

**(2007) 03 CAL CK 0075**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 1736 of 2006**

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|---------------------------------|----|------------|
| Auroma Coke Limited and Another | Vs | APPELLANT  |
| Steel Authority of India Ltd.   |    | RESPONDENT |

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**Date of Decision :** 29-03-2007

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 226

**Citation :** (2007) 3 CALLT 174

**Hon'ble Judges :** Maharaj Sinha, J

**Bench :** Single Bench

**Advocate :** Shakti Nath Mukherjee and Samaraditya Pal, Jayanta Banerjee, Sukla Banerjee and Nitat Chandra Manna, for the Appellant; L.K. Gupta and Asit Ranjan Nandy, for the Respondent

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## Judgement

Maharaj Sinha, J.—By virtue of the order of the Appeal Court dated 11th December, 2006 both the learned senior counsel, namely, Mr. Samaraditya Pal on behalf of the writ petitioners and Mr. Lakshmi Narayan Gupta on behalf of the first four respondents herein (shortly called SAIL) made their respective submissions in Court.

2. Since the point of maintainability of this writ petition was raised by Mr. Gupta he made his submissions first in" support of the preliminary objection raised by him that the writ petition is not maintainable at this stage and Mr. Pal made his submissions thereafter primarily contending that the writ petition is dearly maintainable.

3. However, before Mr. Gupta, in fact, made his submissions on the question of maintainability of this writ petition, Mr. Pal pointed out that the preliminary objection as to the maintainability as raised on behalf of SAIL should be treated to be a plea of demurrer and as such SAIL had to show that the writ petition on the face of it is not maintainable as it does not disclose a cause of action of rather a cause of action recognized in law or that this Court has no jurisdiction to entertain this writ petition as the case may be. However, in considering the

preliminary objection of maintainability the statements, made in the writ petition are to be treated as corrector the allegations made therein must be taken to be true, in other words, it must be shown that the writ petition is not maintainable ex facie.

4. In support of the above, that the plea raised on behalf of SAIL is, in fact, a plea of demurrer, Mr. Pal referred to and relied on a very recent Supreme Court decision on Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, . In explaining what a plea of demurrer is the Supreme Court said:

Demurrer is an act of objecting or taking exception or a protest. It is a pleading by a party to a legal action that assumes the truth of the matter alleged by the opposite party and sets up that It is insufficient in law to sustain his claim or that there is some other defect on the face of the pleadings constituting a legal reason why the opposite party should not be allowed to proceed further. (Sets paragraph 14 at page 650 of the Report).

5. On the above basis, therefore, when a plea of demurrer is raised, the question of maintainability of a proceeding either on the ground of jurisdiction or some other ground, namely, that the proceeding itself is barred by any law is to be determined only on the basis of the allegations or the statements made by the petitioner or the plaintiff as the case may be in his petition or in his plaint treating such statements or the allegations in the petition or the plaint to be true. The Supreme Court also pointed out in the above decision "that the principle, underlying Clause "d" of Order 7 Rule 11 is no different". (See paragraph 15 at page 651 of the Report).

6. There is, however, no doubt that the preliminary, objection as to the maintainability of the writ petition is nothing but a plea of demurrer and to decide this point the writ petition or rather the statements made therein should alone be looked into and considered to determine whether the statements or the allegations made in the writ petition constitute a cause of action recognized in law and is entertainable in exercise of the writ jurisdiction of this Court.

7. For the above purpose, I would mention very briefly the case of the petitioners as has been sought to be made out in the writ petition.

8. The writ petition proceeds on the basis that the petitioners have all the necessary infrastructural facilities like a modern cooking coal washery. The first petitioner Auroma Coke Limited (in short Auroma), is a modern cocking coal washery and specialises in manufacturing washed prime cocking coal.

9. Motivated and encouraged by the decision of the Government of India, Auroma was set up as a modern coal washery Which is capable of producing clean coal of 150 tons per hour to cater the steel plants and other industrial users in the core sector industries, namely, Iron and Steel Industries. The second petitioner is a Director of Auroma and for the sake of convenience both the first and the second petitioners are mentioned hereafter as "petitioner".

