
(2004) 01 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No's. 41444 and 41445 of 2003

Bamdev Nayak

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 KarLJ 435 : (2004) 2 KCCR 1163

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : T.S. Amar Kumar, for the Appellant; V.Y. Kumar, Government Advocate for Respondent 1, L. Govindaraj, for Respondent 2, S. Mahesh, for Respondent 3, H.K. Vasudeva Reddy, for Respondent 4 in W.P. No. 41444 of 2003 and Kesvy and Company for Respondent 4 in W.P. No. 41445 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

H. Rangavittalachar, J.—Since common questions of law is involved in both the writ petitions, they are disposed of by this common order. Facts will be referred to with reference to W.P. No. 41444 of 2003.

2. Facts in W.P. No. 41444 of 2003.

The Commissioner, City Municipal Council, Tumkur (hereinafter referred to as "Commissioner" for convenience) invited tenders from intending contractors for taking up works for improvement of roads and drains in Tumkur at a huge cost under the directions of State of Karnataka and Karnataka Urban Infrastructure Development and Finance Corporation, a project financed by the Asian Development Bank to be completed within a prescribed time, in the first instance, in the month of January 2003. The petitioner and one Rangegowda both contractors, had submitted their tenders. Petitioner had quoted Rs. 3,10,65,746/-. Before the tenders could be opened, the information regarding the rates quoted by the contractors were leaked to the press. The Commissioner

therefore, cancelled the tender notification and issued a fresh notification which was published in the newspapers on 17-5-2003. Petitioner again submitted his tender along with other contractors. After the opening of the technical bids, petitioner and the 4th respondent were short listed. Thereafter the financial bid was opened on 4-8-2003 in the presence of the petitioner. It was found that the petitioner had quoted a sum of Rs. 2,84,13,852.81 i.e., 8.5% less than what he had quoted earlier for the same contract besides offering a general rebate of 5% on all the items of contract while the 4th respondent had quoted Rs. 3,01,97,347.50 Paise.

3. The Commissioner forwarded the tenders of both the petitioners and the 4th respondent to the Tender Approval Committee consisting of Secretary, PWD, Commissioner, City Municipal Council, Tumkur; Managing Director of the 2nd respondent and assisted by Adviser (Eng.), KUIDFC, Project Management Consultant, Executive Engineer, Tumkur Municipal Council, Team Leader and Domestic Consultant. Before the Committee took up the rival tenders for consideration the 4th respondent moved this Court by filing Writ Petition No. 36453 of 2003 taking objection to the manner in which the petitioner had submitted his tender i.e., "offering a rebate of 5% by a separate letter annexed to the tender document", as not being in accordance with the tender conditions. However, the 4th respondent withdrew the writ petition. After this legal hurdle was cleared, while the Tender Approval Committee was considering the rival tender applications of the petitioner and the 4th respondent, the Commissioner intimated the Tender Approval Committee that the petitioner had failed to execute an earlier contract entrusted to him of similar nature and magnitude in time and therefore, it was not desirable to entrust the work to him again and there was also a move to black list him. On the basis of this information and also on the ground that petitioner had quoted 8.5% less than what he had quoted for the same contract six months earlier, the Tender Approval Committee by the proceedings dated 15-9-2003, rejected the petitioner's offer though it was lower than the 4th respondent (however, 4th respondent has reduced the price than what was quoted by petitioner after negotiations), and has ordered for awarding the contract to the 4th respondent. This decision of the Committee has also been approved by the Asian Development Bank authorities. Petitioner as stated, has challenged the said act of the Commissioner in awarding the contract on the ground that the action of the Commissioner in selecting 4th respondent is highly arbitrary and the Commissioner is biased in favour of the 4th respondent.

4. The 2nd respondent has filed detailed statement of objections justifying the grounds for rejection of tender.

5. Commissioner in his statement of objections has stated how the petitioner failed to execute a similar work entrusted to him within the stipulated time in spite of several letters and warnings and therefore, not a desirable person to be trusted again. He has also produced the correspondence between him and petitioner in this regard. Relevant ones will be referred to at the appropriate

place.

