
(1999) 09 GAU CK 0002
In the Gauhati High Court
Case No : Writ Appeal No. 210 of 1999

Ansal Properties and Industries Ltd.	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 3 GLT 195

Hon'ble Judges : Brijesh Kumar, C.J;D. Biswas, J

Bench : Division Bench

Advocate : A.K. Bhattacharyya, K. Agarwal, N.T. Nath, Eva Kakoti, A. Kalita and A. Bhattacharyya, for the Appellant; P.G. Baruah, A.G., B.C. Das, Addl. Sr. G.A., N. Dutta, J. Sharma and N. Chakraborty, for the Respondent

Judgement

D. Biswas, J.—In this appeal by M/s Ansal (Properties and Industries) Limited against the judgment and order of dismissal passed in W.P. (C) 776/99, we are concerned with the question whether the decision of the State Government to award the contract of construction of a Multistoried Secretariat Building at Dispur to M/s. Hindustan Steel Works Construction Limited is liable to be set aside being arbitrary, unjust and un-reasonable. The learned Single Judge, however, declined to interfere with the decision primarily on consideration that the contract has been awarded to a Government Company with the lowest bid.

2. It would be convenient to recapitulate the facts at this stage which eventually drove the Appellant to bring this matter at the threshold of this Court. The Additional Chief Engineer P.W.D. (Building), arrayed as Respondent No. 3, issued a Notice inviting tenders on 8.6.98 for construction of the aforesaid building on Turnkey basis from the intending parties with Techno-Commercial abilities for executing the said work. The estimated cost of the project has been estimated at Rs. 71 crores. The NTT was issued for a Two-Bid System i.e. Technor Commercial bid and the Price bid. Further, it was specified that the Price bid would be opened for consideration only in respect of the tenderers whose Techno-Commercial bids

are found acceptable. In response to the said Notice, as many as 9 Firms submitted tender documents including the Appellant Company and the Respondent No. 4. The Techno-Commercial bids of the 9 tenderers were opened by the Respondent No. 3 on 25.9.98. Thereafter, the Respondent No. 3 opened the price bid on 27.10.98 allegedly before evaluation of the Techno-Commercial bids. The Tender Committee evaluated the bids of the tenderers on 17.11.98 and found the rate quoted by the Respondent No. 4 as lowest. But the Tender Committee was satisfied that the Respondent No. 4 was not financially capable to execute the contract as per requirement of NIT and recommended M/s. Larsen and Toubro Ltd. for the contract at the rate offered by the Respondent No. 4. The Selection Committee constituted by the State Government for examining the design and construction of the project considered the matter on 25.11.98 and decided that discussion/negotiation should be initiated with all the tenderers to redefine the specifications in respect of some items, and for this purpose required the tenderers to submit revised bids. The Appellant submitted its revised bid on 7.12.98 quoting Rs. 72,92,00,000/- while the Respondent No. 4 quoted the lowest bid of Rs. 69,57,75,000/-. The Tender Committee reiterating its earlier stand that the Respondent No. 4 was not financially sound recommended the Appellant Company for the contract at the rate quoted by the Respondent No. 4. The Selection Committee also approved of the decision of the Tender Committee and accordingly recommended the Appellant Company for the contract. The matter was placed before the Minister-in-Charge of Guwahati Development Department on 31.12.98. The Minister-in-Charge eventually by order dated 27.1.99 approved the offer of the Respondent No. 4 on consideration that the rate quoted by the Respondent No. 4 is the lowest and that it is a Central Government Company. This decision and the consequential preliminary order dated 3.2.99 are in challenge in this appeal on the ground that the Minister-in-charge on his own and in difference to the recommendation of the Tender Committee as well as the decision of the Selection Committee decided the matter in a most arbitrary manner.

