

(1986) 07 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2708 of 1986

Amarchand Shanna

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-07-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 299

Citation : AIR 1988 AP 45

Hon'ble Judges : Seetharam Reddy, J

Bench : Single Bench

Advocate : P. Ramachandra Reddy, for K. Manipathi Rao, for the Appellant; K. Jagannadha Rao for Central Govt. and M. Laxmana Rao, for the Respondent

Judgement

1. The Petitioner-Firm, M/s Amarchand Sharma building contractor, seek to issue a writ of mandamus declaring the acceptance of the tender of the 4th respondent by the Chief Engineer, M.E.S., South Zone, Madras respondent 2 herein, as illegal and void; and in turn to accept the tender of the petitioner for the construction of residential accommodation for D.A.D. staff and allied services at Secunderabad notified in February, 1985.

2. The relevant format of the case in brief is that the petitioner firm, as averred in the affidavit, are registered-as "A" Class contractors "in Southern Command. Various works have been taken up and completed since the year 1940. The 2nd respondent had earlier accepted the tenders of the petitioner-Firm up to Rs.83 lakhs for a single work and it was completed without any complaint. That apart is about eight contracts running- into several lakhs were also taken up and completed satisfactorily right up to 1982-83. It is well equipped Firm with all the technical know- how available. During the month of February 1979, the 2nd respondent and the Chief Engineer (R&D), Picket, Secunderabad called for tenders for (1) construction of Airmen's quarters and officers mess at Bidar, (2) construction of auditorium at Airforce Academy, Dundigal, Hyderabad and (3) construction of covered storage accommodation and open stock-yards for stones

of D.R.D.L., Hyderabad. In order to tender when approached for the supply of tender forms, the same as refused without any reason and consequently the petitioner had to file a writ petition for the issuance of tender forms. After admitting the writ petition in W.P. No. 6543/79, interim directions were given for the supply of tender forms subject to the eligibility and pursuantly the tender forms were furnished and the same were submitted. In fact, thereafter the 2nd respondent and the Chief Engineer (R & D) called for tenders in respect of fresh works and the tender submitted by the petitioner was in fact accepted by the 2nd respondent and the Chief Engineer and thereafter the work was duly executed in the years 1980-84.

3. Thereafter, the 2nd respondent notified tenders in Feb" 1985 for the following three works

(1,) For construction of residential accommodation for D.A.D. staff and allied services at Secunderabad;

(2) For construction of staff community ale shopping centre and allied serving at Secunderabad to the aforesaid staff; and

(3) For provision of gun shed and gun park Dr medium guns at Artillery Centre, Yolkonda costing about Rs.30 lakhs.

The petitioner-Firm sought for tender forms and the same were furnished only in respect of items 1 and 2 and the third one was not ripe, then. Tenders in respect of two works were submitted and the petitioner being the second lowest in both the tenders, the tender forms in respect of second work were filed on 4- 10- 1985 which were received by the 2nd respondent, but, however, the 2nd respondent cancelled the tender in October, 1985 unilaterally without any paper, publication again despatched tender forms to the other contractors who had filed the earlier tenders in respect of the same tender as well as in respect of third tender which was denied to the petitioner-Firm without any reason since the last date for submission of tender forms for the recalled tender was 15- 11- 1985 and was later extended to 30- 11- 1985 and for the third one being December, 1985 and coming to know about the cancellation and calling for fresh tenders, the petitioner-Firm requested, the 2nd respondent in the first week of November, 1985 at Madras to issue the tender forms for the said two tenders, but the same was refused.

4. The Chief , Engineer (R & D), Secunderabad ago called for tenders for construction of provision of accommodation for a lecture hall, laboratory room and technical information centre at D.M.R.L., Hyderabad, which was published in August, 1985 and the petitioner applied on 1-9- 1985 for the supply of tender forms. But were denied the same.

5. Unable to secure the tender forms, the petitioner-Firm filed W.P. No. 1,3471/85 on 27-11-1985 for a direction to the 2nd respondent and the Chief Engineer (R&D), Picket, Secunderabad to issue the tender forms. This Court on

28-11-1985 directed to issue the tender forms and further directed to receive the same by extending the last date. Pursuantly, the forms were supplied and the same were tendered after due formalities. The tender in respect of the last work, as called for by the Chief Engineer (R&D), Picket, was accepted on 7-3-1986 and the work also was allotted.