10. The petitioner has stated in the writ petition in somewhat detail as to why the petitioner claims itself to be the only coal washery in the region which has supplied washed prime coking coal to integrated steel plants like IISCO in the last seven years. The yearly turnover of the petitioner for the last three financial years has also been mentioned.

11. In July 2006, Steel Authority of India Ltd. (SAIL in short)" floated a tender for purchase of washed prime coking coal. The petitioner fulfilled, all the terms and conditions of the said tender and participated in the tender process. Some important Conditions of the said tender have also been set out in the writ petition However" the said tender did not proceed further as the petitioner, was informed by SAIL (IISCO Steel Plant) that since sufficient quotations were not received from tenderers there had to be a re-tender. Thereafter, there were several correspondences between the petitioner and the first four respondents herein, who are, for the sake of convenience, to be called as "SAIL" as well.

12. In July tender, apart from the petitioner the 5th respondent herein, Akash Coke Industries Pvt. Ltd. (Akash Coke, in short) also participated in the tender process.

13. However, on 31st August 2006, SAIL floated yet another tender for purchase of washed prime coking coal. According to the petitioner the above tender, namely, the second tender, was" floated in gross violation of guidelines of Central Vigilance Commission (CVC in short):

14. According to the petitioner one of the clauses of the said earlier July tender, namely, Clause 17 was knowingly omitted only to favour some contractors. Apart from the petitioner two other tenderers, namely, the said Akash Coke and one Patliputra Industries (Patliputra in short), the 5th and the 6th respondents herein, also participated in the tender.

15. According to the petitioner the said; Akash Coke and the Patliputra were and are too inferior to participate in the tender and some essential clauses of the earlier July tender were, as aforesaid, knowingly omitted only to favour the other two tenderers, namely," Akash Coke and Patliputra. The petitioner made representation to the concerned respondent or respondent"s highlighting these aspects in support of its stand that the other two respondents are not at all good enough to participate in the tender. The petitioner has tried to highlight the above stand in various statements in the petition, namely, in paragraphs 31, 32, 33, 34, 36, 37, 38 and 39 thereof.

16. One of the eligibility criteria of the tender in question is that a tenderer must be capable of supply not less than 5500 MT per month of washed prime coking coal to ISP, Burnpur and according to the petitioner since the said Akash Coke has only a linkage of 4800 MT of Coal per month and the said Patliputra has a linkage of 2852 MT of coal per month, it is impossible for both the units to supply the requisite prime coking coal to IISCO. (paragraphs 40 & 41 of the writ petition).

17. According to the petitioner both the tenderers; namely, Akash Coke and Patliputra cannot purchase the required" raw coal from BCCL regularly for the reasons stated in paragraph 41 of the writ petition and as such both the tenderers are not eligible to participate in the tender. The petitioner made several representations to SAIL highlighting why the petitioner thought that both the other two tenderers, namely, Akash and Patliputra, were not eligible tenderers and should not, therefore, be in the fray for selection of the most eligible tenderer in accordance with the terms and conditions of the tender in question. The petitioner has come to know that both the eligible tenderers, namely, Akash Coke and Patliputra have been qualified for technical bid though they are not eligible as they have no past experience of supplying washed prime coking coal to any Public Sector Undertaking or any other industry.

18. The petitioner has further highlighted in the petition as to why the said participants, namely, Akash Coke and Patliputra should not be allowed to participate in the tender at par with the petitioner, as both the participants are too inferior to the petitioner as participants and do not fulfil at all the eligibility criteria of the tender in question.

19. The efficacy of the guidelines of the CVC has also been mentioned in the petition. It is stated that the main object of CVC guidelines are to ensure that only reputed and eligible tenderers participate in the tender. The small tenderers or rather units which lack necessary experience cannot participate in the tender if the CVC guidelines are strictly followed, which should be followed in any event CVC guidelines are meant for fair competition and the competition should be between those who have the necessary experience and technical know-how and suitability and the financial ability to participate in the tender, in other words, to be in the fray. The petitioner is willing to compete with those "who are capable of both technically and commercially to execute the order for supply of washed prime coking coal to IISCO." (See paragraphs 59, 60 & 61 of the writ petition).

