(1988) 03 CAL CK 0050

In the Calcutta High Court

Case No : A.F.O.O. No. 618 of 1987

Amco Traders APPELLANT

Vs

West Bengal State Electricity Board and others RESPONDENT

Date of Decision : 11-03-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Sales of Goods Act, 1930 — Section 64

Citation : AIR 1990 Cal 18

Hon'ble Judges : Satyabrata Mitra, J;Bimal Chandra Basak, J

Bench : Division Bench

Advocate : P.C. Sen and G.S. Gupta, for the Appellant; S.K. Deb, L.K. Poddar, A.P. Sarcar and D. Bera, for the Respondent

Judgement

Bimal Chandra Basak, J.—This appeal is directed against a judgment and order dt. 15th Jan., 1986 whereby the learned trial Judge dismissed the writ petition filed by the appellant herein and discharged the Rule. The case of the petitioner is as follows. Petitioner is a dealer in steel scrap materials. There was an advertisement that the West Bengal State Electricity Board the respondent 1 to the writ petition (hereinafter referred to as the Board) proposed to sell assorted sizes of off-cuts of structural steel and invited tenders from the intending purchasers. The said materials were lying at Kolaghat Thermal Power Project Site, P.O. Mecheda, District Midnapore and Agarpara Works of M/s. Texmaco Limited which has been made respondent 4 in the writ petition. Petitioner obtained tender documents and submitted such tenders and the petitioner deposited security money and complied with all the requirements. According to the petitioner on or about 6th July, 1984 the sealed tenders (offers) from the various parties, whose names, addresses and rates quoted were specified in the petition, were opened in the presence of the representative of the petitioner in respect of 500 M/T of the said materials lying at Agarpara Works of M/s. Texmaco Limited (hereinafter referred to as the said materials). Thereafter by a letter dt. 3rd Jan., 1985 the respondent 2 directed the Chief Cashier, K.T.P.P.

Mechada to refund the Earnest Money in respect of the parties mentioned therein as the said tender had been finalised and order placed with a different party. The name of the party in whose favour such order was placed was not disclosed. Accordingly the petitioner prayed for cancelling and/or withdrawing and/or revoking the impugned Memo No. K.T.P.P. RM dt. 3rd Jan., 1985 and to cancel and/or rescind the impugned placing of order upon the respondent 4 or anybody else in respect of the materials mentioned in Annexure "A" to the petition, to accept the offer of the petitioner being Annexure "B" to the petition and to deliver the said materials mentioned in Annexure "A" to the petition.

2. An affidavit-in-opposition has been affirmed by one Babulal Pandia on behalf of the respondent 4 in the writ petition, that is, Texmaco. He has described himself as General Manager (Finance) of Texmaco Limited. The case sought to be made out by the Texmaco is as follows :

a) On or about 27th April, 1977 the respondent 1 placed an order upon the respondent 4 for fabrication and erection of structural steel for the Kolaghat Thermal Power Project of the respondent 1 on the terms and conditions of the said order I craved leave to refer to a copy of the said order at the time of hearing of this application if necessary.

By and under the terms and conditions of the said order it was, inter alia, stipulated as follows:

(9) DEPARTMENTAL SUPPLY OF MATERIALS:

Cement and Steel may be issued from our stores at KIPP at the following issue rates :

(A) Ordinary portland cement to required specification in non-returnable bags.

(a) on bag basis, 290 per 20 bags.

(b) on weight basis Rs. 300 per M/T including weight of bags.

(B) Steel (tested to relevant specification)

(i) 5 mm to 7 mm dia in coil @ Rs. 3052 per M.T.

(ii) M.S. Round/ETS Rounds above 7 mm dia up to 60 mm dia, (excluding 60 mm dia) Rs. 2821/- per M/T.

(iii) M.S. Plates @ Rs. 2,570/- per M/T.

(iv) joints, channels, Angles, Plates etc. @ Rs. 2,666/- per M.T.

For departmental materials issued to you by us you shall exercise reasonable care for safety and any materials left surplus after execution of work including cut pieces (only which may be acceptable to site store) shall be taken back from you at the issue prices. For materials for fabrication and erection CL 11 supply of steel shall be applicable.