6. The 4th respondent in his objections, has defended the awarding of the contract in his favour.

7. Sri R.N. Narasimha Murthy, learned Senior Counsel appearing for the petitioner firstly, submitted that the rejection of the bid of the petitioner on the ground that petitioner had failed to execute an earlier contract in time was highly arbitrary, inasmuch as, the delay in executing the earlier project was not on account of petitioner's default but due to the fact that the sites of work was not handed over in time by the Commissioner. He referred to the letters written by the Commissioner vide Annexure-L, dated 13-9-2002, Annexure-M, dated 6-9-2002 and Annexure-N, dated 17-3-2001 containing the admission of Commissioner to vouchsafe the above fact; these relevant documents have been ignored by the authorities while rejecting petitioner's tender.

8. Secondly, he contended that the tender was invited by the Commissioner. He was "the person" competent to accept or reject tenders. But, in this case, the decision to reject the petitioner's tender was taken by the Tender Approval Committee which Committee was a stranger to contract. The Commissioner therefore, has committed a grave illegality in abdicating his power in favour of the Tender Approval Committee.

9. Lastly, it was submitted that Commissioner had not obtained the approval of State for awarding the contract.

10. Learned Senior Counsel submitted that, whenever the State or its instrumentalities act arbitrarily or illegally in the matter of entering into contracts or selecting the persons for awarding the contracts, the Courts while exercising its powers, under Article 226 of the Constitution should interfere. He therefore, prayed that the awarding of contract in favour of 4th respondent be set aside and the respondents should be directed to award the contract in favour of the petitioner. Learned Counsel referred to the decision of the Supreme Court in Tata Cellular Vs. Union of India, in support of his contention.

11. In reply, Sri L. Govindaraj, learned Counsel appearing for 2nd respondent submitted that the work of improvement of roads and drains at Tumkur was taken up at a huge cost financed by Asian Development Bank under the directions of the Karnataka Urban Infrastructure Development and Finance Corporation ("KUIDFC" for short) and State, by the Commissioner; the project was required to be completed within a stipulated time as per the terms of the financier-Bank and therefore, it was of utmost importance that the contractor to be selected must be capable of completing the project within the stipulated time. The experience the Commissioner had with the petitioner was highly discouraging one and to trust him again would be fatal to public interest.

Answering the contention of the petitioner that though "the Commissioner was satisfied that the delay in execution of the earlier project was not the fault of the

petitioner", it was submitted that the petitioner has not placed the complete facts on record. No doubt there was some delay in handing over the sites for taking up the works but due allowance was given for this period, but then after the sites were handed over to him, he had no excuse for not completing the project in time. It required a lot of persuasion and even administration of threats to get the work done. He referred to several letters written by the Commissioner to the petitioner in this regard (the relevant ones will be referred to at the appropriate place). This experience the Commissioner had with the petitioner certainly was a factor which should dissuade any public authority to again rely on him for taking up another time-bound project of public importance. Learned Counsel submitted that the Courts should be slow in interfering with the contractual powers where public works of importance have to be executed with the aid of Asian Bank at the instance of a rival tenderer more so, when the rival tenderer fails to show how public interest is affected. He relied on the decision of the Supreme Court in *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*,

12. Sri H.K. Vasudeva Reddy, learned Counsel appearing for the 4th respondent submitted answering the contention of petitioner that "the Tender Approval Committee had no role to play and the Commissioner has abdicated his powers in favour of the Committee"; that petitioner was fully aware about the role of the Tender Approval Committee in the matter of selection of contractors. When the Commissioner after opening the financial bid of the parties referred the matter to the Committee for its approval, he did not object for the same. Per contra, he took a chance but, when he failed to secure the contract, he has approached this Court. His conduct debars him from obtaining any relief at the hands of this Court. In support of the contention, learned Counsel referred to the decision of the Supreme Court in *G. Sarana Vs. University of Lucknow and Others*, wherein it has been held, applying the principles of estoppel, that where a candidate seeking selection to a post appears before the Selection Board and voluntarily participates in the interview without any objection to its constitution taking a chance for a favourable order but fails to be selected, cannot be permitted to turn round and question the constitution of the Board".

