Basant Kumar Bucharia Vs. Dvc and ors.

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Court : Kolkata

Decided On : Jul-26-2005

Reported in : 1(2006)CLT459

Judge : V.S. Sirpurkar, C.J. and ;Joytosh Banerjee, J.

Appeal No. : M.A.T. No. 2143 of 2005

Appellant : Basant Kumar Bucharia

Respondent : Dvc and ors.

Advocate for Def. : Anindya Kumar Mitra, ;A. Banerjee, ;P. Sinha and ;A. Mitra, ;Kalyan Bandopadhyay and ;A.K. Shaw, Advs. for Respondent No. 7, ;Mirak Mitra, ;A. Banerjee, ;P. Sinha and ;A. Mitra, Advs. in M.A.T. No. 22

Advocate for Pet/Ap. : Samaraditya Pal, ;R.N. Jhunjhunwalla, ;P. Chatterjee, ;A. Gupta, ;P. Basu, ;M. Gupta and ;D. Agarwal, Advs.

Disposition : Appeal allowed

Judgement :

V.S. Sirpurkar, C.J.

1. This Judgment shall dispose of two Appeals, they being MAT No. 2143 of 2005 and MAT No 2211 of 2005. Appeal No. 2211 of 2005 is against the Judgment of the learned single Judge dated 9.11.2004 in W.P. No. 20449(W) of 2004. The

learned single Judge by that Judgment had allowed the writ petition filed by the two petitioner, namely, Calcutta Industrial Supply Corporation ('CISC' for short) and its partner Shri Narayan Prasad Agarwal. By that it was directed that the second part of the petitioners' tender should be considered and till such time, the final decision regarding the issue of tender order should be deferred till such time. The writ appeal No. MAT 2143 of 2005 is against the Judgment of the learned single Judge dismissing the Writ Petition No. 5953(W) of 2005 filed by the applicant Basant Kumar Bucharia in his capacity as a Proprietor of M/s. Amrit Coal Carriers, a proprietory concern. Both the appeals invoke a common subject of a tender floated by the Damodar Valley Corporation (hereinafter called 'DVC' for short). The said DVC invited offers by floating notice dated 7.5.2004 by way of the Tender whereby bids were Invited from the prospective bidders for transportation of coal from various coal colleries to DTPS which is a unit of the DVC at Durgapur by road. It. inter alia, provided by way of Clause 3.2 that the sealed tender Part I-Technical Commercial and Earnest Money and Part II-Price Bid would be received by the Superintendent Engineer (Technical) DVC, DTPS upto 11.30 A.M on 16.7.2004. The Part I, namely, Technical and Commercial Bid along with Earnest Money was to be opened on the same day at 12-00 noon. The price bid was to be opened only for the bidders whose Technical and Commercial Bid was accepted and the subsequent date to be intimated later on. This datewas later on extended upto 22.7.2004 and 23.7.2004. It was further extended upto 4.8.2004 and 5.8.2004. Accordingly on 4.8.2004, the prospective bidders including the Amrit Coal Carriers and CISC submitted their respective bids. Each bidder had to furnish a Bank Guarantee of Rs. 10 lacs on account of earnest money as per the notice of tender. On 5.8.2004 Part I of the tender comprising of Techno Commercial Bid and the Earnest Money was opened in presence of six bidders by the DVC. This included the bids by the Amrit Coal Carriers and the CISC also. However, it was found that the Bank Guarantee of all the bidders were not in order and consequently the respondent DVC extended the time to furnish Bank Guarantee to 30.9.2004. On 30.9.2004 all the bidders except the CISC resubmitted the Bank Guarantee of Rs. 10 lacs in favour of the respondent DVC. The CISC admittedly did not furnish the Bank Guarantee on that date. Some bidders including the Amrit Coal Carriers were informed by letters by the DVC that the Techno Commercial

Bid was accepted by them and the Amrit Coal Carriers was further intimated that the price bid would be opened on 1.11.2004 at 10.30 A.M. Such a letter went to two other bidders, but not to CISC. On 1.11.2004, the price bids of the three bidders were opened, they being the Amrit Coal Carriers, M/s. B.K.B. Transport (P) Ltd. and M/s. Balaji Mining & Minerals in presence of all the three bidders and it was found that the rate quoted by the Amrit Coal Carriers was the lowest.