11. SUPPLY OF STEEL

The supply or raw steel from our store will be guided as per available stock at site stores and as made available to you from other sources. You shall open fabrication shop at project site for light fabrication work and offer us a US. rebate of Rs. 30,000/- on total contract price which was inclusive of cost of transportation of steel from K.T.P.R. to your workshop at Agarpara. As regard upon you shall commence fabrication work at Agarpara works with the steel available at KTPP site stores to the tune of 1500 M.T. and no extra charge will be paid for transportation of this steel to your Agarpara Works.

We should prepare shop order sheet cutting list accordingly progressively and get it approved prior to fabrication wastage of steel used in fabrication of structures shall be kept to it, minimum. For suitably utilising usable out pieces and available lengths, the contractor shall have to do full strength but welded shop splices as per drawing. The design and location of such splices shall require prior approval of the Engineer.

Such butt welding in cut pieces only shall be paid @ Rs. 17.00 per meter length of per mm. thickness, shop splices from available stock lengths however are covered under your rates for fabrication.

While examining the possibility of utilisation of off-cut at Agarpara works and the site fabrication store requirements at both the centres may be received periodically.

For further suitable utilisation of the off-cuts by the department, you are requested to stack materials limiting to two minimum sizes for structural and plates to be specified later on separately.

After making maximum possible utilisation of raw steel materials, the wastages should be indicated in the form of reconciliation statement prepared and forwarded by you for our record, on verification of which materials beyond 3% of unaccountable wastage may be taken by WBSEB.

The above stated materials off-cuts be loaded weighed for suitable disposal by WBSEB.

The off-cuts at site fabrication stores shall also be treated as for those at Agarpara Works.

3. Pursuant to the aforesaid terms and conditions the respondent 1 from time to time issued or provided diverse quantities of raw steel to the respondent 4 for fabrication of structural steel works for the Kolaghat Thermal Power Project of the respondent 1. The respondent 4 fabricated structural steel works for the said Kolaghat Thermal Power Plant of the respondent 1 at the Agarpara Works of the respondent 4 as well as at the site of the Kolaghat Thermal Power Plant oat of the raw steel issued or provided by the respondent 1 as aforesaid. As a result of the aforesaid fabrication work carried out by the respondent A quantity of

approximately 500 M.T. of off-cuts accumulated at the Agarpara Works of the respondent 4 and a quantity of approximately 160 M.T. of off-cuts accumulated at the site of the said Kolaghat Thermal Power Project. By a letter being No. Accts./KTP/5BC/1329 dt the 11th Aug., 1984 addressed to the respondent 4 by and/or on behalf of the respondent No. 1 the said respondent enquired of the respondent 4 as to whether the respondent 4 was interested in purchasing the said off-cuts at the respective rates mentioned in the said letter. By a letter being No. RCC/TH/201 dt. 17th Aug. 1984 addressed to the respondent 1, the respondent 4 expressed its agreement and/or willingness in principle to purchase the said quantities of off-cuts at the rates mentioned in the said letter and subject to the terms of conditions mentioned therein. By a letter being a 7M/KTP/SBC/1426 dt. 24th Aug., 1984 addressed by the respondent 1 to the respondent 4 the said respondent communicated its terms and conditions of the proposed sale to the respondent 4. By a letter being No. RCC/TSR/1761 dt. 1st Sept., 1984 addressed to the respondent 1, the respondent No. 4 communicated to the respondent No. 1 its counter terms and conditions of the said proposed sale. Thereafter by three diverse letters being No. 7M/KTP/Texmaco/1714 dt. 18/19th Oct., 1984, 7M/KTP/Texmaco/1822 dt. 15th Nov., 1984 respectively addressed by the respondent 1 to the respondent 4 the said respondent sought some clarifications/ confirmation from the respondent 4 with regard to the sales tax payable on the said proposed sale. By a letter being, No. RCC/TSR/3179 dt. 27th Nov., 1984 addressed to the respondent 1 the respondent 4 duly agreed to the terms with regard to sales tax in respect of the said sale. Ultimately by a letter being No. KTP/P/C-40/84/10537 dt. 19/27th Dec., 1984 addressed to the respondent 4 the respondent 1 placed an order upon it for the sale of the said quantities of off-cuts at the respective prices and upon the terms and conditions-contained therein. The respondent 4 has already issued two several credit notes being Nos. CN/96/84 dt. 31st Dec., 1984 and CN/4/85 dt 24th Jan., 1984 respectively to the respondent 1. From the aforesaid facts it is established that the respondent 4 became bona fide purchaser for value of the said materials without any notes or knowledge of any alleged offer in respect thereof by the petitioners and the title to the said materials lawfully passed to the respondent 4. The respondent 4 has since disposed of and sold and delivered a total quantity of 639.475 M.T. of the said materials of M/s. B.S. Trading Company of 32/2/1 Hamid Munshi Lane, Howrah, Biswanath Iron Stores of 135/138 G.G. Road, Howrah, Kishan Lal and Co. of 135 G.G. Road, Howrah, Kailash Iron Stores of 135/138, G.G. Road, Howrah and Bharati Rolling Mills of 194D Manik Tolla Main Road, Calcutta as would appear from the several challans issued by the respondent 4 much before 25th Jan., 1985 being the date on which this Honourable Court was pleased to grant and order of ad interim injunction herein. It is stated that the whole of the said quantity of 500 M.T. of the said material lying at the Agarpara Works of the respondent 4 has been sold and/or disposed of and/or delivered to the various purchasers and no quantity out of the said materials is at present lying at the Agarpara Works of the respondent 4. The respondent 4 also duly raised bills in respect of the quantities of the said materials delivered to the said several purchasers.

