

**(1991) 02 MAD CK 0015**  
**In the Madras High Court**

|                                    |    |            |
|------------------------------------|----|------------|
| Andhra Civil Construction Company  |    | APPELLANT  |
|                                    | Vs |            |
| The Government of India and Others |    | RESPONDENT |

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**Date of Decision :** 07-02-1991

**Acts Referred:**

Constitution of India, 1950 — Article 19(1)(g), 226  
Contract Act, 1872 — Section 6  
Major Port Trusts Act, 1963 — Section 111

**Citation :** (1992) 1 MLJ 93

**Hon'ble Judges :** A.S. Anand, C.J

**Bench :** Division Bench

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**Judgement**

A.S. Anand, C.J.—These appeals are directed against a common judgment of a learned single Judge dated 28.3.1990 dismissing W.P.

Nos. 12324 of 1987; 916 of 1988 and 4174 of 1988.

2. The appellant in all the three writ appeals is the unsuccessful writ petitioner, M/s. Andhra Civil Construction Company—a Civil Engineering Firm

having its Registered Office at Madras from a perusal of the pleadings of the parties, it transpires that during 1979, the Tuticorin Port Trust, with a

view to deepen the approach channel at Tuticorin Port from 27 to 30 invited tenders for deepening the approach channel measuring 1400 Mts.

Work was allotted to two contractors in December, 1979 with a view to have the deepening work executed expeditiously. The channel was

divided into two portions and (i) Reach from Ch.00 Mts. to 525 Mts. and from Ch.1050 Mts. to 1400 Mts. was allotted to the appellant and (ii)

Reach from Ch.525 Mts. to 1050 Mts. was allotted to Dredging Corporation of India Ltd., (hereinafter called the D.C.I.) Work orders were

accordingly issued to the appellant as well as D.C.I. The appellant completed the

deepening of the approach channel between Ch.00 Mts. to 475

Mts. and from Ch.1050 Mts. to 1400 Mts. However, D.C.I. could not do any subsequent work because of the existence of some rock in the

portion for which the work had been allotted to them. Even the appellant could not, for the same reason undertake to execute the work from Ch.

475 Mts. to 525 Mts. Efforts made by the Development Adviser (Ports) and the Chairman, Tuticorin Port Trust did not yield any constructive

result with regard to the further progress of the work by D.C.I. and consequently, the Tuticorin Port Trust decided to have the balance of the work

entrusted to D.C.I. carried out through other agencies.

3. The Tuticorin Port Trust called for tenders on 9.12.1983 for the balance of the work in Reach from Ch;525 Mts. to 1050 Mts, awarded to and

abandoned by D.C.I. stipulating a period of 12 months for the completion of the work. Pursuant to the said invitation, three contractors, (i) M/s.

Asia Foundation and Construction Ltd., Bombay (hereinafter referred to as M/s. AFCons. (ii) D.C.I. and (iii) the appellants submitted their

tenders which were opened on 18.2.1984. A belated tender from another party, viz., M/s. Dredging Consortium of India B.V., Holland appears

to have been received on 2.3.1984. The tenders were placed for the consideration of a Tender Committee, constituted as required by the

procedure for that purpose. The Tender Committee, after considering the tenders and after getting further details and clarifications, submitted its

report on 17.7.1984 with the following recommendations:

(a) Though the offer of M/s. Dredging Consortium was received later, to negotiate with them as their offer was attractive both in terms of time and

money subject to the availability of Foreign Exchange;

(b) In case the above was not possible to call for fresh tenders including foreign firms after getting foreign exchange sanctioned by the Government;

(c) In case Foreign Exchange was not available to get the balance work done through one of the Indian Contractors who have quoted for the

work.

4. So far as the three Indian Contractors who has submitted their tenders are concerned, the Tender Committee was of the opinion that the

appellant firm, with an evaluated completion time of twenty-one months (including tolerance quantity), had an edge over D.C.I. who had given 27

months as the completion time. The Tuticorin Port Trust, therefore, initiated proposal on the recommendation of the Tender Committee. In the meantime, it transpires that the foreign firm gave a post-tender escalation of their offer and on that account, it lost its competitiveness. While dropping the said offer, a consolidated proposal in line with the recommendation made by the Tender committee was sent to the concerned Ministry in the Government of India in September, 1984, to explore the possibility of securing the required foreign exchange to enable the Port Trust to call for a global tender or, otherwise, to allot the work to the Indian contractors. Having somehow acquired knowledge about the recommendation of the Tender Committee, the appellant appears to have initiated a proposal for purchase and import of a Dipper Dredger to undertake the dredging work in time. The appellant appears to have also thought of using the imported machinery for completing the balance of the work which was already with them (Ch.475 Mts. to 525 Mts.) The Port Trust appears to have, after consideration of various aspects resolved to allot the tender to the appellant after the proposal was placed before the Board of Trustees, by the resolution dated 28.5.1985, based on the majority decision of the Board of Trustees. The Board of Trustees appears to have taken note of the terms and conditions regarding the actual acceptance of the tender and the non-availability of the requisite foreign exchange for calling global tenders.

5. While the Tuticorin Port Trust was taking action to implement the decision of the Board to award the work to the appellant, a communication seems to have been received from the Ministry in 1985, calling for para-wise comments of the Port Trust on a representation said to have been received by the Ministry. The Port authorities, while furnishing the report to the Government, also sought for primal clearance of the Government for implementing the decision of the Board in the face of the representations received by the Ministry. After further correspondence and discussions with the Ministry, the possibilities of D.C.I. itself commencing the work appears to have been considered in a meeting and it was found that the said Corporation was reluctant to undertake the work. When the matter was under correspondence with the Ministry, M/s. AFCons appears to have offered a rebate in stages from 20% to 30%. It was considered that the said offer could not be considered otherwise than as a

fresh offer if necessary, by calling for fresh tenders and the same was not considered. It was at this stage that a communication dated 19.6.1986

was received from the Ministry by the Port Trust, permitting it to take a decision on the merits of the case and to award the contract. The members

of the Board were required to be informed accordingly.