2. The CISC moved a writ petition before the learned single Judge of this Court being Writ Petition No, 20449(W) of 2004. In that writ petition, in all the three respondents were joined as the parties, they being the DVC, the Chief Engineer, DTPS and the Superintending Engineer (Technical), DTPS, DVC, Durgapur. In that writ petition, it was complained by the CISC that they were not allowed to take part in the tender process meaning thereby that their price bids were not' opened perhaps on the ground that they had offered their Bank Guarantee late by one day. The other bidders whose Techno Commercial Bid was accepted and whose price bid was already opened on that date, were not made parties to this petition. The learned Judge on 9.11.2004 passed the follow order:

Having heard the submissions of the learned advocates appearing for both sides, I hold that this writ petition may be disposed of by directing the respondents to consider the second part of the tender papers submitted by the petitioners and to defer the final decision regarding issue of tender order till such consideration is made.

The writ application is thus disposed of.

There will be no order as to costs.

3. Probably as a result of this order, the DVC and the DTPS sent a letter dated 1.2.2005 to the Amrit Coal Carriers that the price bid of CISC was going to be opened on 4.2.2005. This was objected to by M/s. Amrit Coal Carriers by a letter dated 3.2.2005 through their Advocate-on-Record, M/s. Khaitan & Co. By that letter, the DVC was asked not to proceed with the opening of the price bid of the CISC. On 4.2.2005, however, the said price bid was opened. At that time, the representative of the Amrit Coal Carriers was informed that the price bid was

opened pursuant to the direction given by the High Court in the order dated 9.11.2004 on the writ petition filed by the CISC. Then, Amrit Coal Carriers obtained the copy of the Writ Petition No. 20449{W) of 2004 and filed further a Writ Petition No. 5953 (W) of 2005 wherein an interim order was passed on 4.4.2005 whereby the DVC was restrained from finalizing the tender for a period of six weeks. This order was further extended upto 20th June, 2005. However, there was an appeal filed against this order by the DVC. The appeal was, however, disposed of by the Division Bench of this Court whereby the single Judge was directed to dispose of the writ petition itself. The said writ petition was heard on 20th June, 2005. However, the learned single Judge dismissed the same. Therefore, an appeal being MAT 2143 of 2005 came to be filed against the order dismissing the writ petition filed by the Amrit Coal Carriers. While this appeal was pending, another appeal also came to be filed against the order dated 9.11.2004 passed by Alok Kumar Basu, J. which was registered as MAT No. 2211 of 2005. The delay in filing the Appeal No. 2211 of 2005 was condoned and that is how, the appeals were heard today.

4. While Mr. Samaraditya Pal, Senior Advocate addressed the Court behalf of the appellant M/s. Amrit Coal Carriers, Sri Anindya Mitra and Sri Hirak Mitra appeared on behalf of the DVC or the case may be DTPS. Sri Kalyan Bandopadhyay, Senior Advocate, addressed the Court on behalf of the CISC.

Shortly stated the contentions of the parties are as follows:

Sri Samaraditya Pal for the appellants in both the appeals.

5. The learned Counsel argued that the learned single Judge erred in law in dismissing the writ petition filed by the appellant being Writ Petition No. 5953 (W) of 2005. He also urged that the learned Judge, Alok Kumar Basu, J. had erred in allowing the writ petition by the CISC by the order dated 9.11.2004. The gravamen of contention of Sri Pal is that Techno Commercial Bid of CISC was rejected or, at any rate, was not accepted and therefore, the DVC was justified in not opening the price bid on 1.11.2004. The learned Counsel points out that a decision was taken by the Tender Committee not to accept the Techno Commercial Bid of CISC and hence, no letter was sent to CISC in respect of the price bid. It is pointed out by

the learned Counsel that though all the bidders were directed to furnish the better Bank Guarantee on 30.9.2004 which was the last date for furnishing the Bank Guarantee, the CISC had failed to furnish the Bank Guarantee on that date and admittedly, the Bank Guarantee was furnished on the next day. According to the learned Counsel, the late furnishing of the Bank Guarantee was fatal to the case of CISC and therefore, the Techno Commercial Bid was rightly rejected on that count. The learned Counsel pointed out that the Techno Commercial Bid was 'admittedly rejected' by the DVC which would be clear from the pleadings of the DVC in the writ petition filed by Amrit Coal Carriers.

