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**(1990) 02 CAL CK 0022**  
**In the Calcutta High Court**  
**Case No : C.O. 7606 and 7614 (W) of 1989**

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| Apurba Kumar Chowdhury and Amir Kumar Ghosh                              | APPELLANT  |
| Vs                                                                       |            |
| The District Magistrate and Chairman, District Diet Committee and Others | RESPONDENT |

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**Date of Decision :** 27-02-1990

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1990) 1 CALLT 288

**Hon'ble Judges :** S.K. Mookherjee, J

**Bench :** Single Bench

**Advocate :** K.K. Moitra and A.K. Ghose, for the Appellant; P.K. Chatterjee and Gita Gupta, for the Respondent

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## Judgement

S.K. Mookherjee, J.—These two writ proceedings are directed against acceptance of tenders for supply of dietary articles with regard to three zones within the District of Burdwan. The terms . of tender have been annexed to the writ applications. Although directions for affidavits had been given in the presence of the learned Advocates for the State on more than one occasion, no affidavit-in-opposition has been filed. Lastly, on behalf of the State respondents, time was prayed for production of the records and such time was granted, in spite of objection from the side of the writ petitioners. No records, however, could be produced due to nonavailability and the said fact was recorded in my order dated 8th of February, 1990. The averments in the writ application, therefore, have remained uncontradicted.

2. From the submissions made and the averments made in the writ application, it appears that one of petitioners Apurba Kumar Chowdhury quoted the following rates :

Zones All categories Bread combined Bhatar Zone 29% below 3% below  
Memari Zone 24% below 4% below Guskara Zone 8.99% above 4% below

and the other petitioner Amir Kumar Ghosh quoted his rates as follows :

Zones All categories Bread combined Bhatar Zone 28% below 3% below Memari Zone 26% below 4% below Guskara Zone 9.9% above 4% below

The respondent No. 6, however, quoted the general rate of 12% below with regard to combined category and 4% below with, regard to bread for all the zones and in terms of the invitation for tenders, previous experience was a matter for consideration, inspite of quotation of lower rates regarding most items by the writ petitioners in the two cases and inspite of rates quoted by respondent No. 6 being higher, the tenders submitted by respondent No. 6 have been accepted with regard to all the zones and the lower rates offered by the Writ petitioners had been rejected, notwithstanding the absence of any discernible violation or contravention, on their part, of any term of the tender. The writ petitioners have raised grievance before this Court that such rejection is illegal in view of the latest position relating to tenders laid down by different judicial decisions. On behalf of the respondents, it was sought to be contended that since the term of the tenders in question would expire with the expiry of this month, the court must refuse to grant any relief on the writ applications as the same would merely be academic.

3. The legal position is now well-settled. A distinction is maintained with regard to the contracts between private parties and those where government is a party. In the case of Tenders invited by a private party, no writ is maintainable challenging the propriety of refusal to accept the tender of a particular party notwithstanding apparent arbitrariness or mala fides in arriving at such decision. But as far as contracts to be awarded by the government are concerned, the same stand on a different footing and writ courts have been held to have jurisdiction to interfere and issue writs in case the decision in the matter of award of such tender or contract is found to be arbitrary or mala fide. The basic reason for such distinction in case of government contracts appears to be due to the position of the government, which is different from that of a private individual. A government is a government even in the matter of award of a tender and as such every action of such a government must be founded on some reasons. The government is not free as a private individual to plead its right to exercise discretion in the manner it likes but has to follow some standards that are not arbitrary or unauthorised even in the matter of exercise of its discretion. It cannot pick and choose a person and refuse to entertain others without adequate reasons. This position is to be maintained even in the matter of distribution of largesse. Unless such restraint is recognised to be inherent in governmental trading activities, the concept of equality and indiscriminate treatment, which are the two very salient features of democracy would be mere illusions and the constitutional protection guaranteed under Article 14 of the Constitution of India would be meaningless. Judicial decisions have repeatedly been emphasizing this feature of a democratic government and the necessity of the court to be alert whenever such instances of discriminatory or arbitrary