3. The Respondents in their affidavit-in-opposition, however, maintained that the Minister-in-Charge being repository of power after due consideration of all the documents passed the order in exercise of his discretion. The reason for approval of the offer of the Respondent No. 4 being germane in the order itself, interference by this Court is impermissible. That apart, highlighting the lapses in the tender documents of the Appellant company it has been further averred that the element of public interest involved in the project having been taken due care of, the Court may not exercise its power of judicial review to upset the decision of the State Government.

4. Shri A.K. Bhattacharjee, the Learned Counsel for the Appellant while arguing the case at length pointed out that the Respondents in violation of the NIT clause opened the price bid before evaluation of Techno Commercial bids and that the Minister-in-Charge acted beyond his powers to take a decision of his own ignoring the recommendation of the Tender Committee and the decision of the

Selection Committee, and the manner in which the discretionary powers exercised by him on consideration of irrelevant factors to set at naught the legitimate expectation of the Appellant deserves to be condemned as unjust, unfair and arbitrary. It was further pointed out that the Minister-in-Charge also acted far beyond his powers in approving the offer of the Respondent No. 4 without either approving or disapproving the recommendation of the Tender Committee and the decision of the Selection Committee.

5. Shri R.G. Barua, learned Advocate General for the Respondent State and Shri N. Dutta, learned Senior Counsel for the Respondent No. 4, vehemently argued to obviate the rival contentions. In an identical tune the Learned Counsel have argued that the Minister-in-Charge in exercise of his discretionary powers had the jurisdiction to decide of his own as to which of the companies would be placed with the contract. According to them, it was so done after taking into consideration all the materials on record and keeping in mind the element of public interest involved in the project, a number of decisions of the Apex Court and High Courts have also been read out to augment their submission. We would like to refer to the decisions later. Before that we would like to replace hereinbelow the recommendation of the Tender Committee, the decision of the Selection Committee and the order passed by the Minister-in-Charge. The initial recommendation made by the Tender Committee on 17.11.98 shows that the Tender Committee on scrutiny of tender documents submitted by Respondent No. 4 found it financially unsound and recommended M/s. Larsen and Toubro Ltd. for awarding with the contract. The Selection Committee after examination of the entire matter on 25.11.98 concluded that the tenderers be asked to redefine the specifications in respect of some items. We do not find any necessity to refer to these matters in details since the decisions taken on 17.12.98 and thereafter are crucial for resolution of the dispute at hand.

6. The relevant part of the Minutes of the Tender Committee recorded on 17.12.98 recommending the Appellant Company may be read as follows:

The Addl. C.E. P.C.C. Zone accordingly made necessary clarifications in the items and called the firms/companies for a discussion on 30.11.98. The sealed Financial implications were opened on 7.12.98 at 4 p.m. It was observed that two firms has asked for more time to submit the financial implication. In their cases their original price bid quoted have now been reflected in the C/S. In case of four other firms/companies like M/s. Gamon India Ltd. they have submitted as if a fresh tender by effecting the rates of almost all the items even by introducing/ deviating from the original specification laid down in the detailed N.I.T. This is against the spirit & principle of healthy process of Tender completion. Therefore in their cases the original prices quoted by them have been reflected in the C.S. Based on the above, it is seen that M/s. Hindustan Steel Works Constn Ltd. has quoted the lowest amount of Rs. 6957.75 lakhs.

This firm is a Govt. of India undertaking. The Committee further notes that the Solvency Certificate furnished by the firm has been issued by S.B.I., local Head

Office Patna dtd. 2.2.95 upto a limit of Rs. 200.00 crores. This certificate, furnished, is not current to show the present financial condition of the firm. Further, the Ministry of Steel and Mines, G.O.I., New Delhi has written a letter, addressed to Sri Shanti Ghatak, Minister-in-charge, Labour Deptt, Govt. of West Bengal, vide their D.O. No. 2 (33)/98-11SM dtd. 13th Aug. 98 indicating that "no decision has yet been taken to close down Hindustan Steel Work Constn. Ltd. and on the contrary we are looking for ways and means to revive this company in consultation with the concerned agencies". This clearly shows that this company is not financially sound.