4. An affidavit was also affirmed on behalf of the Board by one Sri B.C. Dutta, who was the Finance Manager of the Board at the relevant time. His main contention is as follows:

5. In terms of the direction of Standard Tender Committee of the Board contained in resolution dt. 10th Sept., 1983 advertisement for sale of off-cuts of 500 M.T. and 160 M.T. lying at Agarpara Works of M/s. Texmaco and K.T.P.P, Works site had been issued in June, 1984. In response to the said advertisement 9 offers were received and the highest rates obtained were Rs. 3,243.11 per M.T. and Rs. 3,142.11 per M.T. in respect of off-cuts lying at Texmaco, Agarpara Works and K.T.P.P. Works Site respectively and the said rates were quoted by M/s. National Steel Corporation. The Management faced some practical problems in the matter of finalisation of the tender. The bulk of the off-cuts had been lying at Texmaco Agarpara Works for about more than six years. The present condition of the off-cuts in the first few layers above the ground of the stack were unknown. There was every possibility that dispute might arise as regards the acceptability of the rusted and pitted off-cuts by the successful tendered Weightment of the off-cuts and its documental ton in presence of the concerned parties i.e. the Board''s representative, Texmaco''s representatives and the buyer, might be difficult to achieve after proper co-ordination. The management might have been in a whirlpool of problems for disposal of the off-cuts. To avoid the practical problems the entire tender was rescinded and the offer for sale was made to Texmaco under whose custody the materials were lying and the same was approved by the Standing Tender Committee and the offer was ultimately accepted by Texmaco and order for sale was issued by the Texmaco and order for sale was issued by the General Manager, K.T.P.P. by letter dt. 19th Dec., 1984. Copy of the said letter is annexed hereto and marked as Annexure "A". I crave leave to produce the records of the case at the time of hearing. Pursuant to the aforesaid decision the Superintending Engineer (P & S), K.T.P.P. directed the Chief Cashier, K.T.P.P. to refund the earnest money to all the tenderers by letter dt. 3rd Jan., 1985. Copy of which has been annexed as Annexure "D" to the writ application. From the said order it would also be evident that the order was placed with a different party. For the reasons stated hereinbefore the order was not placed with any of the tenderers and it was placed with Texmaco under whose custody the materials were lying. It may be that it is not correct to state that the rates quoted by the petitioner in respect of 800 M.T. of the materials tying at Agarpara Works of M/s. Texmaco Ltd. was the highest. The rates quoted by M/s. National Steel Corporation were the highest both in respect of materials slacked at K.T.P.P. site and al Agarpara Works of M/s. Texmaco Ltd.