6. However, in respect of the other two works, the petitioner's quotation was in the sum of Rs.1,18,62,636-99 whereas the 4th respondent quoted a sum of Rs.1,17,90, 872- 96. The said tenders were however cancelled and recalled on 7-12-1985, for which the petitioner quoted a sum of Rs.1,15,42,320-97 whereas the 4th respondent quoted Rs.1,16,39,952-69. The 2nd respondent, however, called for the 4th respondent to Madras, as averred in the affidavit, and asked him to reduce the rates which was readily accepted by the 4th respondent and later the 2nd respondent accepted the amended tender of the 4th respondent on 8-3-1986 resulting in rejection of the petitioner's tender. Terming the said rejection as arbitrary and illegal, just in order to help the 4th respondent, who is a new entrant to the category of A Class contractor, this writ petition is filed.

7. The counter-averments in the affidavit filed on behalf of respondents 1 to 3 are that it is not correct to say that the petitioner- Firm had completed all the works allotted to them to the utmost satisfaction of and without any complaint whatsoever from the 2nd respondent. The liability of the petitioner extends to a period of 12 months after the certified date of completion of work which is termed as "defects liability period." Under Contract No. 11182-83, which was the last work executed by the petitioner under the 2nd respondent comprising provision of essential accommodation for a medium Regiment at Secunderabad, numerous defects in the work came to be noticed which were notified by the Garrison Engineer (North) to the petitioner with directed to rectify the same by specific dates. The petitioner failed to take timely action and rectify the defects in reasonable time and this avoidable delay caused considerable embarrassment to and criticism of the department.

8. It is incorrect to say that the petitioner being "A" Class contractors are entitled to take up works of the 2nd respondent. Mere registration of the firm does not confer any right on the Firm. In fact it is the responsibility of the Accepting Officers to select the contractors for issue of tenders based upon their performance and other parameters laid down in the departmental instructions, he has also the discretion not to issue the tender to applicant firm in certain circumstances such as (1) contractor is already over loaded (2) performance of the contractor had not been satisfactory in the past and (3) the financial position is found to be unsatisfactory. The reasons for non-issue of tenders are recorded in writing and the same is reported to the next higher authority. Taking into consideration the petitioner's performance in contract No. 11182-83 aforesaid during "defects liability period, the accepting officer decided not to issue the tender form in second call In so far as the tender pertaining to R&D Zone, Picket, Secunderabad, the discretion rested with the concerned Chief Engineer and,

therefore, the 2nd respondent has nothing to do with it. Suppressing the aforesaid material in respect of contract 11/82-83 the writ petition has been filed and directions have been obtained from the issuance of tender form" and so in compliance of the directions, the tender forms were supplied.