5.1. This statement that the Techno Commercial Bid was 'rejected', was seriously challenged by Sri Kalyan Bandopadhyay, Senior Advocate appearing on behalf of the CISC , during the arguments and therefore, the Court asked the learned Counsel Sri Anindya Mitra and Sri Hirak Mitra to explain the stand as to whether or not the Techno Commercial Bid of CISC was, in fact, rejected. The learned Counsel offered to place the original file before the Court on the next day of hearing from which it became clear that the Tender Committee had taken a decision on 11.10.2004 that on account of the opinion of the Law Officer to the effect that the in other contracts of the DVC, the Techno Commercial Bid of the CISC was rejected on the ground of their misconduct. Though in so far as the feasibility of the CISC was concerned, their bid was found to be accepted, it became clear from the perusal of the files that the Law Officer one Dr. Reba Ray had perused the earlier minutes and recorded an opinion that due to the misconduct on the part of the CISC, their Techno Commercial Bid should not be accepted. This opinion was dated 1.10.2004. In pursuance of that ultimately the Tender Committee consisting of five officers rejected the bid on 11.10.2004.

5.2. The learned senior counsel very heavily relied on this and pointed out that there was no question of the CISC being allowed to take part on their price bid being opened by the DVC.

5.3. The learned Counsel attacked the order of the learned single Judge dated 9.11.2004 suggesting that the order had not decided anything and it was merely in the nature of a direction. The learned Counsel then pointed out that the CISC had not bothered to join the other successful bidders as a party though their interests were materially involved and even this aspect was not considered by the learned single Judge. Sri Pal also argued that once the price bid of the three bidders were opened, there was no question of later on opening the price bid under the order of the Court. According to the learned Counsel such procedure was unknown to law and was highly prejudicial to the interest of the appellant Amrit Coal Carriers whose bid was found to be the lowest.

5.4. The counsel also argued that the learned single Judge in W.P. No. 5953(W) of 2005 was bound by the earlier order passed in the Writ Petition No. 20449(W) of 2004 and hence, dismissed the petition. However, since the appeal was against the order in Writ Petition No. 20449(W) of 2004 also, this Court could go into the correctness or otherwise of the order.

Sri Kalyan Bandopadhyay appearing on behalf of the CISC.

6. As against this, the learned Counsel very vociferously argued that first, there was nothing wrong if learned Judge, Sri Alok Kumar Basu, J, had condoned one day's delay in furnishing the Bank Guarantee. The learned senior counsel candidly admittedly that the Bank Guarantee was undoubtedly delayed by one day. However, he pointed out that since good reasons were shown for the delay justifying the same, there was nothing wrong for the learned Judge allowing the application.

6.1. As regards the other aspect of non-joinder of necessary parties, the learned senior counsel pointed out that it was not necessary to join the other bidders as party because the dispute was essentially only against the DVC or as the case may be, DTPS as they alone had refused to open the price bid.

6.2. As regards the third aspect, the learned Counsel heavily came down upon the opinion expressed by the Law Officer and urged that the Law Officer could not have expressed such an opinion without their being any material and without hearing the CISC and in effect the CISC was actually blacklisted by the DVC without even hearing. The learned Counsel argued that if at all the Techno Commercial Bid was rejected on this count even then such rejection was arbitrary and was bound to be interfered with.

Sri Anindya Mitra and Sri Hirak Mitra appearing on behalf of the DVC.

7. Both the learned Counsel candidly admitted that the file produced did display that the Techno Commercial Bid was rejected on account of the opinion expressed by the Law Officer. However, the learned Counsel pointed out that it could not be ignored that the Techno Commercial Bid of the CISC was otherwise found to be in order but for the adverse opinion expressed by the Law Officer. The learned Counsel further argued that even if that be so because of the order passed by the Court, the DVC was bound to open the price bid which it actually did and now it was clear that the CISC was the lowest bidder and the difference was almost one crore of rupees. Both the learned Counsel, therefore, urged that there was no point in putting the clock back. The learned Counsel further argued that there was no direction so far by any Court to accept a particular bid and therefore, the process of tender should be allowed to be finalized permitting the CISC also to bid. It was haltingly suggested by Sri Pal that there was something suspicious inasmuch as when the price bid of the CISC was opened the original tender form did not suggest the lowest rate, but there is a separate paper found in that envelope suggesting that the CISC would allow a rebate of 50% and because of that alone, their bid had become the lowest. In short Sri Pal suggested that a possibility of some tampering could not be ruled out. Both the learned Counsel appearing on behalf of the DVC very stoutly refuted this possibly and pointed out that the controversy involved was blown out of proportion without their being any pleadings.