6. The following rates were quoted by M/s. National Steel Corporation :

1) Agarpara Works ... Rs. 3243.11 K.T.P.P. ... Rs. 3142.11

7. It may be mentioned that the M/s. National Steel Corporation in making the

offer staled that they would pay 1 per cent over and above the highest offer and thus their offer was found to be the highest. It may be stated that the petitioner in the offer made by its letter dt. July 4, 1984 had imposed certain conditions inter alia that part payment and part delivery should be allowed and delivery orders should be issued immediately on receipt of payments, which conditions were not acceptable to the Board and which constitutes a clean departure from Para 7 of lender specification.

8. The writ petitioner filed a reply to the same. As already stated the learned Judge dismissed the writ petition, discharged the Rule and vacated the interim order. The learned Judge held that the petitioner''s writ petition had to be dismissed in limine. We fail to understand how the question of dismissing the writ petition in limine may arise, inasmuch as the final order was passed after affidavits have been filed by the parties and learned Advocates for all the parties were heard. The learned Judge held that the petitioner''s assertion that he was the highest tenderer was not borne out by the facts. The learned Judge further held that there was a further difficulty in the way of petitioner. In this context the learned Judge observed as follows :

"Moreover, there is a further difficulty in the way of the petitioner. The petitioner''s offer pursuant to the tender was conditional. One of the conditions was that the petitioner will make pan payment after part delivery of the goods was allowed, the petitioner would make further payments. It has been staled by the Board that these conditions were not acceptable to the Board and contrary to paragraph 8 of the tenders specification. Therefore, it must be held that the petitioner did not submit a proper tender at all and cannot feel aggrieved by the cancellation of the sale notice."

9. The learned Judge also referred to "another aspect" of this case. In this context the learned Judge held as follows :

"There is another aspect of this case. If the sale to Texmaco is cancelled, the petitioner is not in a position to lift the entire amount of the goods on payment of the entire price. The cancellation of the contract with Texmaco will place the Board in an uncertain position. The other tenderers are no parties to the writ petition and their stand is not known.

In my opinion, the petitioner who is not in a position to buy the entire quantity of goods pursuant to the tender in one lot but wants part delivery of the goods and to make part payment cannot be heard to complain about the cancellation of the sale notice."

10. The learned Judge further noted that the Board has been able to secure by the negotiated contract with Texmaco the highest possible price. In this context the learned Judge observed as follows :

"It has also to be noted that the Board has been able to secure by the negotiated contract with Texmaco the highest possible price. Under the circumstances the agreement cannot be assailed on the ground that it was not in public interest. Different considerations might have arisen, had the Board sold the goods to Texmaco. In fact, the price at which it has been sold to Texmaco was the highest price quoted pursuant to the Tender notice by a bidder. It has also to be noted that the highest bidder did not furnish any earnest money. If the Board had to award a contract pursuant to the sale notice, the highest bid made without any earnest money as well as the bid of the petitioner which was a conditional bid had to be ignored. The result would have been that the Board would have obtained such a small price than what it has obtained by the negotiated contract with Texmaco.

11. The petitioners contention is that the difficulty about the sale from the premises of Texmaco to third parties were known to the Board and with full knowledge of these difficulties, the Board issued the sale notice. There is no new event that has happened after the issue of the sale notice which has caused the Board to go for a negotiated contract with Texmaco.

12. This argument, in my opinion, is also without any substance, the fact that the Board had issued a sale notice and later decided not to go through with the Tender will not make the negotiated settlement invalid or bad. It has to be established that the negotiated settlement was not in public interest or was contrary to any rule of law before the sale can be effected.

13. It has been contended on behalf of the Texmaco that the petitioner has moved this writ petition after the contract with Texmaco was concluded. It has been asserted that now the interest of Texmaco has intervened. This writ petition cannot be entertained. It has further been contended on behalf of Texmaco that Texmaco has not only purchased the goods from the Board but has already sold a portion of the goods to other purchaser. Some documents have been annexed to substantiate the claim of Texmaco.

14. It has been argued on behalf of the petitioner that the case of Texmaco is not convincing. In fact, the documents go to show that they were for sale of goods which were not covered by the present tender notice. In fact, the invoices that have been annexed are in respect of goods that were sold even before the contract between Texmaco and the Board was concluded.