Hence the Committee feels that this firm shall not be suitable for allotment of this work of such magnitude.

M/s. Gammon India Ltd. has quoted the second lowest amount of Rs. 6999 lakhs which is still higher than the amount quoted by M/s. Hindustan Steel Works Constn. Ltd. The Tender Committee does not recommend to offer the work to M/s. Gammon India Ltd. for the reasons as already aforesaid.

The next rate is quoted by M/s. Ansal Properties and Industries Ltd. at Rs. 7392.00 lakhs. Their plan and architectural drawings are also acceptable and their tendered amount is in order as per the clarifications on technical matters given by the Deptt. the Committee therefore recommends that the work in full be offered to M/s. Ansal Properties and Industries Ltd. at Rs. 6957.75 Lakhs (without loading): being the lowest amount quoted by M/s. Hindustan Steel Works Coristn. Ltd.

7. The Selection Committee in its meeting dated 29.12.98 presided over by the Chief Secretary decided to offer the whole work to the Appellant Company. The relevant part of the minutes of the meeting is reproduced below:

M/s. Hindustan Steel Works Construction Ltd., Calcutta stood the lowest at lumpsum price value of Rs. 6957.75 lakhs (without loading). The Tender Committee had doubted the financial capability of this firm reasons for which were indicated in the; Tender Committee minutes. The meeting, considering all aspect, decided to accept the recommendations of the Tender Committee Dtd. 17.12.98 on the ground as recorded in its minutes and approved that M/s. Hindustan Steel Works Construction Ltd. should not be selected for the P.C.C. job.

....

The meeting observed that the next tender value was quoted by M/s. Ansal Properties & Industries Ltd., New Delhi at Rs. 73.92 crores (without loading). This Firm was found to be a reputed one for building construction work of such magnitude. The meeting appreciated the Plan submitted by M/s. Ansal Properties and Industries Ltd.

The meeting, after carefully taking into consideration the recommendations of the Tender Committee and tract records of the Firm, decided to offer the whole work of the Construction of Multistoried Secretariat building at Dispur, to M/s.

Ansal Properties and Industries Ltd., New Delhi at the lowest bid value of Rs. 6957.75 lakhs.

8. In terms of the aforesaid recommendation of the Tender Committee and the decision of Selection Committee, the relevant file with notings of the concerned officials including that of the Chief Secretary was placed before the Minister-in-charge for approval. The Minister-in-Charge vide order dated 27.1.99 approved the offer of the Respondent No. 4. The order reads as follows:

I have gone through all the records in the file. It is found that the HSCL's offer is the lowest for the construction of the Permanent Capital and HSCL's (lowest tenderer) is also a Central Government Undertaking under the Ministry of Steel & Mines.

Therefore, HSCL's offer is approved. Necessary action be taken for early commencement and completion of the work.

9. We have before us the recommendation of the Tender Committee, the decision of the Selection Committee and the impugned order passed by the Minister-in-Charge. Before we proceed further, it is necessary to have a look into the composition of the Tender Committee and the Selection Committee and the duties assigned to them respectively. The Tender Committee reconstituted by the State Government by notification dated 29th October, 1998 consists of thirteen members with the Commissioner and Special Secretary, P.W.D. as the Chairman. The other members are the Secretary, the Senior Financial Adviser and four Chief Engineers and six Addl. Chief Engineers of the same department. This Committee has been authorised to examine all tenders for works amounting to Rs. 15 lakhs and above and to furnish its recommendation for approval by the Government. The competence and expertise necessary for scrutiny of the tender documents for a project with an estimated cost of Rs. 71 crore are manifest in the very composition of the Committee. Similarly, the Selection Committee with the Chief Secretary as Chairman reconstituted specifically for this purpose comprise of high officials of the State Government drafted from different departments like Finance, Revenue, Town & Country Planning, Public Works, Public Health Engineering, State Electricity Board etc. This Committee has been assigned to select the tenderer to be assigned with the contract. The terms of reference are as follows:

1. The residual work under the terms of reference of the Rao Committee which were not covered by the Rao Committee Report.
2. Recommending detailed architectural plan for the Secretariat and Assembly with all facilities providing full requirement of all Secretariat Departments and Assembly Secretariat.
3. Detailed plans for the housing complex with required facilities.
4. Working of full cost estimates with phasing of expenditure.