13. Supporting the decision of the Commissioner in rejecting the petitioner's bid, it was submitted by the learned Counsel that the right of a contractor is only to insist that he should be given an equal opportunity to apply (to make offer) for awarding contracts and the decision process must be fair and once these tests are satisfied, the Courts should not interfere.

14. It was lastly, submitted by him that the project under consideration is of paramount public importance and the people are looking forward for early implementation as it would apart from benefiting the residents of Tumkur Town, decongest Bangalore city besides helping to keep a clean environment and at the instance of a rival contractor the same should not be stalled.

15. Learned Counsel appearing for the Commissioner defended his action. It was submitted that petitioner being guilty of not executing the earlier entrusted

project on time, cannot insist that he should again be trusted. He referred to several letters addressed to the petitioner in this regard.

16. In contractual matters the State and its instrumentalities have as much power and freedom of contract as any other private individual under Article 298 of the Constitution with the restriction that it is subject to certain constitutional obligations. What these constitutional obligations and the scope of judicial review in such matters have been the subject-matter of discussions of various High Courts and the Supreme Court. I will only refer to some important ones of the Supreme Court on the subject.

17. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, it was held that "the Government is not free like an ordinary individual in selecting the recipient's for its largesse and it cannot choose to deal with any person it pleases in its absolute unfettered discretion. Though the Government need not deal with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public whether by way of giving jobs or entering into contract or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will like a private individual deals with any person it pleases. But its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious but, must be based on some principle which meets the test of reason and relevance".

18. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the Court said "State owned or public owned property is not to be dealt with the absolute discretion of the executive. Certain precepts and principles have to be accepted. Public interest is the paramount consideration. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobber or nepotism".

19. The Court also stressed to note the difference between reviewing of "governmental contractual powers" and that of "statutory orders" passed by the statutory authorities in exercise of statutory powers. Distinguishing the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, which was pressed into service during arguments the Court, observed that "it is important to note that unlike *Mohinder Singh Gill*'s case, *supra* where the Court was dealing with a statutory order made by a statutory functionary who could not therefore be allowed to supplement the grounds of his order by later explanations, the present is a case where neither a statutory function nor a statutory functionary is involved but, the transaction bears a commercial though public character which can only be settled after protracted discussion, clarification and consultation with all interested persons.

20. In *Ram and Shyam Company Vs. State of Haryana and Others*, the Court noted the distinction between the distribution of largesse or awarding of

contracts for purpose of augmenting public revenue with that of other cases where the State, intends to achieve some defined constitutionally recognised public purpose. In the former cases, the State is under an obligation to secure the best market price available in market economy.

21. In *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, after referring to *M/s, Kasturi Lal's case*, supra and *Shri Sacchidanand Pandey's case*, supra, it was held that "the transactions entered into by the State while dealing with public property should not be suggestive of discrimination nor any impressions should be given of bias, favoritism or nepotism". Court also observed "that ordinarily the above factors would be absent if the matter is brought to public auction or sale by tenders".

22. In *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, it is held "while it is true that principles of judicial review apply to the exercise by a governmental body of its contractual powers, the inherent limitations on the scope of the enquiry are themselves a part of those principles. For instance, in a matter even as between the parties, there must be shown a public law element to a contractual decision before judicial review is invoked".