6. While matters stood thus, so far as the existing contract with the appellant in respect of the execution of the Balance work already given to them

for dredging in the end Reaches (Ch.475 Mts. to 525 Mts.) though extension of time was granted in October, 1985 upto 30.6.1986, no tangible

action appears to have been taken by the appellant and this made the Port Trust to issue a notice dated 18.8.1986 invoking the forfeiture clause of

the contract. In the meanwhile, the Directorate of Surface Transport brought to the notice of the Chairman, Tuticorin Port Trust that a case had

been registered by the Central Bureau of Investigation against the appellant and some others in connection with the construction work entrusted to

and being executed at that time, by the appellant, relating to the deepening of Bharathi Dock in Madras Port under the Madras Port Trust. On an

enquiry from the Madras Port Trust, it came to be known that the C.B.I. investigation was under progress at that point of time. The appellant

submitted their explanation on 21.8.1986, to the forfeiture notice and they also dealt with the incidents, which had given rise to the complaint by the

Madras Port Trust to the C.B.I. as also with regard to the report submitted by the Madras Port to the Ministry of Shipping about the alleged

irregularities and the efforts made by the appellant till then, to sort out those problems. The appellant requested the Port Trust that those alleged

irregularities committed by certain employees of the appellant need not stand as an impediment in their way for being awarded the work of balance

work left out by D.C.I. in the approach channel. The appellant also informed the Tuticorin Port Trust that they propose to complete both the

balance of work from Ch. 475 Mts. to 525 Mts. as well as the work left undone by D.C.I. for which tenders had been called for within 10 months

from the date of the award of the work.

7. The subject-matter relating to the award of contract for the dredging work in approach channel from Ch.525 Mts. to 1050 Mts. upto 10-98

Mts. level was placed before the Board of Trustees of Tuticorin Port Trust for its

consideration on 30.8.1986. There seems to have been certain representation both against and for the grant of the contract to the appellant and the C.B.I. investigation which was then pending also figured during the consideration. The Board ultimately resolved by a majority to award the contract for the above work to the appellant subject however, to the condition that they agree, categorically in writing, to delete the clause relating to arbitration from the contract M/s. AFCons filed W.P. No. 9648 of 1986 while one of the trustees of the Board of Trustees, Mr.T.M. Stephen, filed W.P. No. 9823 of " 1986. The precise prayer in the writ petitions, shorn of unnecessary details, was that the contract in question be allotted in favour of M/s. AFCons. The prayer was based on the allegedly low offer of M/s. AFCons even though the so-called lower offer had admittedly been made by M/s. AFCons only after the tenders had been closed. M/s. AFCons had not even appeared before the Tender Committee meeting. The pendency of the C.B.I. enquiry against the appellant was also put as a ground to seek the award of the contract in favour M/s. AFCons in preference to that of the appellant. Both the writ petitions were dismissed by a learned single Judge, by a common order dated 24.12.1986. Writ appeals were filed against the judgment of the learned single Judge and both the writ appeals also failed and a further appeal before the Supreme Court in SLP No. 2578 of 1987 also failed on 14.4.1987.

8. The Central Bureau of Investigation, in the meantime, it seems, concluded its investigation and sent a lengthy report to the Vigilance Officer.

Ministry of Shipping, New Delhi. In the concluding portion of the report, it advised.

While no action is recommended against A.17 firm, the Ministry of Shipping may be advised to recommend banning of business dealings with the

firm by the Ports. Madras Port Trust should take action to recover Rs. 1,01,220.50 from A.17 firm.

On coming to know about the advice and recommendation of the C.B.I. and apprehending prejudice and detriment to their business interests and

prospects, the appellant filed W.P. No. 13234 of 1987 alleging violation of the principles of natural justice and Article 19(1)(g) of the Constitution

of India. It prayed for a writ of certiorari seeking to quash the recommendation

referred to supra in the report dated 30.11.1986. It was averred in the affidavit filed in support of the writ petition that because of the advice of the C.B.I. the pre-qualification application dated 24.12.1986 submitted by the appellant to the Chief Engineer, Port Trust, at Madras for consideration in respect of tenders for the Extension Container Terminal at Bharathi Dock of Madras Port had not been approved and even the tender forms were denied, thus preventing the appellant to submit its tender for the said work and that the appellant apprehended similar treatment even in respect of the work of construction of a Naval Berth which was under contemplation of the Madras Port Trust. That apart, the appellant averred that it had entertained an apprehension that the delay in awarding the dredging work by the Tuticorin Port Trust, under consideration, was also due to the advice of the C.B.I. The writ petition was resisted.

9. The first respondent, Government of India, in their counter affidavit filed in certain miscellaneous petitions in W.P. No. 13234 of 1987, set out in detail the manipulations alleged to have been made by the appellant and highlighted the materials gathered by the Investigating Authority (C.B.I.). It was, however, maintained that no instructions had been issued by the Government of India to the Madras Port Trust and the Tuticorin Port Trust, forbidding them from issuing tender forms to any company, including the appellant-company. It was asserted that the C.B.I. report was a confidential inter-departmental document, which could not be furnished to the appellant, that they were alive to the decision of the Supreme Court and the situation that banning business dealings involved certain procedure to be followed. It was stated that the appellant had not been served with any notice to ban business with them and that the prayer in the writ petition could not be entertained at that juncture.