7.1. The learned Counsel further argued relying on a reported decision in Air India Ltd. v. Cochin International Airport Ltd. and Ors. reported in : [2000]1SCR505 , that since in the present case the award of the contract is a commercial transaction, a free hand should be given to the DVC and the Court should permit the relaxation. The learned Counsel very heavily relied on the contents of paragraph 7 in this decision. It was urged further that the Court had always to keep the larger public interest in mind in order to decide whether its intervention was called for or not and according to both the learned Counsel, this was not a case where the Court should interfere with the process. The learned Counsel also relied on another reported decision of the Supreme Court in Raunaq International Ltd. v. I.V.R. Construction Ltd. and Ors. reported : AIR 1999 SC393 , and sounded a caution against the interference by the Court.

8. On the backdrop of these contentions, it is to be seen as to whether the learned Judge was right in allowing Writ Petition No. 20449(W) of 2004 and further whether the learned single Judge was right in dismissing Writ Petition No. 5953 (W) of 2005. It cannot be denied that these two writ petitions are inextricably connected with each other and particularly the Judgment in the second writ petition has used the Judgment in the earlier Writ Petition No. 20449(W) as its basis. At one place in the Judgment in W.P. No. 5953(W) of 2005. the learned Judge records a finding.

I think counsel for the respondents have rightly said that the order having attained finality, and having not been challenged even in this writ petition, its validity and binding force cannot be questioned by the petitioner in any manner whatsoever. I find that by that orde the corporation was directed to consider the price bid submitted by the seventh respondent.

9. It is to be understood that here the petitioner was Amrit Coal Carriers where the CISC was the seventh respondent. The learned Judge further adds:

I think that there is no scope at all to examine whether in view of terms and conditions of the tender notice price bid of the seventh respondent could have been opened and considered by the corporation. Even assuming that under the terms and conditions of the tender notice price bid of the seventh respondent was not to be opened and considered, since its commercial bid had been rejected, I hold that in view of the final and binding Court order, the price bid of the seventh respondent was to be opened and considered by the corporation.

10. In his subsequent findings, the learned Judge had held that there was nothing suspicious about the envelope containing the price bid of the CISC and further that Amrit Coal Carriers had waived its right by not objecting to the opening of the price bid of the CISC. It is, therefore, clear from this Judgment that the whole Judgment

was based practically on the Judgment (order) dated 9.11.2004 passed in W.P. No. 20449(W) of 2004.

11. It would therefore be worthwhile to see as to whether that order itself can be supported in law. In our considered opinion, the order in W.P. No. 20449(W) of 2004 dated 9.11.2004 cannot be viewed as a Judgment. It merely amounts to an 'order' disposing of the writ petition wherein a direction was given. There is no consideration of the rival claims. In fact, the said writ petition was filed without joining the other bidders whose Techno Commercial Bids were accepted and whose price bid was also opened, as parties to the petition. This was very strange and this should have been the first consideration while deciding the Writ Petition No. 20449{W) of 2004. After all the CISC, whose participation in the tender process was excluded, was trying to gain a re-entry into that process and it cannot be denied that their entry would have materially affected the interests of the other bidders whose Techno Commercial Bid was accepted and whose price bids were also opened. It cannot be, therefore, countenanced that a writ petition affecting their interests and that is now apparent that their interests are affected, should not even be joined as the parties and heard. In our opinion, the non-joinder of parties was fatal to that petition, though it is argued by Sri Kalyan Bandopadhyay that the relief was being claimed only against the DVC and direction was sought for on account of their action. In our opinion, an inquiry should have been ensued as to why the other bidders were not joined as the parties. It was apparent from the contents of the petition that firstly the Techno Commercial Bids of the other bidders, three in number, were accepted and their price bids were also opened on 1.10.2004. Therefore, it was bound to be inquired as to why the other bidders had not joined as the parties to the petition. That unfortunately was not realized. There is nothing before us to suggest as to what was the stance taken by the DVC in this petition. The petition was allowed on the first day of hearing perhaps after the DVC and the two other connected respondents were served with the notice of the petition. There is nothing in the order to suggest as to what was the plea raised by the DVC. In our opinion, however, the non-tenability of the petition on account of non-joinder of necessary parties was bound to be considered by the learned Judge, even if not raised specifically by the DVC. In the first place, we cannot view a writ petition being allowed without even considering the contents thereof.