20. The case of the petitioner is that in considering the two other participants, namely Akash Coke and Patliputra as eligible participants to be in the fray, SAIL is denying the petitioner the equal, opportunity, as the petitioner is being compelled to compete with such candidates, namely, the private respondents herein, who are not eligible or do not satisfy the prescribed condition or conditions of eligibility and who according to the petitioner, on the other hand,, are too inferior. Thus. such action or actions of SAIL in this regard are clearly discriminatory, since by this process SAIL is depriving the petitioner of fair competition with the persons similarly situate, as the other two tenderers, though lack eligibility criteria substantially, are being treated at par with the petitioner which, in any event, is also utterly arbitrary and violative of Article 14 of the Constitution.

21. The petitioner has also alleged, that the conduct of SAIL is not only arbitrary and discriminatory but mala fide as well and SAIL is treating unequals as equals only to favour the two ineligible tenderers, namely, Akash Coke and Patliputra

and for this reason, one of the important clauses, namely, Clause 17.5 which found place in the earlier tender and the CVC guidelines have been given a go by.

22. The petitioner though made representations to the appropriate authority of SAIL that both the tenderers namely, Akash Coke and Patliputra are not capable both technically and commercially to compete with the petitioner and/as such they cannot be allowed to be in the vary SAIL is continuing to act as before and allowing the private respondents to be in the fray and by this process, SAIL is denying the petitioner the right to equal treatment and fair competition.

23. The above, in my opinion, is in substance the case of the - petitioner on the basis of which the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution and sought for an interim protection on the day when the petition was first moved ex parte and needless to mention, an order was passed on the prima facie satisfaction of this Court on 7th November, 2006.

24. On 10th November 2006, when the writ petition was heard again, it was submitted on behalf of SAIL that even the techno commercial bid was yet to be completed and only after completion of techno commercial bid the price bid of the tender in question would be opened and not before. It was on that day the learned Counsel also took the point of maintainability of the writ petition primarily On the ground that the writ petition was moved purely on the basis of an apprehension on the part of the petitioner and it could not be said that mere apprehension at this stage could give rise to a valid cause of action in favour of the petitioner.

25. However, being aggrieved by the order passed on 10th November 2006, SAIL preferred an appeal and it is on the basis of the orders passed by the Appeal Court, as I have said before both the learned senior counsel, namely, Mr. Pal and Mr. Gupta made their respective submissions in Court. Although, Mr. Gupta made his submissions first tin the question of maintainability and explained why the writ petition should not be entertained at this stage or rather why if should be held at this stage to be" not maintainable by taking the plea that the entire writ petition was based on a mere apprehension on the part of the writ petitioner that the writ petitioner would not be chosen or selected as the best candidate amongst the three participants", namely, the petitioner, Akash Coke and the Patliputra, to receive the tender or rather to receive the order for supply of prime" coking coal to IISCO covered by the tender in question.

26. Mr. Gupta tried to highlight that there was no reasonable ground for the alleged apprehension on the part of the petitioner in the first place when even the techno commercial bid was not even completed, a submission which was made by Mr. Gupta earlier namely, on 10th November 2006.

27. For the sake of convenience, however it need be pointed, put at this stage that Mr. Pal on behalf of the petitioner emphasise more than once that the petitioner did not invoke the writ jurisdiction on the alleged apprehension that the petitioner would not be selected as the best tenderer, "the case of the

petitioner is that SAIL is considering the utter ineligible tenderers, namely, Akash "Coke and Patliputra at par with the petitioner which SAIL cannot do in accordance with the tender condition and by this process SAIL is depriving the petitioner a fair competition as the petitioner has the right to be treated at par with the other tenderers who have the similar status or rather who fulfil the eligibility criteria like the petitioner and not the tenderers who are for too inferior, namely, the private respondents herein,. Akash Coke and Patliputra."

28. The statements made in the writ petition according to Mr. Pal are more than sufficient to constitute a good cause of action and as such the writ petition at this stage is clearly maintainable as the petition is not based on any apprehension that the petitioner would not be finally selected for the job covered by the tender but the petitioner is challenging the decision making process of SAIL, as SAIL in considering who should be awarded the contract under the tender is considering the eligibility criteria of those candidates who are utterly ineligible to compete or to be in the fray in the first place.