23. In *Tata Cellular's case* referred to by the learned Senior Counsel Sri R.N. Narasimha Murthy, the Court after referring to various decisions on the point and several authors on administrative law like Bernard Schwartz, has enunciated the constitutional obligations of the State while exercising its contractual powers and also the power of judicial review and its limitations in the following terms:

1. The modern trend points to judicial restraint in administrative action.
2. The Court does not sit as a Court of appeal but, merely reviews the manner in which the decision was made.
3. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision, without the necessary expertise which itself may be fallible.
4. The terms of invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers, more often than not, such decisions are made qualitatively by experts.
5. The Government must have freedom of contract. In other words, a fair-play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury Principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
6. Quashing decisions may impose heavy burden on the administration and lead

to increased and unbudgeted expenditure.

24. In *Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others*, it was held "while exercising the power of judicial review, the Courts must keep in mind larger public interest particularly in high cost projects financed by international financial agencies like Asian Bank, World Bank, etc., and acceptance of tenders by Governments in accordance with specifications or opinions of such institutions would not be arbitrary or illegal and the lowest tenderer has no enforceable right.

25. In *Raunaq International Limited's* case, *supra*, on the rival tenderer's right to challenge the awarding of a contract, it is held "When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. If for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the Court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the Court should not intervene under Article 226 in disputes between two rival tenderers".

26. The Court also enunciated a further limitation on the power of judicial review after quoting *Trafalgar's* case in the following terms: "This Court added a further dimension to the undesirability of intervention by pointing out that where the project is a high cost project for which loans in the world bank or other international bodies have been obtained after following the specifications and procedure of such body, it would be detrimental to public interest to interfere".

27. Thus, what emanates from the above decisions of the Supreme Court on the State's constitutional obligation while exercising its contractual powers and the scope of judicial review and its limitations are.--

(i) While awarding contracts the State should act fairly and its decision should not be influenced by any malice or bias. So also its decision must not be arbitrary and should be tested by *Wednesbury* Principles of unreasonableness i.e., the decision is so unreasonable that no sensible person would arrive at such a decision.

(ii) That, the State while exercising its contractual powers must have certain amount of latitude i.e., it must be allowed as expressed by the Supreme Court "a play in the joints".

(iii) That, the Courts cannot undertake a review of the State's contractual powers with the same yard stick of reviewing the statutory powers exercised by statutory authorities.

(iv) That, a lowest bidder cannot claim an enforceable right to get the contract though ordinarily the authorities should accept the lowest bid.

(v) That, whenever a rival tenderer challenges the State action, Courts should examine and must be satisfied that there is an element of public interest involved.

(vi) That, wherever projects of high cost and public importance funded by international agencies like the Asian Development Bank or World Bank are undertaken or executed through contracts, the Courts must keep in mind that it would be detrimental in public interest to interfere.

(vii) That, the Court must always keep in mind the administrative expenses involved by striking out the contracts.

(viii) A distinction always has to be made between cases where the State wants to augment its public revenue by resorting to its contractual power and cases where State wants to achieve a defined constitutionally recognised public purpose. In the former case the highest bidder must ordinarily be preferred though circumstances may be present to depart from the rule and in the latter case the achievement of the purpose would be a predominant factor.

28. Bearing the above principles in mind, let me examine the facts and contentions of the petitioner. On the first contention of the learned Senior Counsel Sri R. Narasimha Murthy that the rejection of tender of petitioner was arbitrary, the facts pertaining to the entrustment of an earlier contract to the petitioner and the experience of the Commissioner as disclosed by records, I will briefly narrate.

29. Under a contract entered into by the Commissioner, City Municipal Council, Tumkur dated 16-9-1999, petitioner was entrusted with works for improvement of roads and construction of storm water drains in Tumkur Town at cost of Rs. 6,38,69,072/- and the work to start by 4-11-1999 and to be completed within fifteen months i.e., on or before 3-2-2001. However, as the employer was not able to hand over the sites on account of certain allied works being not completed, he could not commence the work in time. Therefore, Commissioner addressed a letter to KUIDFC - Annexure-L to the writ petition stating "that the contractor should have executed the earlier work within 15 months from 4-11-1999 i.e., before 3-2-2001 on account of the sites being not handed over to him as the drainage work was not completed, he could not complete the work on time". This opinion was reiterated by the proceedings of the Commissioner vide Annexure-N, dated 17-3-2001. The plea of arbitrariness was advanced by contending that this letters and the proceedings were totally ignored while holding the petitioner "guilty of delay"," where in fact he was not. But, what the