10. The second respondent also filed a counter affidavit stating that the said respondent only discharged its statutory duties imposed by the Delhi Special Establishment Act and that the action of the authorities could not be stifled by instituting proceedings under Article 226 of the Constitution of India. It was maintained that the report of the C.B.I. submitted to another Government department regarding the result of its investigation was not a proceeding against which writ can be issued. It was further stated that the

investigation revealed that the appellant along with several Madras Port Trust Officials, had fabricated documents and made false claims and received payments in the name of the appellant and appropriated them and asserted that during the investigation it was revealed that the particulars of vehicles which were said to be "lorries" used for the transport of stones etc., were in fact registered as two-wheelers. It was stated that the actions and activities of the appellant were found to be highly objectionable and, therefore, a recommendation had been made to consider the question of banning business apart from recovering the financial loss caused to the Madras Port Trust and that having regard to the recommendatory and advisory nature of the report, the same could not be questioned through a writ petition filed under Article 226 of the Constitution of India.

11. The third respondent also filed a counter-affidavit explaining the circumstances under which the complaint had been made to the C.B.I.

regarding the alleged malpractices on the part of the appellant. It referred to the substance of the C.B.I. report though maintaining the confidential

nature of the same. As regards the plea that based upon the report of the C.B.I., they are sought to be black-listed and screened, the third

respondent stated in paragraph 7 of its counter affidavit as under:

Regarding Paragraph 9, it is stated that during October, 1986 the Madras Port Trust had invited a major tender for extension of Container

Terminal at Bharathi Dock for which pre-qualification applications were received from reputed firms/joint ventures. The pre-qualification document

was issued to the petitioner and the firm applied for the pre-qualification as joint venture with M/s. Amsterdam Ballast Dredging. However, they

were not pre-qualified based on merits and hence the tender documents for civil works were not issued to the petitioner. Therefore it is incorrect to

state that the Port Trust did not give tender documents to the petitioner in view of the C.B.I. findings. They have been treated on par with other

tenderers.

12. So far as the Tuticorin Port Trust, the fourth respondent, is concerned, in its counter, it was contended that the Board had since decided to

scrap all tenders and had chosen to call for fresh tenders, that in view of W.P. No. 916 of 1988 filed by the appellant, its W.P. No. 13234 of

1987 had become infructuous. It asserted that the mere fact that the tender of the appellant had been kept valid periodically did not confer any vested right on the appellant to be granted the contract in their favour. It was maintained that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India could not exercise ""supervisory"" jurisdiction in respect of the affairs of the Tuticorin Port Trust and that since none of the fundamental rights of the appellant had been violated no writ petition was maintainable only against the recommendations of the C.B.I. It was then stated that if the appellant felt aggrieved against the order of rejection, they could resort to other remedies open to them in law.

13. The appellant filed a common reply in which, while reiterating the stand in the affidavit and traversing some of the claims of the respondents also expressed their willingness to make further modification in the terms and conditions of their tender so as to benefit the Port Trust in what the appellant claims to be with a view not to make profit but to show their bona fides. Before we deal with the merits of W.P. No. 13234 of 1987, it would be relevant to refer to certain other developments.

14. While the proceedings in W.P. No. 13234 of 1987 were pending on the file of this Court, the Tuticorin Port Trust, by its communication dated 30.1.1988, informed the appellant that the tender submitted by them pursuant to the notice inviting tenders dated 9.12.1983 and all other tenders received from other parties stood discharged by the resolution of the Board, made by its meeting held on 29.1.1988 and consequently all tenders had been rejected pending the proposal to invite fresh tenders. The appellant, thereupon, filed W.P. No. 916 of 1988 praying for a writ of *certiorari* to quash the said proceedings, dated 30.1.1988, and for a direction to the respondents (Government of India and the Tuticorin Port Trust) to issue the work orders to the appellant-company for the balance dredging of approach channel between Ch.525 Mts. and 1050 Mts. minus 10.98 Mts. in the Tuticorin Port Trust. The appellant, after reiterating the averments in the earlier writ petition, further submitted in their affidavit filed in W.P.No.916 of 1988 that it was due to pressure from M/s. AFCons that the appellant were being subjected to such unwanted hostile treatment. That having regard to the earlier decisions of the Board resolving to grant the work to the appellants and the stand of

the Tuticorin Port Trust in the Supreme Court of India, the action of the Tuticorin Port Trust was unsustainable in law. That the cancellation order

has been issued on extraneous considerations and in bad faith. That there was no application of mind by the Tuticorin Port Trust and consequently

the proceedings dated 30.1.1988 were liable to be quashed.

15. The Tuticorin Port Trust, the second respondent, filed a detailed counter affidavit traversing the allegations of the appellant and submitted that

the appellant have misconceived their remedy.

16. In the meantime, it transpires that vide a communication dated 5.2.1988, the appellant was informed that in view of the forfeiture notice issued

on 18.8.1986, the site had been taken over on 4.2.1988, thereby the appellant stood expelled and that the remaining work under the agreement

would be got done as per Clause 43 and other terms of the agreement. The appellant thereupon filed W.P.No.4174 of 1988 seeking to quash the

proceedings dated 5th February, 1988. The appellant, while reiterating the allegations in the earlier writ petitions, further contended in the affidavit

filed in support of W.P. No. 4174 of 1988 that the Port Trust was estopped from cancelling the contract; that there was no proper application of

mind inasmuch as the Port Trust had only obeyed the instructions of the Government, which are the subject matter of challenge in W.P.No.13234

of 1987 and W.P.No.916 of 1988. While traversing the averments raised by the appellants in their counter affidavit, the Tuticorin Port Trust

contended that the only remedy open, if at all, to the appellant was to take recourse to the arbitration and other civil proceedings and that the filing

of the writ petition was not appropriate.