9. The allegation that the 2nd respondent has always been antagonistic towards the petitioner-Firm and has been trying to cause as much harm as possible is baseless and patently untrue, as it is clear from the fact that the tenders for the work under reference were issued by the 2nd respondent to the petitioner-Firm in first call. Thereafter, however, the 2nd respondent was within his rights to take into account the petitioner's negligence and failure to attend the defects which cropped up in the work under contract No. 11/82-83 which came to his knowledge at the time of selection of contractors for issue of the said tender in second call. The petitioner-Firm while concealing their act attempted to malign the 2nd respondent. The tenders for C. A. No. 17/85-86 pertaining to this writ petition were re-issued on 17-10-1985 to be received back on 30-11-1985. Since the 2nd respondent, as aforesaid, recommendation did not select the petitioner-Firm for issue of tenders, the same were however issued on the direction by this Court on 2-12-1985 by extending the date for receipt to 7-12-1985. In the second call tenders were received and opened on 7-12-1985. The petitioner quoted a lump sum amount and the figures quoted by the petitioner as well as the 4th respondent are correct. However, it is denied that the 2nd respondent called for the 4th respondent to Madras and so forth with a view to deprive the petitioner of the said work and that the 2nd respondent personally handed over the letter of acceptance to the 4th respondent at Madras and so is baseless. The 2nd respondent as the Accepting Officer on behalf of the President of India has full powers to decide upon the acceptance or otherwise of lowest or any tender, which is evident from the tender form itself it is further averred "It is submitted that the Chief Engineer was convinced, based on knowledge of petitioner firm's negligence and delay in meeting the contractual obligations during the defects liability period of rectification of innumerable defects in the work under CA No. CEMZI/SEC/ 11 of 1982-83 that the petitioner firm is not reliable and could not be depended upon and he proceeded to consider the acceptance of 2nd lowest tender which happened to be that of M/s. B. V. Neelamber Rao & Co., (respondent 4). And after completing all the departmental formalities as are required in such a case, he signed the acceptance letter bearing Chief Engineer, Madras Zone's No. 87108/219/E3 on 7-3-86 (i.e. 90 days after receipt of tenders in 2nd call) and this letter was despatched by registered post on 8-3-86. Voluntary reduction offered by M/s. B. V. Neelamber Rao & Co., in their tender amount was also taken into account before acceptance of their tender. The amount of tender accepted is Rs.1,15,35,996-48 (which incidentally happens to be less than the petitioner's tender amount of Rs.1,15,42,326.97).

10. Also averred that innumerable defects came to be noticed in the work after certified date of completion of the said contract (Contract No. 11/82-83). The

petitioner took inordinately long time to rectify the defects.

His performance on earlier occasion is not relevant. The 2nd respondent judged the performance of the petitioner on his experience and also that of the 4th respondent as a public servant cannot be unmindful of his obligations. It was a judicious exercise of his discretion and, therefore, there is nothing illegal about the same.

11. The contentions of Sri P. Ramchandra Reddy, learned counsel for the petitioner-Firm are :

(1) Refusal of tender forms to a registered contractor would amount to blacklisting.

(2) On principle the lowest tender must be accepted unless it is disqualified.

(3) Acceptance of any other tender without giving opportunity to the lowest tenderer viola five of principles of natural justice.

(4) Tender made subsequent to the date cannot be accepted.

(5) Voluntary tender called for and made by the 4th respondent is in contravention of the rules.

(6) No reason has been assigned for disqualification of the petitioners tender.

12. Taking the first contention it has to be seen whether rejection of a tender, even 4 it is the lowest, would amount to blacklisting. The following case law relied on by the learned counsel for the petitioner-Firm is of little or no assistance to the petitioner in this behalf.

13. In E. E. & C. Ltd. v. State of W. B., AIR 19175 SC 266 the Supreme Court held:

"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 order of blacklisting indicates that the relevant authority is to have an objective satisfaction Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is :put on the blacklist.

The State which has the right to trade has also the duty to observe equality. The Government cannot choose to exclude persons by discrimination. The order of black- listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who has been dealing with. the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to claim equal treatment to

enter into a contract which may be proper, necessary and essential to his lawful calling. Where the blacklisting order involves civil consequences it casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion." Hence a person must be given an opportunity of hearing before his name is put on the blacklist."

In *Ram and Shyam Company Vs. State of Haryana and Others*, the facts were that the Government refused to confirm the highest bid of "A" for grant of lease in an auction while granting the lease to "B" thereafter who had offered some more money on the order of the Chief Minister. Held under these circumstances that a unilateral offer secretly made not correlated to any reserve price made by "B" after making false statement in the letter was accepted without giving any opportunity to "A" either to raise the bid or to point out the falsity of the allegations made by "B" in the letter as also the inadequacy of his bid. Acceptance of offer made and sought to be substantiated on the allegations without the verification of their truth, which was not undertaken, would certainly amount to arbitrary action in the matter of distribution of State largesse which is impermissible. In *Dorai Murugan Company, Madras Vs. Andhra Pradesh Small Scales Industries Development Corporation Ltd. and Another*, a contract for purchase of coal dust from Public Sector Undertaking was given to the petitioner whose tender was the highest. Thereafter, the same was cancelled on the ground, that Undertaking received higher offers subsequently from parties who had represented that they had not seen the tender notices earlier and so fresh tender notice was issued prior to cancellation of contract. Held that cancellation of contract was invalid warranting interference under Art. 226 of the Constitution.