5. Phasing or dismantling of the existing structures and synchronisation of the construction programme of the buildings and the infrastructure and making arrangements for shifting and housing of officers/residences of employees involved.

6. To examine and recommend to the Government for approval of various works proposed by the executing agency.

7. To examine and recommend the strengthening of the executing Agency and re-deployment of manpower from Government Department.

8. To review the progress of Permanent Capital Construction.

9. Any other relevant matter which may be deemed fit and proper by the Committee.

10. The composition of the Selection Committee and the terms of reference are indicative of the fact that it is a Committee assigned to select and recommend the best tenderer to the State Government for approval. Like the Tender Committee, the competence and expertise of this Committee are also not in dispute. Therefore, any opinion tendered by any of these two Committees is of immense significance and cannot be brushed aside without overriding reasons. Before we examine the propriety of the impugned order and the reasons for passing thereof, it is considered necessary to mention in brief that the Selection Committee which met on 25.11.98 to consider the initial recommendation of the Tender Committee to award the contract to M/s. Larsen and Toubro called for second round of negotiation with the tenderers. It was after second round of negotiation, the Tender Committee by its minutes dated 17.12.98 recommended the Appellant company provided they agree to execute the work at the rate offered by the Respondent No. 4. The Tender Committee did not recommend the Respondent No. 4 for reasons already reproduced hereinbefore. The Tender Committee was of the view that the solvency certificate upto a limit of Rs. 200 crores issued by the State Bank of India, Patna, on 2.2.95 was not indicative of the current financial position of the Company and that the contents of the letter dated 13th August, 1999 issued by the Ministry of Steel and Mines, Government of India showed that the Central Government was looking for ways and means to revive the Company. For the said reasons, the Tender Committee concluded that the firm (Respondent No. 4) was not suitable for allotment of the work of such a magnitude. The Selection Committee considered the matter and accepted the recommendation of the Tender Committee and decided to offer the whole works of construction to the Appellant Company. The Selection Committee also recorded their appreciation for the plan submitted by the Appellant Company.

11. On the face of the above, the question will naturally arise whether the order passed by the Minister-in-charge to award the contract to a third party rejected by both the expert and the Selection Committee could be sustained in law in view of no-reasons being made available in the order itself. Both Shri P.G. Baruah, learned Advocate General and Shri N. Dutta, Learned Senior Counsel,

argued that there are enough materials on record to justify the deviation made by the Minister-in-Charge and the reasons are germane in the expressions (1) HSCL's offer is the lowest and (2) HSCL is a Central Government Undertaking. Shri Dutta, learned Senior Counsel, further submitted that the Respondent No. 4 being a Government company has the ability to raise finance and in support of this referred to the "package" offered by the Government of India to revive the company. Shri Bhattacharjee, learned Counsel for the Appellant, however, maintained that the announcement of "package" by the Government of India to revive the Company shows the bankruptcy of the Company. According to him, the "package" at best shows that an attempt is being made to revive the Company.