17. The learned single Judge, after an elaborate consideration of the respective contentions of the parties raised before him, by his order dated

28.3.1990, dismissed all the three writ petitions filed by the appellant, holding inter alia, that, (a) W.P. No. 13234 of 1987 was premature and the

C.B.I. report being an inter-departmental communication, the appellant could not be heard to build up an argument as if it had been side-lined on

account of that report; (b) that there is no question of quashing an inter-departmental "letter" and as such W.P. No. 13234 of 1987 was not

maintainable, particularly in view of the fact that no order had been passed, based on that letter; (c) that the respondents had maintained the stand

even in their counter affidavits that the appellant was not black-listed and that would show that the case of the appellant for allotment of other works in future would be considered, if they took part in other tenders; (d) that no person had a right to get a contract and that this Court cannot compel anybody to enter into a contract between one person and another; (e) that even though the Tuticorin Port Trust is an autonomous body and is entitled to take a decision, the Port Trust is bound to obey the directions of the Central Government u/s 111 of the Major Port Trusts Act, 1963; (f) that even assuming that this Court can test the reasoning for rejection of the tenders, the reasons given by the respondent-Port Trust could not be said to be arbitrary; (g) that Clause 43(3) of the contract confers power of forfeiture and the right to take over the balance work in terms of the said provision in the contract to the Port Trust; (h) that if the appellant felt aggrieved by the rejection of its tender or forfeiture of the work already entrusted to it, the appellant had to work its remedy either in a civil court or through arbitration, as the case may be, but not by way of a proceeding under Article 226 of the Constitution of India, as resorted to by the appellant through W.P. No. 4174 of 1988 and W.P. No. 916 of 1988; (i) that the Tuticorin Port Trust had not acted arbitrarily or unreasonably or on extraneous considerations; (j) that on the basis of the stand taken as defence in the earlier proceedings before this Court or the Supreme Court, it could not be said that the contract or tender had been awarded to the appellant and (k) that factually there was no basis or proof to hold that the appellant had been black-listed.

18. Aggrieved, the appellant filed the above three appeals. W.A. No. 423 of 1990 has been filed against the judgment in W.P. No. 13234 of 1987; W.A. No. 422 of 1990 against the judgment in W.P. No. 4174 of 1988 and W.A. No. 421 of 1990 has been filed against the judgment in W.P. No. 916 of 1988.

19. The first submission of Mr. Govindaswaminathan the learned senior counsel on behalf of the appellant was that the C.B.I. though as a statutory investigating authority is entitled to tender advice on the investigation carried out by it but unless the same is followed up by the concerned department of the Central Government in the manner prescribed by law and in conformity with the principles of natural justice and fair play, on

effect could be given to the recommendations of the C.B.I. According to the learned Counsel for the appellant, the Central Government, by its

inaction and deliberate indifference, had brought about a situation wherein the port authorities in the country were avoiding any business

connections or contractual dealings with the appellant without formally "black-listing it. It was argued that the appellant had been actually black-

listed, but since no procedure had been followed to black-list it, no "formal order of black-listing had been passed but the court could draw an

inference from the attitude of the Port authorities, that, without following the prescribed procedure the appellant had in fact been "black-listed" and

granted appropriate relief to the appellant. Reliance was placed by the learned Counsel upon the decision of the Supreme Court reported in

Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , to urge that since black-listing had the effect of creating a

disability by preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gain

principles of fair-play require that the person concerned should be given an opportunity to represent his case before being black-listed. This

judgment, however, for what follows, has no application to the present case. As a matter of fact, though the three writ appeals relate to three

different writ petitions with different prayers in each one of them, the basic and general submission made, covering all the three writ appeals, was

that the C.B.I. report and the advice or recommendation given therein loomed large with the Ministry and influenced by that recommendation, the

orders impugned in the writ petitions from which W.A. Nos. 421 and 422 of 1990 arise, came to be passed by the Port Trust. The learned single

Judge, while considering this issue took into account the specific stand and the averment on behalf of the respondents that the assumption and

apprehension of the appellant in this regard were baseless and that there was no material on the basis of which such an assumption could be raised.

It was opined that the apprehensions of the appellant were unjustified and without any basis.

20. The counsel on either side, apart from referring in detail to the respective pleadings, took us through the correspondence which had passed

between the appellant and the Port Trust as well as between the Port Trust and the concerned Ministry of the Government of India. After going

through the same and giving our thoughtful consideration to the entire material, we are of the view that the learned single judge was well justified

and right in coming to the conclusion that the appellant had not been "black-listed" and that the relief sought for in the writ petition, giving rise to

W.A. No. 423 of 1990, was premature and that the appellant cannot have any legally justiciable grievance, particularly when the respondents in

their counter affidavits had categorically maintained that the appellant was not black-listed and that its case will be considered by the respondents

in future if the appellant took part in any tender.

21. So far as the first respondent is concerned, it has been stated in paragraphs 7 and 9 of the counter affidavit filed before the learned single Judge

in the writ petition as follows:

7. In the above circumstances and facts stated therein, it is not true that the petitioners Company was to be absolved of the charges against them in

the report filed by the C.B.I. It was on the basis of charges which were established beyond any doubt, against the petitioners that the C.B.I. had

recommended to the Government to consider the advisability for banning future dealings with the petitioners' firm. However no instructions have

been issued by the Government to the Madras Port Trust and Tuticorin Port Trust forbidding them to issue tender forms to any company including

the petitioners' company.