contention overlooks is the conduct of the petitioner subsequent to the sites being handed over to him and when there was no other impediment. After, the sites for starting the work was handed over to the petitioner on 17-3-2001 in pursuance of the request of the petitioner, the Town Municipal Council, by its proceedings dated 17-3-2001, extended time for completion of the work by another 9 months i.e., from 4-2-2001 to 3-11-2001. Petitioner failed to complete the work within this time and started seeking for further extension of time, time and again by his letters dated 24-9-2001, 12-10-2001, 3-12-2001 (Annexure-R11 series). Even several reminders issued by the Commissioner and the threat to claim liquidated damages by his letters dated 28-2-2002, 30-4-2002, 31-5-2002 and 9-7-2002 (Annexure-R11 series) did not have the desired effect i.e., petitioner failed to execute the work.

30. One of the letters written by Commissioner dated 17-7-2003 addressed to petitioner is reproduced here receipt of which is not denied, for better appreciation.

No. CMCT/ADB/BN/2002-03 Dated: 17-7-2003 To

Sri Bamdev Nayak, Class I Contractor, Rajajinagar, Bangalore 10

Sir,

Sub: Improvement of Roads and Construction of Storm Water Drains in Tumkur Town. Ref:

1. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 4-11-2002.
2. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 7-11-2002.
3. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 22-11-2002.
4. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 28-11-2002.
5. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 2-12-2002.
6. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 11-12-2002.
7. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 18-12-2002.
8. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 26-12-2002.
9. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 26-12-2002.
10. T.O. Lr. No. CMCT/ADB/BN/Phono/2002-03, dated 2-12-2002.
11. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 18-1-2003.
12. T.O. Lr. No. CMCT/ADB/BN/Phono/2002-03, dated 25-1-2003.
13. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 31-1-2003,
14. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 4-2-2003.

15. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 13-2-2003.
16. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 3-3-2003.
17. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 18-3-2003.
18. T.O. Lr. No. CMCT/ADB/BN/Phono/2002-03, dated 18-3-2003.
19. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 1-4-2003.
20. T.O. Lr. No. CMCT/ADB/BN/2002-03, dated 9-4-2003.
21. T.O. Lr. No. CMCT/ADB/BN/2003-04, dated 24-4-2003.
22. T.O. Lr. No. CMCT/ADB/BN/2003-04, dated 30-4-2003.
23. T.O. Lr. No. CMCT/ADB/BN/2003-04, dated 10-7-2003.

Your attention is invited to the letters cited under reference 1 to 23 and regret to note that you have not responded to any letters since 8 months. This type of attitude will show that you do not have interest in finalizing the final bill of the works executed by you.

On 16-7-2003 a meeting was convened in City Municipal Council, Tumkur in the presence of the Technical Advisor, KUIDFC, Bangalore; Team Leader, PMC, KUIDFC, Bangalore; Stup Consultants Limited, Bangalore and ADB, Engineer of City Municipal Council, Tumkur and detailed discussions were held regarding your final bill.

You have not attended to the following points till today.

1. Submission of final bill statement.
2. Submission of "As built drawings".
3. Handing over of site of roads and storm water drains to CMC, Tumkur.
4. Repair of roads and storm water drains.
5. Submission of RFT for stadium road.
6. Rectification of defects as pointed out by the Stup Consultants Limited, during execution of work for which part rate has been paid to you.

It has been decided in the meeting to serve a final notice to you to attend the above requirements before 30-7-2003. If you fail to comply the same, action will be taken ex parte as per the tender agreement. Please note that, this is the final notice to you to rise to the occasion.

Yours faithfully, Sd/- Commissioner, City Municipal Council, Tumkur.