14. Conversely the decision in *Sri Rama Engineering Contractors Vs. Construction Engineer, Civil Engineering, Department of Space, Government of India, Sriharikota, Nellore and Another*, cited by the learned counsel for the respondents is direct on the point which governs almost the entire contentions advanced in this case on behalf of the petitioner and the facts are also almost analogous. The Division Bench of the Andhra Pradesh High Court held :

"The main argument of the petitioner before us was that he had been excluded on the basis of certain materials contained in the progress reports maintained by the first respondent in the usual course of his official business when the petitioner was earlier working for the Space Department. These reports appear to have had shown the petitioner as having not completed the construction work entrusted to him earlier in time. From the averments in the counter, we also find that the petitioner had been rejected on the basis that he did not have any previous experience in executing the work of this magnitude while the second respondent had such experience. The previous work which the petitioner had done did not exceed Rs. 5 lakhs. On the above, the petitioner argued that the rejection of his tender on the basis of the contents of the past performance reports without affording him any opportunity to confirm or contradict the

contents thereof, was in violation of the principles of natural justice and his exclusion on the basis of lack of experience and past performance would amount to blacklisting him.

The argument of blacklisting advanced by the petitioner. in our opinion, was afflicted with serious conceptual infirmity of woolliness. 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 black- listing 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 [told 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 reacting 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 to us 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 for 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 and Chemicals Ltd. Vs. State of West Bengal and Another, that he should have been given a notice before being blacklisted must therefore fail.

The last if not the most important argument of the counsel for the petitioner in this case was that the principles of natural justice were violated by the Construction Engineer and the Tender Committee by their taking into account against the petitioner the materials culled from the performance reports already referred to above without putting those materials for confirmation or contradiction of the petitioner. Although filing of writ petitions based even on minimal violence to the principles of natural justice have nowadays become too common and complaints based on violation of principles of natural justice have become almost the last refuge of a writ argument it must be said that the seriousness of such a charge could in no way become lessened by frequency of its use or familiarity of its employment. In man's never ending quest for justice in his unending world of doubt and uncertainty there are no more spontaneously accepted legal principles than the principles of natural justice. Both man and God acknowledge allegiance to these ancient and hallowed principles. It is commonly accepted that natural justice like the American Due Process is the best instrument for promoting the interests and the dignity of man as well as for furthering the legitimate State purposes. It ensures the participation of the common man in the Governmental process while insuring the Government against committing those elementary blunders which leave lasting stains of infamy and blemish on its system of justice (see Justice Jackson in *Shaughnessy v. U. S.*, (1952) 34-5 US 206. 224-225. It is therefore no wonder that Courts have held up these principles as the unwritten limitations on exercise of State power and the two well-known Latin maxims, (a) *audi alteram partem*. and (b) *nemo iudex in re sua*, have become the unthinking normatives of world jurisprudence. There is therefore no difficulty in accepting these principles. But the real difficulty arises in applying them. There is no agreement either among the modern or the ancient judicial authorities as to when these two principles would apply and what they would entail where they apply? Do they apply to acts which are conceptually described as judicial or quasi-judicial or do they apply to administrative acts of so? Do they apply only to acts of forfeiture of vested rights or do they extend to the protection of what are called legitimate hopes and aspirations? Do they safeguard procedures which if properly observed might result in constituting new rights? Does the urgency of the situation or the nature of the administrative action operate to excuse departure from these principles? Is denial of these principles by itself a prejudice? Is an action taken in violation of principles of natural justice void or voidable? Is official notice a - legitimate exception to this doctrine?"

Also held:

"But applying any of the criteria above mentioned we find that the present case does not call for application of principles of natural justice. We do not find it

possible to say that principles of natural justice should apply to a case where the Government is refusing to enter into a works contract with the Government through the method of tenders. The Government rejected him on its ground of his relative unsuitability. This involves no forfeiture of his preexisting rights or interests nor does it defeat his legitimate expectations" nor does it inflict any civil case into consequences. Fitting the present case to the above schemata we hold that the present is a case which clearly falls within the application category of cases. According to the above principles the petitioner is therefore entitled only to be treated fairly and honestly and not according to principles of natural justice. The petitioner has been accorded that treatment and therefore no legitimate complaint can be made by him on that ground.