[Emphasis supplied].

9. With regard to the 4th paragraph of the affidavit, It is submitted respectfully that the petitioners are trying to create sympathy from this Hon'ble

Court, though they know very well that the Government would not straightway implement the recommendations of the C.B.I., ignoring the

principles of natural justice. Banning business dealings with the petitioners' firm would require compliance with the principles of natural justice and

would have to be covered by the instructions of the Government of India regarding the banning of business dealings with firms which are contained

in paragraph 16 of the judgment of the Supreme Court in the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and

Another, . Hence any action leading of banning of the business dealings with any firm in question would require sufficient opportunity to be given to

the concerned company and also after proper enquiry if it is found to be guilty

and the punishment to be imposed would depend on the, gravity of the charges, and then only any action could be taken against the company. The petitioners at present have not yet been served with the show cause notice and no action has been taken against the company by the Government for banning business dealings with the petitioners' company. Therefore, the prayer of the petitioners' Company to restrain the respondents from taking into consideration the advice of the C.B.I is not entitled to be considered. I submit that at this juncture the petitioners' company cannot invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

[Emphasis supplied]

22. So far as the third respondent is concerned, it has been stated in paragraph 7 of the counter affidavit filed in the writ petition before the learned single Judge as follows:

7. Regarding paragraph 9, it is stated that during October, 1986, the Madras Port Trust had invited a major tender for Extension of Container Terminal at Bharathi Dock for which pre-qualification applications were received from reputed firms/joint ventures. The pre-qualification document was issued to the petitioner and the firm applied for the pre-qualification as joint venture with M/s. Amsterdam Ballast Dredging. However, they were not pre-qualified based on merits and hence the tender documents for civil works were not issued to the petitioner. Therefore, it is incorrect to state that the Port Trust did not give tender documents to the petitioner in view of the C.B.I. Findings. They have been treated on par with other tenderers.

[Emphasis ours]

23. So far as the Tuticorin Port Trust is concerned Mr. R. Krishnamoorthy, its learned senior counsel pointed out that it was not the specific or definite case of the appellant that in view of the advice of the C.B.I. they were prevented from participating or offering themselves as a tenderer. On behalf of the fourth respondent, it was represented that it may also be recorded that the appellant will not be so prevented from participating in the contracts with the said authority in future, unless and until any of the competent authorities passes specific orders to that extent, which as on

date had not been so far passed.

24. After a careful consideration of the stand taken by the respondents, as noted hereinabove, we are of the view that indisputably, as on date,

there are no specific orders passed by the second respondent or by any other competent authority, black-listing the appellant or directing the

banning of business dealings with them and it is only a fanciful apprehension, without any basis, on the part of the appellant to presume that on the

basis of the advice of the C.B.I., the Government of India as well as the other Port Authorities are avoiding having any business dealings with them

or are not allowing the appellant to participate in tenders floated by the various Port Authorities. No specific grievance with reference to even one

particular instance has been brought to our notice, let alone substantiated and the instance pleaded with reference to the third respondent (Madras

Port Trust) has been explained in detail and it has been demonstrated that the apprehension of the appellant was without any basis and was

unreasonable. This being the fact situation while we agree with the learned Counsel for the appellant that merely on the advice of the C.B.I. and

without passing any order by following the prescribed procedure for black-listing, the appellant cannot be black-listed, but find that since

respondents have categorically asserted that the appellant has neither in fact, nor in law been blacklisted, all that it requires at our hands is to clarify

that in view of the categorical stand taken by the respondents that the appellant has not been blacklisted and, therefore, they will not prevent the

appellant from participating in any of the tenders to be floated or invited by them in future and that consideration of the tenders shall be accorded

on merits, uninfluenced by the impugned advice/recommendation of the C.B.I.

25. In the light of our above discussion and having regard to the fact that the advice that was sought to be quashed in the writ petition is nothing but

a mere recommendation of an investigating agency, made in an inter-departmental correspondence, which proprio vigor has no operative force or

lawful effect or binding impact to the detriment or prejudice of the appellant, we see no reason to interfere with the conclusion of the learned single

Judge that W.P. No. 13234 of 1987 is premature and cannot be sustained at all at this stage and consequently W.A. No. 423 of 1990 shall stand

dismissing, subject, however, to the observations made by us in paragraph 22

above.

26. Coming now to W.A.No.421 of 1990, which is concerned with the refusal of the Tuticorin Port Trust to award the contract for balance

dredging in approach channel from Ch.525 Mts. to 1050 Mts. to the appellant. The learned Counsel for the appellant submitted that the Tuticorin

Port Trust denied the contract to the appellant on extraneous grounds only on the directions of the Government of India and that the said action of

the Government of India was vitiated by mala fides also. It was further argued that since the Board had already passed two resolutions, resolving

to award the contract to the appellant and had taken the very stand in the earlier proceedings before this Court as well as in the Supreme Court

(referred to supra), the Port Trust was estopped from going back from the positive stand and in that view of the matter, the appellant is entitled to

be awarded the work and the contract in question.