Unfortunately, when we see the order, it was silent about the contention raised on behalf of the writ petitioners and the respondents. There are no reasons given for the direction which the Court had issued. It. is known as to what prompted the Court to direct opening of the price bid of the CISC, even when the CISC had firstly failed to furnish the Bank Guarantee in time and secondly when its Techno Commercial Bid was not accepted. Even if it presumed that the fact of the Techno Commercial Bid not being accepted was not manifested before the Court, surely the Court was bound to inquire as to why the price bid of the CISC was not opened. We are very sure that the facts regarding the Techno Commercial Bid not being accepted, would then have been before the Court. However, it seems that there was no inquiry on that issue. We therefore are unable to support the order dated 9.11.2004.

12. The second question that comes for consideration is as to whether the learned Judge deciding the Writ Petition No. 5953(W) of 2005 was bound by that order and was right in holding that order to be binding. It was true that at the time when the second writ petition was being argued, there was no challenge to that order. But would that, by itself make the order binding even against, the parties who were not parties to the petition? In our opinion, this aspect should have been considered by the learned single Judge while deciding Writ Petition No. 5953(W) of 2005. That apart, there is one more reason why in our opinion, the learned Judge erred in relying upon the order dated 9.11.2004. A question is decided in the judgment and such decision has to be based on reasons and the rival contentions. A Judgment cannot be held to be a binding Judgment unless and until it specifically decides a controversy involved. Now here was a case where the real players in the game are absent or are kept absent by not joining them as the parties and straightway an order came to be issued which would affect their interests vitally. Under such circumstances, in our opinion, the learned single Judge deciding W.P. No. 5953(W) of 2005 should not have held the order dated 9.11.2004 as a binding order as against the Amrit Coal Carriers. We have deliberately quoted from the Judgment to show that it was on the premise of finality of that order that the subsequent writ petition came to be decided about. True it is that the learned Judge said that the order dated 9.11.2004 was not challenged in the Writ Petition No. 5953(W) of 2005. That, in our opinion, was possible and again there was no

necessity for the petitioner in W.P. No. 5953(W) of 2005 to challenge the order in a subsequent writ petition as they were never the parties to the earlier writ petition and therefore, the order was not binding against them at all. Under the circumstances, we hold that the learned single Judge was not justified in treating the order dated 9.11.2004 to be a binding order and basing his Judgment thereupon to hold that the opening of the price bid of the CISC was fait accompli The whole Judgment runs only on that premise which, in our opinion, is incorrect. Once the order dated 9.11.2004 is found to be not sustainable, in our opinion, the further questions may even need not be decided. However, we are since disposing of the appeals, we will take the stock of those arguments also.

13. It was argued by Sri Bandopadhyay that the Techno Commercial Bid could not have been rejected and was, in fact, not rejected and that, in fact, the Techno Commercial Bid of the CISC was otherwise found to be accepted and as such, a legal opinion expressed by the Law Officer should not have been waived upon the DVC and they should not have then taken a decision not to accept that bid as was taken in the Tender Committee meeting dated 11.10.2004. In fact it will not be possible for us to go into that aspect in this appeal. The fact of the non-acceptance of the Techno Commercial Bid was not even known when the first writ petition was filed. The whole writ petition was based on the price bid not being opened, probably on account of the late submission of the Bank Guarantee on the part of the CISC. If the rejection or as the case may be, non-acceptance of the Techno Commercial Bid was not even the subject matter of the first writ petition, we fail to follow as to how the parties at this stage was justified in going into the correctness or otherwise of that decision. The fact of the matter which was clear from the files that the Techno Commercial Bid of the CISC was not accepted for whatever reasons. However, It would not be possible for the CISC now to argue the merits or demerits of the decision not to accept price bid at least in this writ petition. In our opinion, that question has to be decided on the basis of the opportunities being given to the parties to contest that question. Such opportunities were not there and are not present today before us. It would be therefore futile for us to go into the correctness of the decision on the part of the DVC not to accept the Techno Commercial Bid. The necessary corollary of this position is that then the price bid of the CISC could not have been opened. It, was argued that the only reason why