There is a practical reason also why rules of natural justice should not apply to the facts of this case. The petitioner was only one among several tenderers. His tender was rejected on the basis of his relative unsuitability. If principles of natural justice should apply to this case, notices should go to the competing tenderers inviting their claims and objections. Their replies must be selected, collated and considered. Relative assessment of tenderers should be made. All this certainly means postponement of the decision by a few months to award the contract to build houses. This is a wholly reasonable way of going about building houses and certainly not at all the way to build bridges. Natural justice applied to such situations would turn into a stumbling-block to the efficient and effective exercise of State power. Natural justice must be envisaged by the Courts as a canal through which State power may freely flow releasing its energy for the benefit of the citizens and not as a dam to hold it back. This time-consuming and self-defeating process would clearly rule out the applicability of principles of natural justice to the facts of this case. De Smith did say. "clearly not every decision affecting individual interests has to be preceded by a prior notice and an opportunity to be heard." (See De Smith's Constitutional Law and Administrative law. III Edition, page 566)."

15. On the above conspectus, it is not possible to hold that every refusal to award a particular contract would amount to blacklisting. The rejection in the case on hand is based upon non-performance of the petitioner in the previous work and was based on the comparative unsuitability whereas blacklisting is based on positive grounds against the affected party and does not involve any comparison. Blacklisting is like passing a Bill of Attainder. This certainly does not ensure in the case of refusal of awards of a contract. On comparative scrutiny 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 on the ground that he was less suitable for particular work compared with some other contractor because of his previous performance was rejected even though lowest and in turn the second lowest was accepted on comparative merit. In such case, the rejected contractor is still eligible and continues to be eligible in future works. Indeed, in this case, the

petitioner-Firm's tender was accepted for the work under a different Chief Engineer at Picket, Secunderabad. Had it been the case of blacklisting, he would have ceased to be eligible for any tender made in any zone. Hence, I am not persuaded to accede to the submission that the act of rejection of the petitioners tender amounts to blacklisting.

15A. Contentions 2 to 6 may be considered together. The dominant question which arises in these contentions is whether the petitioner has to be given any opportunity before his tender was rejected. In fact, the Division Bench of this Court in Sri Rama Engineering Contractors Vs. Construction Engineer, Civil Engineering, Department of Space, Government of India, Sriharikota, Nellore and Another, advertent to the similar contentions. held that principles of natural justice have no place in such a case. What all has to be seen in such cases is whether the petitioner has been treated fairly and honestly and not according to the principles of natural justice. The undisputed position in this case is that in respect of these very tenders, earlier on 16-8-1985 tenders were called for and in October, the same were opened. Wherein the lowest tender was that of the 4th respondent, the quotation being Rs.1,17,90,872.96, whereas the petitioner's quotation was the next lowest being Rs.1, 18.62,632.99. Nevertheless the same was cancelled and again the tenders were called for second time in November, 1985 and on 17-12-1985 when the tenders were opened, the petitioner's tender happened to be the lowest while that of the 4th respondent happened to be the next lowest. If really, the 2nd respondent was antagonistic towards the petitioner, as alleged by the petitioner surely without any criticism or difficulty whatsoever, he could have accepted the offer of the 4th respondent on the earlier occasion. his quotation being lowest; that was not to be. By the time the second call was made, there was substantial material before the 2nd respondent in respect of contract No. 11/82- 83 which demonstrates that the petitioner did not come up to the expectations of the department in rectifying the numerous defects pointed out by the department. As early as on 5- 1- 1985 as many as 19 defects were pointed out for rectification. Again on 21-6-1985 it was pointed out to the petitioner that the defective item noticed during defects liability period which are shown in Annexure A to the letter have to be rectified by 14-7-1985, failing which necessary action will be taken in terms of conditions of contract. Even by 10-11- 1985 defects numbering five remained unrectified and so on 10- 1 1- 1985 again a letter was addressed wherein the petitioner was informed that five more defects are outstanding and the same be attended to. In fact in the letter dated 31-12-1985 referring to the said contract No. 11/82-83 it has been stated the defects intimated to the petitioner's representative at site for rectification were not complied so far. Please carry out the same immediately". Though the Bank guarantee bond along with extensions have been forwarded to the petitioner and duly discharged by the letter dt. 20-12-1985, but that does not absolve yet the obligations of the contractor which remained outstanding as per the letter dt. 31-12-1985 which has been duly acknowledged by the petitioner and thereafter two more reminders also have been forwarded. Again