27. Whether the appellant is entitled to claim that a right to the grant of the contract had accrued in its favour on the Board merely passing the

resolutions without either communicating the acceptance of the tender or issuing any work order thereafter to the appellant requires now to be

considered. This will also necessitate consideration of another aspect as to the extent to which the appellant can take advantage of the disclosure of

the proceedings of the Board, in the Court in a pending litigation, where such proceedings had not been admittedly, communicated in due course

officially to the appellant. In our opinion, for what follows, such resolutions or disclosure in the court cannot be construed to be an order formally

communicated to the party which may create any right in that party. The apex Court in *Bachhittar Singh Vs. The State of Punjab*, , held that merely

writing something on a file does not amount to an order. They opined that unless a formal communication of the same is made to the person

concerned, the authority concerned is not bound by the minutes on the file. Again, in *State of Bihar and Others Vs. Kripalu Shankar and Others*, ,

though arising under the Contempt of Courts Act, 1971, the question as to the effect of disclosure of certain proceedings and communications in

the course of a proceeding before Court came up for consideration and the Apex Court opined thus:

27. We would like to outline the general principle on which confidentiality of State

documents should be protected. The general principle is that if a person is involved in a litigation, the Courts can order him to produce all the documents he has which relate to the issues in the case. Even if they are confidential, the Court can direct them to be produced when the party in possession does not produce them, for the other side to see or at any rate for the Court to see. When the Court directs production of those documents there is an implied understanding that they will not be used for any other purpose. The production of these documents in ordinary cases is imposed with a limitation that the side for whose purpose documents are summoned by the Court cannot use them for any purpose other than the one relating to the case involved.

Thus, we hold that the stand of the respondents in the court proceedings does not confer any justiciable right.

28. What in law then is the consequence of the mere passing of the resolutions dated 28.5.1985 and 30.8.1986 and do such resolutions by

themselves have the effect of bringing into existence a contractual relationship between the appellant on the one hand and the Tuticorin Port Trust

on the other in respect of the work of balance dredging in approach channel from Ch. 525 Mts. to 1050 Mts.? In law, in a matter like this, a

contract is formed by making of an offer and the acceptance of the offer for consideration. Acceptance, to bring into existence a contractual

relationship, cannot be said to be complete unless and until the same has been communicated to the offer or. In other words, the formation of the

intention is not enough and external manifestation of the same by an explicit act of communication to the other party is an essential ingredient to

make the contract complete and irrevocable, since before that it shall always be within the rights of the offeree to go back or withdraw from the

contractual commitment. A reading of Sections 3 to 6 of the Indian Contract Act, 1872 will substantiate the above indisputable position of law and

Illustration (c) to Section 4 as well as Section 5 and the Illustrations contained there under make it amply clear that the acceptor is entitled to

revoke his acceptance at any time before the communication of the acceptance becomes complete as against him and communication of an

acceptance can be said to have been made only when the acceptor intends by an act of the acceptor to communicate the acceptance to the other

party in the normal course and such communication comes to the knowledge of the proposer through such communication. In this case, we find

that in law, a firm contract could not be said to have come into existence merely on the passing of the resolution or as already held on account of

their disclosure in the Court proceedings on an earlier occasion. The fact that periodically the appellant was admittedly extending the period of

validity of the tender even thereafter will also go to show that the parties never proceeded as though a contract had come into existence.

29. We are also of the view that the Port Trust was not bound to accept the tender of the person who offered to highest amount and if the

Government rejected all the bids made at the auction, it cannot involve any violation of Article 14 or Article 19(1)(g) of the Constitution of India.

Unless the conditions of the tender contained any stipulation that the highest tender would be or shall be accepted, a person who gave a higher

tender has, in law, no right to have the said tender accepted only on that account. It cannot be disputed having regard to the peculiar tender

conditions etc. that the Board of Trustees alone was entitled to decide whether the highest tender should be accepted or whether fresh tenders

should be invited. Unless the decision can be considered to be so unreasonable or perverse that no reasonable person could arrive at such

decision, the same could not be called "arbitrary". Indeed, judicial scrutiny of the decision taken either not to give a contract or to reject all

tenders, is not completely ruled out and a person aggrieved is entitled to invoke the writ jurisdiction to question a decision if it is arbitrary, perverse

or suffers from any other similar vice. Of course, there is an initial presumption (even though rebuttable) that the action of a public authority is

reasonable and in public interest and it is for the person challenging its validity to show that the action is unreasonable, arbitrary or contrary to the ,

professed norms and the burden is rather a heavy one. The same will be the position even when a challenge is made on the ground that the action

taken was for a collateral purpose or mala fide. Courts do not, in the course of judicial review of action of the competent constituted authority,

substitute its own decision on the ground that the decision which appealed to the authority is not the best or that the decision of the authority is not

a feasible means of achieving the objectives or that it could have adopted a different course which may have been better and the like reasons.

Judicial review, as has often been held, is not ordinarily concerned with the decision but only with the decision making process. On account merely

of the fact that two reasonable conclusions are possible, the Courts do not discard the one view taken by duly constituted competent authority -

bona fide, and substitute the other view. The reasonableness or otherwise of a decision has to be judged having regard to the totality of the

circumstances, the subject-matter in question and the peculiar needs or necessity depending upon the exigencies of the situation. The view that we

have taken is fortified by a Division Bench of this Court. In the decision reported in Chokhant International Ltd. v. Board of Trustees of the Port of

Madras 1987 Writ L.R. 529, in circumstances which were almost similar as in the present case, the Bench opined:

We must, therefore, bear in mind the fact that unless we are satisfied that the Board of Trustees had not been acted like a body are (sic.)

reasonable men or that the decision which they have taken was not such that a reasonable person in the circumstances of the case would not have

taken, or that they had taken into account any extraneous consideration"s which affect their decision, the decision to call for fresh tenders will not

be open to challenge. In view of the undoubted legal position that if one of the tenderers increases his bid the other tenderers must also be given an

opportunity to give higher bids, the Board of Trustees, in our view, were quite justified in closing all the tenders and calling for fresh tenders.