29. It is the decision making process of SAIL in finalising the tender in question which has been challenged or questioned in the petition rather the decision itself as no final decision has yet been arrived at. The petitioner is entitled to invoke the writ jurisdiction of this Court on the basis of the cause of action disclosed in the petition that SAIL should not be allowed to consider the respective cases of the ineligible candidates in finalising the tender and by this process SAIL is, in fact, infringing the right of the petitioner of fair competition and equal treatment in the matter of obtaining contract from the Government or an authority or instrumentality within the meaning of Article 12 of the Constitution.

30. The Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, was dealing with a case of a tender where one of the conditions of eligibility was that a tenderer must possess "at least five years" experience for putting up and running a 2nd class restaurant and two snack bars at the International Airport at Bombay. One of the questions before the Supreme Court was whether a tenderer who lacked the above experience of five years would still be competent for consideration or rather would be regarded as eligible for consideration for the tender. The Supreme Court unhesitatingly answered the question in the negative and said that in a case where a tenderer did not have the five years experience he would not be eligible for consideration and on that basis the authority concerned was not to entertain the tenderer as the tenderer did not have the necessary experience which was one of the conditions of eligibility for obtaining the job or the contract under the tender in question.

31. At this stage perhaps, it would be useful to mention what the Supreme Court had, in fact, said in answering the above question:

It is a well settled rule of administrative law 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 on pain of invalidation of an

act in violation of them. In support of the above rule the Supreme Court further said that the above rule was "enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 : 3 L Ed. 2d. 1012.

32. For the present purpose, it would also be useful to set out the observations of Justice Frankfurter in the above American Case, as the same was quoted with approval by the Supreme Court as of the basis of the above rule of administrative law.

33. "An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

34. The above rule, said the Supreme Court further, was accepted as valid and applicable in India in a few decisions of the Supreme Court mentioned in the body of the Judgment. (See paragraph 10 at pages 1635 & 1636 of the Report).

35. As I have said above, in the present" proceeding the case of the petitioner is" that the petitioner is being constantly subjected "to discrimination as it is being treated at par with two other tenderers, who according to the petitioner, are utterly ineligible to "participate in the tender and the authority concerned, namely," SAIL- by treating the petitioner equal with the unequals in the matter of awarding contract under the tender in question is denying the petitioner its right to equality or the equal protection guaranteed under Article 14 of the Constitution.

36. Today, an agency of Government or an authority or instrumentality within the meaning of Article 12 of the Constitution in exercise of its power or discretion is subjected to the same constitutional or public law limitations as Government as the Supreme Court said in *International Airport Authority* (supra). The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with, the public, whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance".

37. I should not and do not forget for a moment that at this stage I am only concerned with the question, of maintainability of this writ petition and in order to decide this question or the preliminary objection, as aforesaid, I am only to take the allegations" made in the petition and the petition alone to be true. The stand taken by SAIL that no decision has yet been taken on techno commercial is at this stage, in my opinion, immaterial as the petitioner has either rightly or wrongly made put a case in its petition that SAIL is treating the petitioner

unfairly and in an utter discriminatory manner as SAIL" is treating the petitioner at par with utter ineligible tenderers and that alleged action on the part of SAIL constitutes an arbitrary action on its" part which in its turn is denying the petitioner its right to equality.

38. "The doctrine of equality embodied in Article 14", said the Supreme Court in International Airport Authority (supra), "is now well settled".... "Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant, principle, which is non-discriminatory. It must not be guided by any extraneous or irrelevant consideration, because that "would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm, which is rational and non-discriminatory".

39. The State has the right to trade. The State has there the duty to observe equality". (See paragraph 21 at page 1642 of the Report)."

40. Since I am considering the question of maintainability at this stage only on the basis of the allegations made in the petition and the petition alone, I must say, I cannot shut the door of the writ jurisdiction of this Court to the petitioner by saying that since no final decision has yet been reached, or rather, since even techno commercial bid has yet to be completed by SAIL, this writ petition or rather the cause of action thereof should be regarded as premature. True, No final decision has yet been taken, the best tenderer has not yet been chosen but the complaint of the petitioner is that in choosing the best tenderer the Authority is denying the petitioner"s right to equal treatment,. Since the petitioner is being subjected to discriminatory treatment, the petitioner is at present entitled to seek protection from this Court though no final decision on the tender has yet. been made.