15. It is not necessary to express any opinion on this aspect of the matter, It is also not necessary to express any opinion about the merits of the prayers made in the writ petition on which some comments were made on behalf of the respondents.

16. In my opinion that writ petition must fail as I am of the view that the sate to Texmaco cannot be assailed as not being in public interest. There is no legal infirmity in the procedure that was followed. In fact, the Board has been able to obtain the best price under the circumstances. It has also been pointed out that various practical difficulties have been avoided by this process. Moreover, I am of the view that the petitioner not having made a proper bid has no reason to feel

aggrieved.

17. Being aggrieved by the same this appeal has been preferred. During the hearing of the appeal we wanted to ascertain the correct position from the records and particularly to check up whether the averment of facts made by the Board and Texmaco in their affidavits are supported by their own records. Accordingly we gave certain directions for the purpose of production of the records. In this context we may point out that Mr. A.P. Sircar learned Advocate appearing for the Board has throughout the proceedings before us, taken up a very fair and frank attitude in the matter and he has produced before us the entire records of this case. We are told that now the whole transaction has come within the jurisdiction of West Bengal Power Development Corporation thereinafter referred to as Power Corporation) and accordingly we directed the Power Corporation to be added as a party which was done. Mr. Sircar has appeared for both. Mr. Sirkar has told us that the gentleman who has affirmed the affidavit on behalf of the Board before the trial Court and who actually was behind the final decision in the matter, is no longer in their service. He has very fairly submitted before us that the Chairman of the Board has now gone through the records and has come to the decision that the matter has to be left entirely to this Court for its decision, as he is not satisfied about the manner in which this particular transaction was dealt with on behalf of the Board.

18. So far as the records of Texmaco is concerned, we gave certain direction for production of the records and we appointed one of their senior Officers as Special Officer who has been bringing the records to Court from time to time.

19. From the records of the Board we find that in this case the action taken on behalf of the Board after the tenders were received was arbitrary. It appears that according to the Board from the bid sheet prepared, one M/s. National Steel Corporation had offered the highest rate for both the items, i.e., materials lying at K.T.P.P. and Agarpara. Amco Traders bid Rs. 3211/-per metric tonne. What National Steel Corporation had done was though their bid was Rs. 3027/- and Rs. 26277- per metric tonne for the two items respectively, but they declared in their original tender that their final offer will be one per cent higher than the price offered by other parties. Therefore what was done was that though strictly speaking the offer of the writ petitioner was the highest, the Board treated the bid for the National Steel Corporation to be highest by adding one per cent to the highest offer of Amco. Therefore the Board had actually proceeded on the basis that the offer of Amco was highest. In view of the special condition by National Steel Corporation, the Board had treated them as the highest offer. In our opinion, this is highly improper and against the tender notice. Tender notice invited the highest offer. No one can make an offer by quoting a rate and stating that the final bid would be some percentage over and above the highest offer made. This should not have been accepted by the Board. Otherwise any one making a bid in that fashion, would always to be treated as the highest offerer. This is mala fide. In our opinion, the selection of National Steel Corporation as

the highest offer and to treat them as such was bad, illegal and arbitrary and without jurisdiction. The writ petitioner should have been treated as highest bidder.