31. Therefore, what emerges from the letters written by the Commissioner addressed to the petitioner, the receipt of which is neither denied nor any explanation is given, is that though petitioner can claim to have a justifiable

cause for not completing the project within 7-3-2001 but certainly he had no justification for subsequent delay. This conduct certainly cannot be said to be an irrelevant one while considering his request for entrusting another time-bound project of public importance and the decision therefore to reject the tender on this ground cannot be held as arbitrary.

32. On the next contention of Sri R.N. Narasimhamurthy, learned Senior Counsel that the Chief Officer of Tumkur Municipality committed an illegality firstly by not taking an independent decision by himself, but, by obeying the directions of the Tender Approval Authority and secondly, while awarding the contract in favour of the 4th respondent, no approval of the State Government was obtained as required under the provisions of the Karnataka City Municipalities Act. Is concerned, in the first place, the said contentions do not form part of pleading in the writ petition. For the first time, during arguments this contention is advanced.

33. Secondly, as rightly submitted by Sri Govindaraj, Counsel for the respondent, the project is financed by the Asian Development Bank to be implemented as per the State and KUIDFC directions. It cannot be said that the State or the Asian Development Bank cannot have a say in the matter of taking a decision for awarding contract. The Chief Officer as a person interested in development of Tumkur was entitled to be guided by the opinion of the State Government. Tender Approval Authority and the Asian Development Bank in selecting the best person for undertaking the work.

34. And lastly, as rightly submitted by Sri H.K. Vasudeva Reddy, learned Counsel, when the Commissioner forwarded the technical and financial bids of the petitioner and 4th respondent to the Tender Approval Committee, though the petitioner was aware of the same, he kept quiet and took a chance expecting a favourable decision but when failed to secure the contract, is now raising the contention during arguments, which he cannot be permitted to do so.

35. One other aspect which is necessary to bear in mind is that this Court cannot review the contractual powers of the State with the same yardstick as it reviews the statutory powers exercised by statutory authorities under various statutes. After all, the State is entitled to chose the best person provided they do not violate the constitutional obligations. Hence, there is no merit in this contention either.

36. As stated, the contractual power of the State can be interfered when the power is exercised with a mala fide intention or to favour any particular individual. Except a bald statement in this regard that the "Commissioner only to favour the 4th respondent and exclude the petitioner has awarded the contract", no material has been produced nor any argument is addressed on this point. The Tender Approval Authority while considering the letters of the Commissioner regarding the past conduct of the petitioner in the matter of executing a similar work of the same magnitude cannot be accused to have taken any irrelevant material into consideration inasmuch as when the Commissioner found petitioner

had not executed the earlier work within the specified time in spite of repeated reminders such a person cannot inspire any confidence in the Commissioner or Tender Approval Authority while considering him for awarding a fresh contract. Nor the said reason can be said to be highly unreasonable offending the Wednesbury Principles. The project is a high cost one financed by Asian Development Bank and to be completed within a prescribed time and unless the petitioner shows how public interest is being affected by selecting the 4th respondent which he has miserably failed to establish merely on the ground that he is the lowest tenderer cannot stall the work by invoking the writ jurisdiction of this Court. I find therefore, no merit in this petition.

37. In W.P. No. 41445 of 2003, the Karnataka Urban Infrastructure Development and Finance Corporation had invited tenders by a tender notification published in Praja Vani newspaper. Petitioner was one of the tenderers. Petitioner had quoted Rs. 290.30 lakhs while the 4th respondent had quoted Rs. 302.31 lakhs. Petitioner's tender was rejected. This action is questioned by petitioner on the ground that though petitioner's tender was the lowest, the same has been rejected on the ground that he had failed to carry on the work entrusted to him earlier by the Commissioner, City Municipal Council, Tumkur in time.

38. Since I have already upheld the awarding of the contract in favour of the 4th respondent in W.P. No. 41444 of 2003, the same reasoning applies equally to this writ petition also. I find no merit in this petition either.

Both the petitions are dismissed.