30. So far as the instant case is concerned, it is not in dispute that neither the resolutions of the Port Trust dated 28.5.1985 and 30.8.1986 had

been duly communicated to the appellant for even any intimation of such resolutions had been sent to it with the object of or intention of

communicating the so called acceptance at any time. Admittedly, no work order has been issued to the appellant on the basis of the said

resolutions. The copies of those resolutions apparently came to be known when the same were produced in the earlier proceedings before this

Court and the Supreme Court as well as in the course of the current proceedings. They were never communicated to the appellant with the

intention of communicating the acceptance of the Port Trust of the tender submitted by the appellant. (The learned Counsel for the appellant, on

instructions from the appellant obtained in Court, also had to affirm this position of non communication.) In view of the above fact situation, we are

unable to agree that the appellant acquired any right, much less a vested right, to the award of the contract in question in their favour only on the basis of the non-communicated resolutions referred to supra. On the other hand, the appellant had been only communicated an order of rejection, pursuant to the resolution of the Board of Trustees, dated 29.1.1988. Consequently, the appellant cannot claim any rights based on the earlier resolutions of the Board. The disclosure of the resolutions in the course of the Court proceedings cannot be equated with the communication of an acceptance of the offer so as to constitute a contract or bring into existence any contractual relationship for sustaining a claim, justiciable in law. As already noticed, the fact that admittedly even after the resolutions dated 28.5.1985 and 30.8.1986 the Port Trust had been seeking for extension of the period of validity of tender and the tenderer, including the appellant, had been conveying their willingness periodically by extending the period of the validity of the tender, by itself shows that no concluded contract came into existence between the parties, which the appellant can get enforced. Equally, the position does not change or get altered by the stand taken in the counter affidavit filed in this Court and the Supreme Court in the earlier proceedings in defending its action questioned in those proceedings. There can be no prohibition against the Tuticorin Port Trust or its Board of Trustees in exercising their discretion or undoubted powers either way in rejecting any one or all of the tenders received and thereafter, calling for fresh tenders with the same or any additional terms and conditions. Consequently, we are not persuaded to agree with the submission on behalf of the appellant that a legally enforceable contract can be spelt out either on the basis of the stand taken in the counter affidavits in the earlier proceedings or on the basis of the non-communicated resolutions.

31. Whether the decision of the Board of Trustees of the Port Trust to reject all the tenders can be said to be so unreasonable that no reasonable person or body of persons could have arrived at such a decision or that the decision was vitiated on the ground that any extraneous considerations had been taken into account, now falls for our consideration. We have been taken through the note dated 28.1.1988 put up by the Chairman as Agenda Item No. 19, seeking approval of the Board v, for the rejection of all the tenders received for the balance dredging work in the approach

channel from Ch.525 Mts. to 1050 Mts. upto 10.98 M. level as also resolution No. 185 passed on the basis thereof on 29.1.1988. Those records

disclose a meticulous consideration and analysis of the matter in the proper perspective, taking into account only what could be considered to be

relevant. This becomes apparent from a bare perusal of the minutes of the discussion and the resolution. The note submitted to the Board, no

doubt, seems to have taken into account the communication dated 12.1.1988 received from the Government of India, the relevant portion whereof

reads thus:

The entire matter has been considered in the Ministry. The tenders for this work were called for some time in 1983 and it would be against normal

principles of project formulation and management to award a contract in 1988 based upon 1983 tenders and rates. It has, therefore, been decided

that the Tuticorin Port Trust may be advised to discharge all the existing tenders and to invite fresh tenders for the entire balance dredging to be

done in the Port to achieve the design draft of 30". While calling for fresh tenders, you may also ask the tenderers to indicate the availability of

foreign assistance, if any, and the quantum of foreign exchange if needed, for the work.

Even if it be assumed that it was after taking into consideration the above advice of the Government of India that the Board rejected all the tenders,

no exception can be taken to the decision of the Board, as the reasons which really weighed with the Board cannot be said to be either arbitrary or

so unreasonable that no reasonable person or body of persons could have arrived at. The reasons were relevant and not extraneous at all. We are

of the opinion that having regard to the stakes and the public interest involved, the powers of the Government of India, as the Supervising and

Controlling Authority of the Port Trusts in India, the nature of the powers exercised by the Port Trust and the peculiar facts and circumstances of

the case, no objection in law can be taken to the competency of the Government of India to give the said advice to the Tuticorin Port Trust. The

reasons which weighed with the Board of Trustees have relevance and sufficient nexus to the object and the ultimate decision taken by the Board.

32. In State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, , the apex Court while considering the question of rejecting a

highest offer, declared the position of law thus:

It appears to us that the High Court had clearly misdirected itself. The conditions of action made it perfectly clear that the Government was under

no obligation to accept the highest bid and that no rights accrued to the bidder merely because his bid happened to be the highest. Under condition

No. 10 it was expressly provided that the acceptance of bid at the time of auction was entirely provisional and was subject to ratification by the

competent authority namely the State Government. Therefore, the Government had the right, for good and sufficient reason, we may say not to

accept the highest bid but even to prefer a tenderer other than the highest bidder, the High Court was clearly in error in holding that the

Government could not refuse to accept the highest bid except on the ground of inadequacy of the bid. Condition No. 10 does not so restrict the

power of the Government not to accept the bid. There is no reason why the power vested in the Government to refuse to accept the highest bid

should be confined to inadequacy of bid only. There may be a variety of good and sufficient reasons, apart from inadequacy of bids, which may

impel the Government not to accept the highest bid. In fact, to give an antithetic illustration, the very enormity of a bid may make it suspect. It may

lead the Government to realise that no bona fide bidder could possibly offer such a bid if he meant to do honest business. Again the Government

may change or refuse its policy from time to time and we see no reason why change of policy by the Government, subsequent to the auction but

before its confirmation, may not be a sufficient justification for the refusal to accept the highest bid. It cannot be disputed that the Government has

the right to change its policy from time to time, according to the demands of the time and situation and in the public interest. If the Government has

the power to accept or not to accept the highest bid and if the Government has also the power to change its policy from time to time, it must follow

that a change or revision of policy subsequent to the provisional acceptance of the bid but before its final acceptance is a sound enough reason for

the Government's refusal to accept the highest bid at an auction. That is precisely what has happened here.