20. However, the matter did not stop here; further development took place. After it was decided that the National Steel Corporation was the highest offer, the matter was referred to the Finance Department and the Finance Manager K.T.P.P. Mr. B.C. Dutta gave the following noting under his signature dt. 26th July, 1984 E.S.T.C.''s resolution requiring us to press tender for sale of off-cuts in question and find out whether we need take up the case to them for decision on the results of the tender. According to Mr. Dutta he had a new idea of selling the off-cuts in question to Texmaco. At first, he stated that it was his idea but later the expression "I" was modified to ''We''. It is peculiar to note that at this stage he was raising a question of various complications through it has already been decided to sell the goods by public notice. Tenders have been invited and tenders have been submitted and it is only the question of taking a final decision. It further appears that Mr. Dutta had for quite sometime past, was having "discussions" with Texmaco''s executives on the above lines and Texmaco agreed to his proposal against a " modest rate of commission". It further appears that he had an informal discussion with Mr. P.K. Ray of M/s. Texmaco on the issue and wanted to know from him the ruling rate for sale of scraps from their Agarpara Works. It further appears that Mr. Ray quoted the rate as at around Rs. 3,100A "which is not much below the highest rate obtained by us". Mr. Ray during discussion readily agreed to Mr. Dutta''s proposal for taking over the scrap from Board at the rate obtained provided proceeds thereof are adjusted towards payment of their pending bills. It is further stated that he readily agreed to it subject to their foregoing the commission. It also appears that Mr. Ray agreed to forego it. It was also recorded by him that during discussion it was made clear that the above proposals are only explanatory and are subject to approval of the competent authorities. Under what authority and under what jurisdiction Mr. Dutta look up that matter at that stage in that fashion is not clear and it is not supported by the Board now. A particular procedure was decided to be followed but after it was followed for some length, a departure was made after the tenders were received. Thereafter comes the most peculiar and arbitrary note of Mr. Dutta, Finance Manager, K.T.P.P. under his signature dated 11th August, 1984,

"General Manager, K.T.P.P. had delivered the file and desired me to discuss the case with Member (F & A). On 10-8-84. I had detailed discussion with Member (F& A) on it. He advised me to take the following course of action.

1) To make an offer to M/s. Texmaco Ltd. for sale of off-cuts to them at the highest price obtained against tenders.

2) To prepare a comprehensive note and submit the case of S.T.C. after obtaining Texmaco''s reaction to(1) above.

G.M. is out on lour to Calcutta/Delhi and is not expected at Headquarters perhaps before 16/17-8-84. Disposal of the off-cuts has been delayed long and we may now act quickly and finalise the case. On this consideration, I have signed the letter to M/s. Texmaco Ltd. in compliance with (1) above subject to G.M.''s post fact approval to it".

21. This is highly improper to say the least. As already stated tenders have been received. Writ petitioner was the highest tenderer. National Steel Corporation''s offer could not be considered because such offer is not valid. In any event such tender of Amco or National Steel Corporation had to be accepted. At that stage it was neither proper or legal to make any offer to Texmaco or take a decision in their favour contrary to tender notice. Further it was not for public interest also because no higher price was agreed to be paid by Texmaco. It further appears that B. C. Dutta, Finance Manager, KTPP in his note dt. 11th Aug. 1984 stated that G.M. will conic back within a week. This letter was written on the same date, that is, on 11th Aug., 1984 and in this letter it was written that the higher rate obtained in respect of the scraps lying at Agarpara Workshops was Rs. 3,243.11 and Rs. 3,142.11 for sale of 500 and 160 M.T. of off-cuts at Agarpara Works and KTPP Works Site respectively, and they wanted to know if the Texmaco are interested in purchasing the said off-cuts at the above rate and the terms and conditions, if any, thereunder. Mr. Dutta had no business to write such letter under the circumstances, more so in the absence of G.M. who was due to be back within a week. The question of delay does not arise because these off-cuts have been lying there for a long long time, Question of acting quickly and finalising the issue at this stage could not arise and the question of signing the letter subject to G.M,''s approval "post facto" was merely a hoax. Oh receipt of the letter dt. 11th Aug., 1984 Texmaco wrote a letter to Mr. Dutta agreeing to purchase the off-cuts of 500 M.T. at the Agarpara Works and 160 M.T. at KTPP Site at the rate of Rs. 4,243.11 and Rs. 3,142.11 per ton respectively. But this was subject to Board''s allowing them to adjust the amount payable for such cut pieces against out standings from the Board. Thereafter a letter was written on 24th August, 1984 by the Board to Texmaco and it was agreed that adjustment against such credit note against Texmaco''s outstanding bills will be made after the same have been passed for payment by the Board. It was further directed that should any such occasion arise when adjustment against Texmaco''s credit note on the above line may not be made by the KTPP, the Texmaco would be liable to pay for in cash the value of such credit note or the unadjusted part of it. On 1st Sept., 1984 Texmaco wrote to the Board. It was suggested that such adjustments were to be made against the Texmaco''s outstanding escalation bills which amounts to Rs. 107 lakhs. It was further stated that at present the outstanding from the Board exceeds Rs. 136 lakhs and, accordingly, no occasion can arise when adjustment of credit notes against Texmaco''s outstanding may not be possible. As such, the question of Texmaco''s liability to pay in cash the value of such credit note or any unadjusted part thereof does not arise. It further appears that in his meeting dt. 31st Aug., 1984 the STC-1 has decided to sale the off-cuts to M/s. Texmaco Ltd. at the accepted tendered rate. Ultimately the