treatment on the part of the government in the realm of contract, tenders or largesse are brought to its notice. No doubt, the court cannot direct acceptance of a particular tender, the discretion for which is vested in the government but at the same time the court must intervene when the rejection of a tender with lower rates is not based on reasons or is based on reasons which are unacceptable, judged by the standard of a reasonable mind or standard or procedure adopted with regard to rest of tenders. The fundamental requirement is that equality of opportunity should, apply to matters of public contracts and exclusion of a person from getting the benefit of a contract has to be supported by legality. The concept of welfare state would stand out ultimately to be a farce hollow and empty if the court remains passive in the case of arbitrariness of a governmental action. Reference may be made to the cases of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , *H.S. Kohli and Another Vs. General Manager, Chittaranjan Locomotive Works and Others*, , & *Barun K. Sinha and Another Vs. District Magistrate, Murshidabad and Others*, .

4. Applying the aforesaid ratios laid down by the judicial authorities, including the Supreme Court of India, it appears that the rejection of the tenders submitted by the writ petitioners, in the instant case cannot be justified particularly when the reasons for such rejection of the lower rates and acceptance of the higher rates are not made available to this Court either through the means of affidavit-in-opposition records. The only probable ground for rejection of a tender might have been quotation of "abnormally above rates" which again remains vague and unenforceable in the absence of any specific guideline to show that would be considered as an abnormally above rate. The orders, accepting the tenders of respondent No. 6, are, therefore, liable to be quashed. This Court has been informed that the supplies during the pendency of these writ proceedings have been carried on by the respective writ petitioners. It is no doubt, true that the period of the disputed tenders would be expiring with the expiry of this month and as such there is no scope for directing consideration afresh of the tender submitted by the writ petitioners but that, does not and cannot debar this Court from quashing the unjust and illegal orders accepting tenders of the respondent No. 6 and declaring that the authorities were obliged, in the matter of consideration and acceptance of such tenders, to act in conformity with the ratios as indicated hereinabove by the different Judicial pronouncements, which are intended to obviate any scope for arbitrariness or whimsical action on the part of such authorities. Since ours is a welfare state, it will not be fair on the part of the court to avoid the decision on such a question on the ground merely that it would be academic. Court must adopt a pragmatic approach by not shutting its eyes to the mounting burden of litigation and the hardship such litigation causes to a person who has to come to court unnecessarily for relief because of technical reasons and the court must, in exercise of its extraordinary powers, if public interest so demands, should ignore technical fetters and subserve the cause of justice by preventing multiplicity of

cases. The disputed tender is of annual nature and a Court of law would fail in its duty if it does not issue necessary mandate on declaration to prevent recurrence of instances of arbitrariness and capriciousness of governmental authorities. My above approach is well justified by the principles laid down in the cases of State of Madras v. Periaswami (C.A. 444/60) decided by Supreme Court on 6.11.1961; State of Gujarat v. Mahbub Khan, AIR 1968 Gujarat (para 10); Ghaio Mall and Sons Vs. The State of Delhi and Others, ; Rashbihari Panda etc. Vs. State of Orissa, ; & Shri Krishnagopal Dutta Vs. Regional Transport Authority, Burdwan and Others, ; & Shiv Shankar Dal Mills and Ors. v. State of Haryana and Ors. (1960) 2 SCC 437.

5. The writ applications are, accordingly, disposed of by declaring that the acceptance of the tenders submitted by the respondent No. 6 was arbitrary, illegal and unconstitutional and by issuing Writs of Mandamus directing the State respondents to consider the subsequent tenders observing the procedural norms as indicated hereinabove.

6. There will be no order as to costs.

7. If urgent Certified copy of this judgment delivered to-day is applied for by any of the parties, the department is directed to supply the same within three weeks, if not earlier, from the date of deposit of requisite stamps and folios.