on 5- I- 1986 and 28-2- 1986, reminders for the rectification were sent. These letters have been acknowledged by the petitioner. This is clear from the letter of the petitioner dt. 8-3-1986. The earlier letter, before the letter of the petitioner dt. 8- 3-1986, was on 12-10-1985 which was in reply to the respondents letter dt. 4-10-1985 wherein it is stated that major part of rectification has been attended and if any left over will be completed soon. Thereafter the only letter which has been addressed is that of 8-3-1986. Had the petitioner rectified the defects, surely he would have addressed the replies to various letters that followed in December, January and February. This goes to show that there were defects pointed out in the execution of the work entrusted in the past and was yet to be completed by the time the acceptances the tenders was decided in this case. As per 5. 1 of letter No. 3 Ein C's letter No. 33416/E8 dt. 5-12-1966 which deals with preparation, issue and acceptance of tenders," it is laid down how the application for issue of tenders can be rejected. It reads:

"5. Rejection of application for issue of Tenders

5. 1 : In accordance with para 419 of MES Regulations - 1968 tenders will normally be issued to those contractors who are borne on the MES approved list of contractors and within whose financial limit the amount of the proposed work lies. The Accepting Officer has the discretion not to issue tenders to a contractor in a particular case such as -

- (a) the contractor is already overloaded;
- (b) the performance of the contractor had not been satisfactory in the past;
- (c) serious irregularities were committed by the contractor in the past;
- (d) his financial position is found to be unsatisfactory."

16. It is, therefore, clear from the above material that the defects in the previous works entrusted to the petitioner-Firm were outstanding as they stood unrectified despite reminders and it is for the subjective satisfaction of the Accepting Officer to accept or reject the lowest tender on comparative merits and while rejecting the tender of the petitioner, the reasons have been recorded that because of his past performance, which was not at all satisfactory and up to the mark, the tender of the petitioner was rejected and that being so, no rule insists upon, that, before rejecting, the party must be put on notice. Therefore, the question of no observance of principles of natural justice does not arise. What all has to be examined in the case is whether the party, whose tender has been rejected, has been treated fairly and honestly. These two criteria in my undoubted view stand satisfied.

17. The only question remains to be cleared is whether voluntary reduction made by the 4th respondent is in accordance with the rules. On a comparative merit when the second lowest tender was accepted by rejecting the lowest on good and reasonable grounds. the question whether later on 26-12- 1985 the fourth respondent voluntarily reduced the amount tendered and when the quotations

were under consideration of the 2nd respondent and the quotation was offered and finally the acceptance of the tender was made on 3-3-1986 would invalidate. Whether the fourth respondent voluntarily reduced or not the fact was that the second lowest tender was in any case, to be accepted, and it was eventually accepted. During the interregnum there was a voluntary reduction. Hence, there is no merit in the submission that the acceptance of voluntary reduction in tender would destroy the entire tender scheme. Hence the contention is rejected.

18. From the foregoing, therefore it is quite clear that rejection of the lowest tender on comparative merits and acceptance in consequence of the second lowest, would not amount to blacklisting of the party whose lowest tender was rejected. The acceptance of the second lowest on comparative considerations and suitability of the performance does not violate the principles of natural justice and, therefore, no notice and opportunity to the party, whose lowest tender was rejected, is necessitated. What all has to be examined in such circumstances in accepting any tender other than the lowest is whether the lowest tender has been treated fairly and honestly in rejecting the same.

19. In the result, the writ petition is dismissed. No costs.

20. Petition dismissed.