arguments again but I thought it not fit to again hear the arguments and thus I had rejected that application, The petitioner has submitted written arguments in detail which I have got on the record and I have pursued them thoroughly.

(19) In the written arguments, the petitioner has gone on to refer to many facts which do not form part of the record, so those facts cannot be taken notice of by this Court, In order to show malafide of respondent No. 4, the petitioner in the written arguments has mainly high-lighted the letters issued by respondent No. 4 seeking information from the petitioner. I do not understand how such letters could show any malafide on the part of respondent No. 4. He has also referred to certain facts regarding emergency and some visits of Sanjay Gandhi and the petitioner's appearance before the Shah Commission. But I do not see how these facts can be taken notice of when they do not form part of the record and have also no bearing on the merits of the case. The petitioner has mentioned about the facts that his work used to be found satisfactory and his work used to go on smoothly when Shri M. P, Gandhi was the in charge and when Shri Sinha, respondent No. 4. became Superintending Engineer, all his troubles started. The petitioner has forgotten that earlier the petitioner was blacklisted in which respondent No. 4 had no role to play. Mere fact that respondent No. 4 had been eliciting certain information from the petitioner in order to assess his work does not mean that respondent No. 4 was inimically inclined towards the petitioner and was having any malafide intention. The petitioner has made reference to reply dated November 17, 1984. It is pertinent to mention that instead of furnishing the information required from him the petitioner went on to refer to extraneous matters in this reply. He has also referred to the fact of Shri Sinha being deprived of some dual charge on his complaint whereas Shri Sinha has, in his affidavit, referred to his written request for being relieved of dual charge. It is pertinent to mention that

there is nothing to show that in fact Shri Sinha was relieved of dual charge on any complaint of the petitioner. Regarding non-release of certain payments by respondent No. 4 in respect of some work of the petitioner, already I have mentioned that the authorities have taken a plea that the payments could not be released to the petitioner as the petitioner had failed to sign the agreement. This point has not been met by, the petitioner either in his rejoinder affidavit nor in his elaborate written arguments. Still the petitioner wants that inference of malafide should be drawn against respondent No. 4, Then the petitioner has referred to his being awarded the contracts in May and July 1985 and his not being awarded the contracts in respect of these three works in question when there was difference of only 2-3 months in between, but that could be no ground for holding that the works in question had not been awarded to the petitioner on account of any malafide act of respondent No. 4. As already discussed above, the petitioner did not give any proper reply to the queries raised and after obtaining the necessary reports regarding his performance that the Chief Engineer took the decision not to accept the lowest tenders of the petitioner. Mere fact that Shri S. K. Sinha, respondent No. 4, had made recommendations on the basis of the material collected would not lead to inference that Shri Sinha was acting malafide in any manner. The petitioner in the written arguments has made reference to some happening when he went to meet Shri Sinha on his promotion. I am afraid that such facts cannot be given any importance when they were not pleaded in the writ petition. The petitioner has gone on to criticise the reports of different Executive Engineers on the ground that they were influenced by respondent No. 4 but it is unimaginable that such persons holding high posts could have been influenced by their colleague or may be superior officer Shri S. K. Sinha in giving reports against the performance of the petitioner. Then the petitioner highlighted the fact that after the Chief Engineer has taken the decision, the contract was awarded to respondent No. 5 within two days. Again no such plea was taken in the writ petition that any undue haste has been exhibited in issuing the letter of acceptance to respondent No. 5. So, the detailed facts mentioned by the petitioner in the written arguments in this respect cannot be given any importance.

(20) Then, the petitioner has also referred to rules of C.P.W.D. Manual and the norms maintained with regard to assessing the performance of the contractors but

they do not show that those are being followed by the Delhi Development Authority. No such plea has been set up in the written petition. So, the respondents had no opportunity to meet this new point. The petitioner has also highlighted that at no point of time the officer looking after his works had issued him any notices pointing out any poor performance of his works. So, according to the petitioner, he is being condemned without being given any chance to show that his performance was not bad. He has also referred to certain cases of arbitration in which the decisions have gone in favor of the petitioner in order to show that whenever the contracts were rescinded by the Delhi Development Authority the claim of the petitioner was upheld while the counter claims of the Delhi Development Authority were negated and from this the petitioner wanted this Court to draw an inference that the performance of the petitioner was always good and for extraneous reasons his contracts used to be rescinded and hurdles used to be put on his way. According to the petitioner, he believed in honest work and was not in the habit of indulging in nefarious activities like meeting demands of bribe by any officer of the Delhi Development Authority including respondent No. 4 and for that reason respondent No. 4 had acted in a malafide manner in getting his lowest tender rejected in the present case. It is difficult to hold from the material placed on the record that respondent No. 4 had been harassing the petitioner or had demanded any illegal gratification from the petitioner and had acted in any malafide manner.