41. The question is whether the petitioner can maintain its cause of action as disclosed in the petition on the basis of the statements or the allegations made in the petition itself, I do not hesitate for a moment to say that my answer to that is clearly in the affirmative.

42. The petitioner as a matter of right cannot, in my opinion, claim that it has alone the right to enter into the contract tout it can certainly agitate before the Court exercising writ jurisdiction that the petitioner is entitled to equal treatment with others who offer tender or quotations for the purchase of goods as the principles of equality guaranted under Article 14 of the Constitution makes one thing certain that though SAIL may refuse to enter into relationship with the petitioner, it cannot arbitrarily choose any person it likes in entering into such

relationship and discriminate between persons similarly circumstances, but its action must be reasonable and non discriminatory and if it is found that there has been a departure from such standard or principle that would invalidate such action on the part of SAIL unless, of course, SAIL is in a position to justify its stand on some rational and non discriminatory ground. (See International Airport Authority (*supra*), para 21 at page 1643 of the Report).

43. SAIL therefore, in my opinion, has a duty to demonstrate that the allegations of discrimination against SAIL! as made by the petitioner in the petition are baseless or rather should not be held to be correct, as there had and has not been any discrimination by SAIL in considering the case of the petitioner so far, the petitioner and, the other tenderers are equally eligible for consideration and the allegations of the petitioner that the SAIL is treating the petitioner with utter ineligible candidates are not correct as the petitioner and other tenderers stand more or less on the same footings. The action of SAIL has not been unreasonable or arbitrary or unfair or discriminatory as alleged. SAIL is not guilty of any unequal, or unfair, or discriminatory treatment in the first place.

44. Once the writ petition is heard on merits, it may well be that the writ petitioner would be unable to substantiate its allegations in the petition, once SAIL comes up with its case in its affidavit. Today, however, it is extremely difficult, to even suggest that the petitioner has no cause of action or that the petition is not maintainable since the cause of action of the petitioner as stated in the petition or rather the statements made in the petition in support of the cause of action of the petitioner do not even suggest that the petition is based on any apprehension or "misapprehension". At this stage, the petitioner rightly or wrongly is alleging that it is being subjected to utter unequal treatment and SAIL is taking into account in its consideration the eligibility of two utter ineligible tenderers who should not be allowed to be treated at par with the petitioner having regard to the tender conditions or rather having regard to the eligibility criteria of the tender in the first place. And I repeat, that for this purpose, at least for the time being, I have to proceed on the basis that the statements and/or the allegations made in the petition are true. The Court cannot refuse to entertain the writ petition on the ground that SAIL has not yet finally decided to whom it will award the contract under the tender and, therefore, the" petitioner has no reason to apprehend that it will be wrongfully excluded or excluded at all.

45. The petitioner, as I have said before, contends that utter Ineligible tenderers such as Akash Coke and Patliputra are being allowed to be in the fray whereas their cases should not at all be considered by SAIL and by considering the respective cases of utter ineligible candidates with the case of the petitioner they are depriving the petitioners" right to equality which SAIL cannot do even in entering into a contractual relationship. SAIL, on the other hand, has to show that the action or actions of SAIL have always been and still are, in considering the respective cases of tenderers, national and non discriminatory.

46. What has been tried to be established by the petitioner is that SAIL in

considering who is the best tenderer is under an obligation to act fairly and not arbitrarily in accepting the tender. SAIL is bound "to conform to the standard or norm laid down in tender conditions of eligibility and is not entitled to depart from it". In reality, however, according to the petitioner, SAIL is considering such tenderers who are utterly ineligible as they do not fulfil the eligibility criteria and by entertaining such ineligible tenderers what SAIL is, in fact, doing, it is denying the petitioners' right to equality or equal opportunity in the matter of tendering for the contract".

47. Although the petitioner is the only eligible tenderer, SAIL is treating the petitioner at par with the two utter ineligible tenderers and in this process SAIL is treating the unequals, as equals which it cannot do in deciding to whom it should award the contract under the tender. The very fact that the SAIL is considering the respective cases of utter ineligible candidates or tenderers, such as Akash Coke and Patliputra, that by itself is clearly discriminatory, arbitrary and unreasonable.