33. On a careful consideration of the material placed before us and the reasons which weighed with the Board of Trustees in resolving to reject all

the tenders, in our opinion, the decision of the Board cannot be considered or condemned to be so unreasonable as to be called "arbitrary" or

mala fide. The factors, such as the long lapse of time, the impact of changed conditions and situation pointed out by the Government of India, the

prevailing and governing economic factors, viz., the rates as well as the revised offers made subsequent to the tenders in question were all relevant

for the purpose of considering the rejection of all existing tenders. The offer of the appellant itself during the course of the proceedings before the

learned single Judge as well as before us to further reduce their rates and even the willingness expressed to waive the provision for escalated rates

is not a matter which can be considered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The learned single

Judge was, therefore, right in rejecting the claim of the appellant that the balance dredging work ought to have been awarded to them. Despite

lengthy arguments, we have not been persuaded to take a view different than the one taken by the learned single judge, consequently, W.A. No.

421 of 1990 shall stand dismissed.

34. Now, the only question that remains for our consideration is the validity of the action of the Port Authorities in invoking Clause 43 of the

Contract, which is the forfeiture clause, in the agreement in respect of the non-completion of the work already given to them under Agreement No.

12-CE/1979-80, as communicated to the appellant on 5.2.1988. That is the subject matter of challenge before us in W.A. No. 422 of 1990.

35. The right to execute the work and receive remuneration therefore arises from the terms and conditions of the contract duly executed between

the parties and the writ jurisdiction under Article 226 of the Constitution of India is not intended to facilitate avoidance of the obligations voluntarily

incurred. The question as to the extent a termination of a contract by the Government or a State undertaking can be challenged before a Court in

proceedings under Article 226 or Article 32 of the Constitution of India, has been the subject matter of consideration in a catena of cases before

the apex Court as well as this Court. We find that the case law on the subject has been extensively reviewed by a Division Bench of this Court

reported in Shaikh Mohammed Rowther and Co. (P) Ltd. v. K.P.V.V. The Shipping Corporation of India 1987 Writ L.R. 638. The Division

Bench came to the conclusion that the question of unreasonableness of the exercise of rights conferred under a contract cannot be raised or

allowed to be agitated through a writ petition under Article 226 of the Constitution of India, irrespective even of the plea that exercise of the

contractual powers to terminate the contract was a mala fide one. The Apex Court in the decision reported in Mahabir Auto Stores and others Vs.

Indian Oil Corporation and others, , took the view that though the rights of citizen are in the nature of contractual rights and the manner, the method

and motive of a decision of entering or not entering into a contract could be subject to judicial review, Article 14 of the Constitution of India cannot

be and has not been construed as a charter for judicial review of the State action after the Contract has been entered into to call upon the authority

to account for its actions. Even if it be assumed for the sake of argument, though we make no such assumption that the appellant has suffered some

financial loss due to the invoking of the forfeiture clause even arbitrarily, it is for the appellant to work out its remedies before the ordinary civil

courts or by means of an Arbitration proceedings, as contemplated under the contract; but resort to the proceedings under Article 226 of the

Constitution of India is inappropriate and ill-conceived. In our view, the learned single Judge was right in rejecting the challenge to the action of the

Port Authorities invoking the forfeiture clause in the case in the writ proceedings and we are unable to take a view different than the one taken by

the learned single Judge.

36. On behalf of the appellant, it was also submitted, though for the first time before us only that there is no Board resolution authorising the

allotment of work left incomplete by the appellant. This involves factual verification and even otherwise we see no relevance of the submission at all

to the issues before us. Since this aspect was not put in issue before the learned single Judge or even in the memorandum of grounds of appeal

before us, we do not consider it proper to embark upon an enquiry into those aspects at this late stage. In the grounds of appeal, the only challenge

to the impugned action of the Port Trust was that the Port Trust had cancelled the contract influenced by the instructions of the Government of

India and not on the basis of any relevant consideration and that the instruction had been given in view of the report of the C.B.I. The learned single

Judge found on the basis of the material on record that there was no basis for such a plea. Our attention has not been invited to any specific

material to substantiate the stand taken to the contra by the appellant, except the general claim that the C.B.I. report was the basis of all the actions

of the respondents. Such a general submission, by itself, did not appeal to us and we have not countenanced the same while dealing with W.A. No.

423 of 1990. The Port Authorities issued a notice proposing to invoke the powers under Clause 43 of the Agreement as early as on 18.8.1986

and it gives valid and convincing reasons in justification for their action. There have been subsequent deliberations also as could be seen from the

correspondence that was exchanged between the parties where after the impugned communication was issued. Therefore, raising of the cry of wolf

merely on the basis of the report of the C.B.I., as having influenced the course of every action, is in our view, overplaying the game based on

apprehensions rather than, realities. In our view, the learned single Judge was perfectly justified in rejecting W.P. No. 4174 of 1988 also and we

see no reason to interfere with the said decision in this appeal. Consequently, W.A. No. 422 of 1990 shall also stand dismissed.

37. In view of the above discussion, the writ appeals fails and shall stand dismissed, but, in the circumstances there will be no order as to costs.