(21) It may be mentioned that the petitioner had mentioned in the writ that in the hope of getting the present contracts awarded to him as his was the lowest tender, he had undertaken some work under the verbal order of Shri M.P. Gandhi and had entered into an agreement with the supplier of raw-material. The copy of said agreement, annexure 'X' appearing at page 167 of the court file made it evident that it cannot pertain to any raw-material being procured in respect of the works in question because this agreement was entered into much before even the tenders were issued in respect of the works in question. The petitioner referred to various clauses of this agreement to show that with regard to the raw-material mentioned in annexure 'C' the petitioner was to confirm the order with the supplier within three months from the date of the agreement and from this particular clause the petitioner wanted this Court to infer that the petitioner had made the arrangement

for the raw material in respect of the works in question. It is preposterous to suggest that the petitioner had made arrangements for supply of raw-material necessary for executing the works in question when even tenders had not been called for the works in question. It is really desperate attempt of the petitioner to link the agreement mentioned above vis-a-vis works in question. The petitioner was having already a large number of works with him and in respect of those works it appears the petitioner entered into this agreement. A perusal of the whole of this agreement makes it clear that this arrangement of supply of material is being made for the existing works in hand of the petitioner and not in respect of any future works which the petitioner may or may not get. Even otherwise the petitioner in the writ petition did not at all give details of the work already carried on by him in respect of the works in question. The petitioner wanted to take advantage of the fact mentioned in the letter awarding the works to respondent No. 5 that some of the work has been already got done from some other agency. The petitioner would like this Court to believe that the said work was done by the petitioner when the petitioner had not given any detail whatsoever of any such work done in respect of the present works in the writ petition. It is not possible to believe that the petitioner had carried out any such work when the petitioner had not been at all awarded the contracts in question.

(22) , From the above discussion, it is evident that only where administrative decision affects any civil right of a party, that before taking any such decision rules of natural justice are to be followed. In a case where a person only gives a bid or a tender and his bid or tender is not accepted by the authority concerned acting fairly and honestly, there the question of application of rule of natural justice does not apply because such decision of the authority does not go to affect any civil rights of the party concerned. A party can acquire any civil right in such matter only where a contract has been awarded to a party accepting his bid or tender. Mere fact that a particular contract is not awarded to a party does not mean that the said party has been blacklisted. The authorities could assess the performance of the petitioner with regard to the works already being done by the petitioner. There is no question of the authorities giving any show cause notice to the petitioner in order to have his point of view with regard to the assessment of his work done by the officers of the Delhi Development Authority. After all the petitioner has entered

into contractual relationship with the Delhi Development Authority and if the Delhi Development Authority rescinds or revokes the contract of the petitioner, the petitioner is not without remedy. The petitioner could always take resort to arbitration for any illegal revoking of his contracts and claim damages. The scope of the applicability of rules of natural justice cannot be enlarged so as to put unnecessary obstacles in the way of administrative authorities to take decisions quickly. Only where civil rights of the parties are affected that the authorities are bound to give show cause notice and an opportunity of hearing to the parties who are to be affected by such administrative decision. I entirely follow the reasoning given in the case of Sri Rama Engineering Contractors (supra) and hold that in the matter of accepting or into accepting the tenders, no civil rights of the parties are affected necessitating any application of rules of natural justice. At any rate, it must be held that by not giving the contracts in question to the petitioner the respondents have not blacklisted the petitioner and for that reason also, there was no necessity for the respondents to have given any opportunity of hearing to the petitioner before rejecting his lowest tender.

(23) Examined from any angle, I find no merit in this writ petition. I dismiss the writ petition and discharge the rule in view of the peculiar facts of the case I leave the parties to bear their own costs.