48. The complain of the petitioner is as I have said before that though the final selection has not yet taken place and the contract in-question has not yet been awarded, SAIL is not entitled to consider the utter ineligible candidates, such as Akash Coke and Patliputra at par with the petitioner in the first place. Since SAIL is purely discriminatory and petitioner with unequals in the "matter of awarding contract under the tender in question in violation of the eligibility criteria SAIL is guilty of arbitrary action and the conduct of SAIL is purely discriminatory and as such is violative of equality clause of the Constitution as also of the rule of the administrative law inhibiting arbitrary action International Airport Authority (supra), para 34 at page 1651 of the Report

49. The question raised by SAUL or rather by its learned Counsel that the alleged cause of action of the petitioner is premature as no decision has yet been taken by SAIL as to who is the most successful tenderer may Well "be a very good ground for consideration at the "time When the writ petition is heard and adjudicated on merits but since I am only concerned at the moment with the question of maintainability writ proceeding as the petitioner is alleging that it is being subjected to constant discriminatory treatment, it cannot be said that the cause of action of the petitioner is premature as rightly or wrongly. The petitioner has taken a definite stand that SAIL, in any event; cannot consider the cases of ineligible candidates or tenderer and since the SAIL is guilty of just that the decision making process of SAIL in, awarding the contract in question under the tender has been and is being vitiated.

50. Whether, as I have said above, the petitioner Will be in a position to substantiate the case, of the petitioner against SAIL when the petition is heard on merits on affidavits is not relevant at this stage do far the question of maintainability of the writ petition is concerned. Just because, according to SAIL, the petitioner is likely to lose its case in future as no final decision, has been taken by SAIL in the matter of awarding contract under the tenders cannot and

does not, in my opinion, make the alleged cause of action of the petitioner, premature. The SAIL also cannot say that the cause of action is based on apprehension and that there is no ground or grounds for such apprehension at this stage as the petitioner again has made its position clear that what the petitioner is attacking at this stage is the decision making process of SAIL in selecting the best tenderer which the petitioner is entitled to do even before SAIL takes its final decision on the selection of the best tenderer.

51. What was submitted on behalf of the petitioner: is that an administrative decision or action which is based on wholly irrelevant considerations; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to intervene", (see: *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel* (2006) 8 SCC 200, para 12 at 209).

52. The contention on behalf of SAIL, that since no decision has yet been taken on the question of awarding the contract under the tender in question the present proceeding or rather the cause of action there of should be regarded as premature, does not make the challenge" of SAIL very strong, as indeed, the petitioner has not" challenged in this proceeding the final decision in respect of awarding" the contract under the tender. What is under challenge in this proceeding is the decision, making process of SAIL on the basis of which SAIL is to arrive at its final decision on the selection of the best tenderer.

53. On behalf of SAIL Mr. Gupta tried to demonstrate on the basis of the stand taken by the petitioner that the cause of action pleaded in the petition is premature and that the alleged cause of action is based on a mere apprehension which the petitioner has failed to substantiate with any reasonable ground or grounds in the first place. Mr. Gupta preferred to call the "alleged apprehension" of the petitioner as "misapprehension" as well.

54. In support of his submission, that since the cause of action of the petitioner is based on a mere apprehension, without any reasonable ground, Or the alleged cause of action, in any event, should be regarded" as premature cause of action and therefore should not be entertained at this stage, Mr. Gupta relied on a few decisions in support of his preliminary objection as to the maintainability of the writ petition. For the sake of convenience all the decisions cited by Mr. Gupta are mentioned below:

- 1) *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, .
- 2) *Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others*, .
- 3) *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, .

- 4) Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another, .
- 5} Gurbax Singh and Others Vs. Union of India and Others, .
- 6) Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others,
- 7) Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, .
- 8) Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others,
- 9) Union of India and Ors. v. Abdul Satter and Ors. reported in 88 CWN at page 811.

55. It must at this stage, however, be pointed out once again that on a plain, reading of the writ petition or the allegations made therein it cannot be said that the petitioner has tried to base its, alleged cause of action on any apprehension at all. I have not been able to find a single statement or allegation in the petition wherefrom it can even be implied or inferred that a particular statement or allegation of the petitioner is based on mere apprehension.