12. The reasons reflected in the order of the Minister-in-Charge that the Respondent No. 4 has quoted the lowest price is not in controversy. The other reason that the Respondent No. 4 is a Government Company is in challenge. We have carefully examined the tender notice and nowhere we find any indication that the Government Company would be given preference to Ors. . In our opinion when a tender is floated inviting offers without specifying any reservation for special consideration, the authority assigned with the duty to accept the best available tender cannot during the course of consideration attribute any preferential treatment to any class or group of competing tenderers. This view has been a law for the country since the judgment in Harinder Singh Arora Vs. Union of India (UOI) and Others, has been pronounced by the Supreme Court. The ratio laid down in the said judgment that the Government may enter into a contract with any person, but while doing so the State or its instrumentalities cannot act arbitrarily still holds the field. If the State chooses to invite tenders, the terms and conditions laid down in the tender notice have to be followed. Therefore, the reason that the Respondent No. 4 is a Government Company and hence selected for the works does not appear to be legally acceptable. If it was the policy of the State to give preference to any Government Company or Undertaking, such policy should have been made known to the intending tenderers from before. On this context, examination of the records is necessary to see whether there are discernible reasons to accept the Respondent No. 4 as a financially sound Company capable of executing the construction works. This will be done keeping in mind the extent and limit of powers of judicial review available to this Court. Before that we prefer to reappraise ourselves with the laws that hold the field in the sphere of contractual relations.

13. In Tata Cellular Vs. Union of India, the Supreme Court made it clear that the principles of judicial review would also apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. The inherent limitations ingrained in exercise of powers of judicial review have been spelt out in the said judgment. The exercise of powers shall be to find out whether there has been infringement of the provisions of Article 14 of the Constitution. While reviewing the decision it has to be seen whether the State has endeavoured to get the best person or best quotation keeping in mind the

element of public interest involved in the matter. In *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, the basic principles laid down in *Tata Cellular (supra)* have been emphasized. That apart it has been held that the award of a contract by the State is essentially a commercial transaction and the considerations which would prevail in its decisions to award the contract would be the same. The Supreme Court further reiterated that the Court should not substitute its own decision for the decision of an expert evaluation committee. The other judgments of the Supreme Court referred to by the Learned Counsel for the Appellant would show that the Supreme Court consistently laid down that the State shall not deny any person equality before law or equal protection of law within the territorial limit of India and elaborated the vast amplitude of right to equality as contained in Article 14 of the Constitution. It is an established principle by now that any legislation or State action which is not informed by reason is anti-thesis to the rule of law and offered the protective umbrella of Article 14.

14. In *Kasturilal v. State of Jammu and Kashmir* AIR 1980 SC 1192 the Supreme Court had held that one basic principle which must guide the Court in arriving at its determination is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with the public interest. The burden has to be discharged to the satisfaction of the Court by proper and adequate material. The Supreme Court further reminded that the Court would not strike down governmental action as invalid unless it is satisfied beyond all shadow of doubt that the action is unreasonable or not in public interest.

15. Keeping in mind the above principles laid down by the Supreme Court, this Court is to examine the impugned decision of the Minister-in-Charge with reference to the materials on record. It has already been stated hereinbefore that the Tender Committee consisting of a number of experts did not find any fault with the technical bid of the Appellant as well as the Respondent No. 4. However, while considering the financial ability as per requirement of NIT specifications, the Tender Committee found the Respondent No. 4 as financially unsound. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the Supreme Court held that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards. This shows that there is no scope for any deviation from the eligibility conditions. The decision of the Committees have been based on consideration that the solvency certificate furnished by the firm was not current and that the letter written to the Minister-in-Charge, Labour Department, Government of West Bengal, indicated that the Company was not financially sound. The Selection Committee consisting of high officials of the State Government also endorsed the aforesaid view of the Tender Committee after due deliberation. The documents made available and the file produced before this Court at the time of hearing do not seem to contain

anything contrary to the above decision of the Tender Committee and the Selection Committee. The order passed by the Minister-in-Charge also shows that the aforesaid decision of the two committees have not been given any consideration. The impugned order was passed, without rejecting or approving the decision of the Tender Committee and the Selection Committee, giving preferences to the Respondent No. 4 simply because it is a Government Company. In our opinion this action on the part of the Minister-in-Charge is nothing but a sweeping conclusion without application of mind. If there were reasons to override the recommendations of the Committees, it was obligatory on the part of the Minister-in-charge to incorporate those reasons in the final order passed by him. This alternately suggests that the Minister-in-Charge has been influenced by considerations not relevant to the issue. The decision in *Raju Mathew Vs. State of Kerala and Others*, which is relevant to the issue at hand is reproduced below:

4. It may be noted that the High Level Tender Committee is an expert body and as such can be presumed to know the validity of the offer made by the Petitioner better than any one else. In a case where a decision has been taken by an expert body after advertising to all relevant aspects the State in spite of its dominant hierarchical position in the administrative ladder, shall not interfere with the same unless a manifest error in the decision making process is pointed out. The decision of the High Level Tender Committee is not vitiated by any such error latent or patent. If the decision of the expert body is based on proper materials and is not tainted by an extraneous consideration and the decision show proper application of mind, such a decision must be given the imprimature of a reasonable order and must be kept beyond the pale of interference by the Government on other considerations. There is yet Anr. aspect to be borne in mind in considering the legality of Ext. P.4. Ext. P.4 decision has been taken without any reference to the expert body, viz. the High Level Tender Committee and once the expert body after examining the whole matter thread-bare and going the whole-hog arrives at a decision. Government cannot ultimately reverse the said decision without the consulting the Body. There is no material on record to show that the High Level Tender Committee was ever consulted before rejecting the Petitioner's offer.

16. Almost in the same tune the Madhya Pradesh High Court in *Precision Technofab and Engineering Co., Ahmedabad and Others Vs. State of M.P. and Others*, in para-24 expressed that the matter of evaluation of tender is entirely a job of experts and the court would not substitute its opinion for that of the expert. The decision in the above two cases clearly indicate the significance of the report of the experts in evaluating the merits of respective tenders. It would further appear from the aforesaid decisions that the Government cannot unilaterally reverse the opinion of the expert body without entering into a discussion with such expert body, and any decision taken without reference to the opinion of the expert body would tantamount to arbitrariness. The State is also not expected to interfere with such a decision in the absence of error

manifest in the decision. In the instant case, the Minister-in-Charge does not appear to have consulted the Tender Committee or the Selection Committee before taking the decision. No obvious reasons are also forthcoming from the impugned order or the documents in file. The recommendation of the committees thus appear to have been ignored in a manner hitherto unknown.

17. Shri N. Dutta, learned Senior Counsel argued that the State in its dominant hierarchical position reposed in the Minister-in-Charge discretionary powers either to accept or reject the recommendations of the committees or to act otherwise which he considers conducive to the best interest of the State. This submission by the learned Counsel raises the question as to whether the Minister-in-Charge dealing with such a matter had unfettered discretion in the exercise of his powers of either approving or disapproving the recommendation. There is no doubt that the powers of the Minister-in-Charge cannot be confined to the limits of either approving or disapproving the aforesaid recommendations within the meaning of the word "approval" available in the Black's Law Dictionary. We are of the view that while exercising this wide discretion, the Minister is free to choose the best available tender. If he disagrees with the opinion of the Committees, he may proceed to select any other party not recommended by the Committees. But while doing so, he is required to record reasons for the same. This is necessary to safeguard the interest of the public and further to ensure that the State finance is best utilised for the benefit of the people.

18. In Shiv Sagar Tiwari Vs. Union of India and others, , the Supreme Court held as follows:

1. The administrative law has of late seen vast increase in discretionary powers. But then, the direction conferred has to be exercised to advance the purpose to subserve which the power exists. Even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter of unfettered discretion. This proposition was rejected emphatically by the House of lords in the landmark decision of Padfield. This apart, as pointed out in United Sates v. Wunderlich:

Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some...official, some bureaucrat....

Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's Ors. inventions.