goods were delivered to Texmaco. It may be further pointed out that further complications were created regarding the question of sales tax.

22. It is now well-settled that the State which includes the undertaking of the Stale cannot behave in the same fashion in respect of its property like an ordinary individual. It cannot act arbitrarily in the matter. This position in law has been well-settled by various decisions. In the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, it was held that after having" inviting lenders on certain terms and conditions, it is not open to the authority concerned to make a departure from the same and take any action which is in violation of the terms and conditions. After having received the tenders because of the personal interest of the Finance Manager of the Board and al his instance and behest private negotiations took place and he decided to sell the goods to Texmaco who had never submitted any tender. It is quite clear from the noting that this gentleman viz. Mr. Dutta superimposed himself in respect of the transaction and exploited his position as Finance Manager and ultimately imposed his decision in the matter. He ignored the General Manager and the rest of the actions were taken at his sweet will. He look over himself the duty of General Manager, decided to ignore the tender conditions, and decided to sell it to the so-called highest rate which certainly did not include higher than any rate offered by the tenderers. This also certainly did not give any extra benefit because they agree to have it adjusted against the claim of Texmaco whereas they would have received cash money if the highest offer of the private parties were accepted. They also did not receive any money by selling it to Texmaco.

23. Under the circumstances we are of the opinion that the decision of the Board in selling scraps to Texmaco was illegal, improper, without jurisdiction, mala fide and arbitrary. This was done at the instance of one particular officer of the Board namely, B.C. Dutta, Finance Manager, K.T.P.R

24. Further from the records produced by Texmaco we are not satisfied that these particular scraps have already been sold by them.

25. The next question is what order should be passed in this case as according to Texmaco the scraps in question had already been sold by Taxmaco to different parties. Before any final order is passed giving relief to the writ petitioner, it has to be found out first whether the goods or any part of it is lying in the Agarpara Works. For this purpose a Special Officer should be appointed who shall cause an inquiry to be made whether the scraps, which are the subject matter of this proceedings or any part of them are still lying there and whether any part of it has been sold. The documents produced do not support the contention that such goods have been sold. A further opportunity is given to the parties to this effect. To that the writ petitioner-appellants has no objection. On behalf of the Texmaco it is stated that the goods have been sold. On behalf of the Board and the Corporation the matter is left entirely to the Court. Accordingly we pass the following order.

26. There will be an order of status quo regarding the goods. Mr. Pradip Kumar Ghosh. Barrister-at-law is appointed as Receiver of the goods lying at Agarpara Works at the relevant lime and which are the subject matter of the tender. He is also appointed as a Special Officer. He shall cause local inspection to be made, with the help of such person or persons as he may appoint, at the costs of the writ petitioner at the first instance. He shall also cause an inquiry to be made after giving an opportunity to the parties concerned. He shall submit a report before the final order is passed by us on the question of relief to be granted to the writ petitioner. For such reason this matter is adjourned for a fortnight from this date for the time being.

27. Let a copy of the operative portion of this order be given to the learned Advocates for the parties and the Receiver-cum-Social Officer. The Board and the Texmaco and their officers are directed to render alt assistance to the Special Officer.

28. Mr. Sarcar the Advocate for the Board and the Corporation and Mr. H.B. Ray, Special Officer in respect of the records of the case are directed to cause production of the records of the case before the Special Officer for that limited purpose Mr. Ray shall continue to be a Special Officer of this Court until further orders.

29. Let a plain copy of the operative portion of this order countersigned by the Assistant Registrar (Court) be given to the learned Advocates of the parties.

Satyabrata Mitra, J.

30. I agree.

31. Order accordingly.