56. The petitioner, on the other hand, has tried to make out a case against SAIL on the basis of its allegations in the petition that the SAIL is guilty of arbitrary action and discriminatory, treatment as SAIL is treating the petitioner being the only eligible tenderer with unequals, namely Alcash Coke and Patliputra, who according to the petitioner, are utterly Ineligible tenderers. The alleged action or actions on the part of SAIL in processing the tender in question should be stopped.

57. Mr. Guptk, however, pointed out that in order to decide the question of maintainability of the petition at this stage the relief or reliefs as sought for by the petitioners" in the petition should also be taken into account. He submitted that the reliefs as sought for by the petitioner sufficiently indicate that the alleged cause of action of the petitioner is based on a mere apprehension and in any event, the reliefs as sought for by the petitioner cannot at this stage be granted as SAIL has yet to decide who is the most competent tenderer for obtaining the contract under the tender in question.

58. It may well be, that the petitioners upon final adjudication of the petition may not obtain all the reliefs or any relief as sought for but, that will depend on the final adjudication of the writ petition, or rather when the same is adjudicated upon on merits and not before. Merely because the petitioner may not obtain all the reliefs or any relief as Sought for by the petitioner in the petition cannot by itself be the determining factor for holding that the cause of action as pleaded in the writ petition is premature and therefore the writ petition at this stage is not maintainable as contended by SAIL.

59. The decisions cited by Mr. Gupta would have been in, my opinion, extremely relevant and decisive, had I found that the alleged cause of action of the petitioner is based on an apprehension or mere apprehensions alone. Since the cause of action of the petitioner as rightly demonstrated by the learned Counsel

for the petitioner is not based on any apprehension on the part of the petitioner, the above authorities cited by Mr. Gupta do not, in my opinion," throw much light or rather any light on the question of maintainability of the writ petition as raised by Mr. Gupta on behalf of SAIL.

60. I do not, therefore, think that the above decisions, except one, need be dealt with or discussed in any detail. However, when the writ petition is heard on merits on affidavits the decisions cited by Mr. Gupta may well be decisive but that is a matter on which no final opinion need be expressed on my part now when I am only concerned with the maintainability of the writ petition on the basis of the statements of the allegations in the writ petition alone treating the said allegations or rather the statements made therein to be true at this stage.

61. The decision cited by Mr. Gupta which need, however, be mentioned is the decision in *Kunda S. Kadam (supra)*, where, the Supreme Court found that the cause of action pleaded in the writ petition was premature as the petitioner apprehended that the recommendation made by the concerned Public Service Commission would be accepted or confirmed by the Municipal Corporation, namely, Bombay Municipal Corporation, who was the appointing authority for appointment of Deputy Municipal Commissioner of the Corporation. The Public Service Commission who recommended the name of a candidate was not the appointing authority. It was not known whether such recommendation of the Public Service Commission for appointment of a candidate who did not have the required statutory qualification would be accepted by the Municipal Corporation who has indeed the appointing authority.

62. Although the power of appointment was with the Municipal Corporation but even after the decision of the Corporation for such appointment the same was required to be confirmed by the Government for making the appointment a regular appointment. The Public Service Commission who made the recommendation for a candidate who, according to the petitioner therein, did not have the statutory qualification was merely a recommending authority who did not have any part to play in the decision making process for the appointment of the Municipal Commissioner in question at all. It was only the Municipal Corporation and the Government who were the two deciding authorities for the appointment of Deputy Municipal Commissioner.

63. The said decision, therefore, in my opinion, cannot apply to the present case as SAIL is the sole deciding authority to decide to whom the contract in question should be awarded under the tender and the petitioner, as aforesaid, either rightly or wrongly, is challenging the process adopted by SAIL in making the above decision.

64. In view of the above, I am of the opinion that the writ petition at this stage is perfectly maintainable and should be decided on merits on affidavits. Thus, the following direction is given for using affidavits;

65. Affidavit in opposition be used within three weeks from date. Affidavit in

reply within one week thereafter, the writ petition will appear in the list on 19th April, 2007 as an "Adjourned Motion" for further hearing on merits.

66. However, let the Special Officer as per the Order of the Appeal Court dated 11th December, 2006 file the report in Court by Monday next i.e. 2nd April, 2007.

All parties including the Special Officer are to act on a signed xerox copy of this dictated order on the usual undertakings.