2. These high principles of administrative law have been placed at the forefront because, as would appear from what is being stated later, in the present case there was gross misuse of discretionary power relating to allotment of accommodation to government employees. As against the discretionary quota of 10 per cent, it shot up to 70 per cent; and on top of that 8768 houses were allotted by stating that the same was being done on "Special Compassionate Ground". This naturally led to uproar and serious objection from those who were denied accommodation as per rules. After the present petition was entertained

and the Court went into the matter in depth, it was found that what had taken place was a scam, and a big scam at that. In the present case, we do not propose to say anything regarding the allegation that the allotments were made for extant consideration, as investigation relating to that is under progress. What we propose to examine rather is how best we can take care of illegality which has resented following out-of-turn allotments a galore.

The ratio laid down in *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, also in the same tune speaks of a duty to act fairly and to adopt a procedure which is fairplay in action. The same ratio is also available in *A.P.S.R.T.C. Vs. State Transport Appellate Tribunal and Others*, In this case the Supreme Court held that the Court has the power to compel an authority vested with discretion to exercise that discretion, but not to exercise it in any particular manner. The principles of law are more or the same. The question is whether a particular State action is reasonable within the scope of Article 14 and whether such action is in public interest. An action, if it survives the above tests, is not to be interfered with.

19. Considering the above position of law, we are of the view that the Minister-in-Charge cannot give a go-bye to the recommendations and decisions of the expert Committees without recording reasons. Once the reasons are recorded, the Court will not enquire into the adequacy of such reasons. The repository of a discretion is always under a legal obligation to observe certain principles so that the discretion is exercised in its proper perspective. The offers of the Appellant Company and the Respondent No. 4 in the instant case have been placed at par so far the technical bid is concerned by both the Tender Committee and the Selection Committee. For obvious reasons, we are refraining from delving deep into the technical aspects. Any defect in the tender documents of the parties in respect of matters other than financial ability may be a concern for the decision making authority. So also/the allegation that the Respondent No. 4 has been incurring loss in terms of crores from the year 1989 to 1998. Shri Dutta, learned senior Counsel, referring to the additional affidavit of the Respondent No. 4 submitted that the development leading to improvement of the financial condition of the Respondent No. 4 was also placed before the Respondent authority. That apart, both the parties also pointed out certain lapses in the offer of the other. These are matters to be looked into by the Minister-in-Charge. Such lapses need not be broached upon by us in depth when the technical bid is not in challenge. Although, as argued by Shri Dutta, scrutiny of technical bid may be permissible in a given case, such exercise by the Court as far as practicable be avoided, else it would amount to assumption of the role of the decision making authority. It is for the Minister-in-Charge to consider whether the solvency certificate issued by the S.B.I., Patna could be relied and acted upon or whether in spite of loss incurred, the Respondent No. 4 was otherwise capable of executing a project worth Rs. 70 crore and so on. In the absence of any discussion as above, it would be wrong to conclude that the element of public interest has been taken care of by the Minister-in-Charge. It would also be contrary to the

principles of law to attribute lack of concern for public interest on the part of the experts in the absence of any such indication in the impugned order. Situated thus, the matter in our opinion warrants application of mind afresh by the Minister-in-Charge.

20. Although Shri N. Dutta, learned Senior Counsel for the Respondent No. 4 laid stress on the decision in *Kasturilal, Raunaq International and Harminder Singh*, the infirmities pointed out hereinbefore do not suggest of any scope to uphold the validity of the order. Shri Dutta, relying upon the decision in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, argued that the Court shall not set aside an illegal order which in consequence will review Anr. illegal order. This ratio available in Para-17 of the aforesaid judgment has no application in the present case as no order prior to the one under challenge appears to have been made before. The ratio of *Suresh Vs. Vasant and Others*, and the *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, are also not applicable in this case. There is no doubt that the Government have the powers to change or revise its policy subsequent to the acceptance of the provisional bid, but such a change should not in any manner destroy the eligibility standards laid down in the NIT. The decision to award the contract to the Respondent No. 4 on the ground that it is a Government Company cannot be construed as suggestive of any change in the policy. For this reason as well, the decision rendered in *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, which deals with the concept of reasonable classification does not have any relevance to the case at hand. We have considered the decision in ALR 1970 A&N 164 relied upon by Shri Baruah, learned Advocate General. An order even if malafide cannot be placed beyond the scope of Article 14. Incorporation of an expression in the impugned order that "I have gone through all the records in the file" does not in our opinion satisfy the test of reasonableness as is required under Article 14. This elliptical expression even if expanded, subject of course to the materials on record, does not inspire us even to infer the meaning sought to be attributed at the time of argument. Expansion must be based on certain chain of circumstances borne out of record and not otherwise. The element of public interest and the background in which the impugned order has been passed cannot extend any support to an otherwise wrong order, although "time" appears to be the essence underlying the contract.