the price bid was not opened, was the late submission of the Bank Guarantee. Sri Bandopadhyay argued that there was some accident resulting in the death of a girl and therefore, the Bank Guarantee could not be offered and the delay in offering the Bank Guarantee of one day was rightly condoned by the learned Judge. There significantly we do not find any trace of these reasons in the order dated 9.11.2004. We do not even see any application of mind by the Judge as to whether the late filing of the Bank Guarantee could be condoned or was liable to be condoned and if so, for what reasons. We do not even see application of mind to the question as to whether the reasons given by the CISC for late submission of the Bank Guarantee were justified and were, in fact, proved. This has now to be imagined that the learned Judge has condoned the delay.

14. Again, as we have shown that was not the only reason why the price bid was not accepted, it was on account of the legal opinion that the price bid was not accepted. The further question would be as to whether in the wake of non-acceptance of the Techno Commercial Bid, could the price bid be allowed to be opened? There also we do not see any discussion or consideration. In our opinion, if the condition was acceptance of the Techno Commercial Bid which was clear from the tender notice for openign the price bid, then the non-acceptance of the price bid had to be termed as fatal to the case of the CISC. However in the absence of any inquiries and findings, the whole question was pushed to the background. It has now surfaced, as the stand was undoubtedly taken by the DVC in the second writ petition that the Techno Commercial Bid was rejected. Now it was bound to be considered therefore by the learned Judge deciding W.P. No. 5953(W) of 2005 as to whether once the Techno Commercial Bid was rejected, could the price bid be allowed to be opened? He certainly could have gone into that question because that question was neither discussed nor decided in the earlier writ petition. To that extent, the order dated 9.11.2004 was not binding against him, it is not the inference but the reasoning which becomes binding on the subsequent Courts. The learned single Judge however chose to go only by the final inference, or as the case may be, a direction issued. In our opinion, he still could have gone into this question particularly because the petitioner in W.P. No. 5953(W) of 2005 was not a party in the earlier petition. Therefore at the instance of the said petitioner, the question could have been decided. In our opinion, the

learned single Judge in W.P. No. 5953(W) of 2005 has erred in not deciding that question.

15. If as a fact, it was established that the Techno Commercial Bid was not accepted or rejected [pleaded by the DVC in their Affidavit in W.P. No. 5953(W) of 2005] then there was no further question of allowing the further price bid of the CISC to be opened. They had failed at the threshold and had to be. therefore, kept out of the further tender process.

16. It was very forcefully argued by Sri Anindya Mitra and Sri Hirak Mitra that now because of the Court's order, the price bid was opened and it was apparent that the price offered by the CISC was the most competitive one. The learned Counsel further argued that it was after all a pubic money which would be saved if the CISC are allowed to take part. We would like to point out that in paragraph 7 of the Air India's case cited supra, the Supreme Court observed.

In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily.

17. The above observations are extremely telling. The plea regarding the offer by the CISC being the lowest one cannot by itself be the be all and end all' of the matter. We have already shown that the price bid of the CISC could not have been opened since their Techno Commercial Bid was, in fact, not accepted. Under such circumstances, when we note that the tender process is not complete or that the contract has not been finalized with any of the parties, it would be for the DVC to find out its own ways to save the public money. As regards the caution sounded by the Supreme Court against the interference in such contracts, the same was

equally applicable to the order dated 9.11.2004. There also the Court, was called upon to interfere with a commercial contract. If the same principles are applicable to that order, then even that order could not have been passed which would virtually silence the CISC. Therefore, this argument is rejected. In short, we are of the opinion that the order dated 9.11.2004 cannot be sustained and it has to be set aside and that petition is ordered to be dismissed. The Writ Petition No. 5953(W) of 2005 must succeed to the extent we have indicated. Both the appeals, therefore, stand allowed in the light of the observations made above by us. No order is however made as to costs.

Later:

After the Judgment was delivered the learned Counsel appearing on behalf of respondent Nos. 7 to 11 sought for the stay of the Judgment for two weeks on the ground that they have to approach the Supreme Court. Stay of one week is granted.

The original file which has handed over is ordered to be given back.

Joytosh Banerjee, J.

18. I agree.