21. The learned Counsel for the Appellant has also argued that the doctrine of legitimate expectation which has a very important role to play in the field of administrative law also demands that the case of the Appellant company ought to have been given consideration in view of the recommendations made by both the Tender Committee and the Selection Committee. In support of this, the learned Counsel has referred to the decisions of the Supreme Court in *U.P. Awasthi Vs. U.P. Sahasra Vikas Parishad*, *U.P. Sahasra Vikas Parishad Vs. Gyan Devi (Dead) by LRs. and another*, etc. etc., *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, and *Punjab Communications Ltd. Vs. Union of India and Others*, . The above judgment deal

with the doctrine of legitimate expectation. In U.P. Awaz Evam Vikas Parishad (supra) it has been held that the "legitimate expectation" has its place in public law. A person having a legitimate expectation may expect to be treated in a certain way by the administrative authority even though he may not have any legal right to enforce. In Food Corporation of India (supra), the Supreme Court held as follows:

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of the consideration of a legitimate expectation forms part of the principles of non-arbitrariness, a necessary concomitant to the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in large public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

Considering the decisions above and the fact that the Appellant Company was recommended by two expert bodies, we are of the opinion that the situation, as above, created an expectation with the Appellant Company for consideration of its case by the Minister-in-charge. The impugned order being completely silent about this aspect, in our opinion, is contrary to the doctrine of legitimate expectation which is undoubtedly one of the basic requirements of non-arbitrariness. From this point of view also we find that the impugned order has no leg to stand.

22. The discussion above on various aspects of the disputes leads to the inevitable conclusion that the impugned order passed by the Minister-in-Charge contrary to the recommendations of the two committees without recording reasons for deviation therefrom cannot be sustained in law. The matter obviously requires reconsideration and application of mind afresh by the Minister-in-Charge in the light of the discussion made hereinbefore.

23. In the result the appeal is allowed. The judgment and order under challenge are hereby reversed and the Writ Petition (C) No. 776 of 1999 is allowed. All orders passed in this behalf are set aside. The matter is referred back to the Minister-in-Charge for reconsideration after application of mind to the different aspects highlighted hereinbefore and to pass fresh orders in accordance with law. We feel it necessary to make it clear once again that the Minister-in-Charge is free either to approve or disapprove the recommendation of the Tender Committee and the decision of the Selection Committee. If he decides to

disapprove the recommendation of the committees, in such eventuality, he is also free to select any of the firms including Respondent No. 4 which in his opinion is the "best" for the purpose. However, recourse to any of the modes above must be for reasons to be recorded in writing. We hope that the Minister-in-Charge will undertake and complete the process of reconsideration expeditiously without loss of time.

24. Before parting, it is considered necessary to observe that the fall-out of this order, if any, will have to be borne by the Respondent No. 4 since while disposing of the Writ Appeal No. 131 of 1999 preferred against the order dated 29.4.99 passed by the learned Single Judge, the Division Bench of this Court made it clear that the Appellant's case on merit would not be prejudiced nor its interest would be jeopardized in the legal proceedings which may take place.

No order as to costs.