
(1981) 08 CAL CK 0023
In the Calcutta High Court

Barun K. Sinha and Another

APPELLANT

Vs

District Magistrate, Murshidabad and Others

RESPONDENT

Date of Decision : 31-08-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 298

Citation : AIR 1982 Cal 19

Hon'ble Judges : B.C. Ray, J

Bench : Single Bench

Advocate : R.C. Deb, K.K. Maitra and A.K. Mukherjee, for the Appellant; A.K. Dutta and S. Banerjee, (for No. 6), S. Gupta, A.A.G. and S. Mustafi, for the Respondent

Judgement

B.C. Ray, J.—The subject-matter of challenge in this writ application is the acceptance of the tender submitted by respondent No. 6. Narayan Roy for supply of dietary articles in the hospitals of the Murshidabad District arbitrarily and in violation of the principles of natural justice. The facts of this case as well as the case of Tapan Kumar Ghosh are almost identical and as such the statement of the facts of Barun Kumar Sinha's case will suffice for the purpose of decisions of these two rules.

2. The petitioner Barun Kumar Sinha who has been supplying dietary articles in the State-owned hospitals in Murshidabad since 1974 submitted a tender in pursuance of tender notice issued by the Chief Medical Officer of Health. Murshidabad, respondent No. 2, for the year 1981-82 inviting tenders from bona fide contractors for supply of dietary articles. It has been stated in the said notice that the intending tenderers shall quote overall percentage of rate for each category of contract in each zone falling in Part-I either "Above" or "At par" or "Below" the schedule of rates prepared for the purpose. It has been further stated in the said notice that in respect of the State-owned hospitals and health centres falling under zone in Part-II the intending tenderers may quote overall percentage of one rate for three categories of contracts either "Above" or

"Below" the schedule of rates as one contract for each zone for three categories as shown in Part-II. A copy of the schedule of rates and the tender form, it has been stated in the tender notice, is obtainable from the office of the respondent No. 2 on payment of Rs. 5/- in Treasury Challan to be deposited on week days and the last date for submission of tenders was fixed on 30-4-1981 up to 12 noon. It is also stated therein that the tenders would be opened on 30-4-1981 at 3 p.m. The selection of tenders and acceptance of rates would be communicated to the parties concerned by the respondent No. 2 for and on behalf of the Government of West Bengal. It has also been provided in the tender notice that the Governor of West Bengal reserves the right to reject any tender without assigning any reason thereof and acceptance of lowest rates will not be obligatory to the contracting officer. This tender notice has been annexed as annexure "B" to the petition. A schedule of rates of dietary articles for the year 1981-82 categorywise has been annexed as annexure "A" to the petition. The tender submitted by the petitioner has been annexed as annexure "C" to the petition and the rates quoted therein for all three categories of articles are much lower than the rates submitted by the respondent No. 6 and the rates offered by the petitioner are the lowest rates. On Apr. 30, 1981. at 3 p. m. all the tenders were opened in the office of the respondent No. 2. On 9th of May, 1981. the petitioner came to know from the office of the respondent No. 2 that respondent No. 6 was selected for supply of dietary articles for the year 1981-82 in the hospitals within the district of Murshidabad. It has been stated that the respondent No. 6 was not a bona fide contractor as he has no experience as a diet contractor and the respondent No. 6 is a close associate of the respondent No. 2. the Chief Medical Officer of Health. Murshidabad and as such this unusual award of contract in favour of respondent No. 6 has been made. It has also been submitted that no reason has been assigned in not accepting the tender wherein the lowest rate was quoted for supply of these dietary articles by the petitioner, nor any opportunity of hearing was given to the petitioner before rejecting his tender. It has been submitted that the order of appointment made by the Dietary Committee consisting of respondents Nos. 1 to 5 is arbitrary and discriminatory and no reasons have been assigned for appointing respondent No. 6 as successful contractor. It has also been submitted that this appointment is in contravention of the fundamental right of the petitioner guaranteed under Article 14 of the Constn. of India. This writ application along with other applications was also moved before this court and the instant rules were obtained. There was also interim order of maintaining status quo as on that day regarding supply of dietary articles to the . hospitals for three weeks with liberty to pray for extension of the period on the same application upon notice to the respondents.

3. On 17th June, 1981. after hearing the learned advocates for all the parties the interim order was extended till the disposal of the rules. The petitioners Barun Kumar Sinha and Tapan Kumar Ghosh it was stated therein, would continue to supply dietary articles on and from 18-6-1981. Thereafter on 6th of July. 1981. the matter was mentioned by the learned advocate for the petitioner who made

an application for clarification of the above order and after hearing the parties the order passed on 17-6-1981 was modified to the extent that Tapan Kumar Ghosh who did not supply dietary articles from the date of issuance of this Rule cannot be permitted to continue to supply dietary articles on and from 18-6-1981 on the basis of the interim order of maintaining status quo.

4. An affidavit-in-opposition sworn by Dr. M. K. Chattaraj, Assistant Chief Medical Officer and the Secretary, Diet Committee. Murshidabad was filed. In para. 3 of the said affidavit-in-opposition it has been stated that the tenders were opened by the District Diet Committee consisting of the respondents Nos. 1 to 5. It has also been stated therein that these members took a resolution for selection of tender for the year 1981-82 on 30-4-1981 to the following effect :--

(a) That the articles of tender would be up to the standard quality at such low rates would not be maintained.

(b) The rates quoted by the tenderers at the rate of 25% below the scheduled rates would be accepted.

5. A copy of the resolution has been annexed as annexure "A" to the affidavit-in-opposition.

6. It has been stated that on the basis of this norm laid down by the meeting of the District Diet Committee the respondent No. 6 whose rate is 25% below the schedule rates has been decided to be appointed by the District Diet Committee. It has also been stated in the said affidavit-in-opposition that by a resolution of the District Diet Committee the petitioner who has been supplying the Diet articles and whose term of contract which was due to expire on 30th of March, 1981 was allowed to continue supplying dietary articles up to 15th of May, 1981. This was communicated to the other contractors including the petitioner who had been given contract the previous year to continue supply of dietary articles under such contracts up to 15th of May, 1981. It has been stated that his rate was accepted by the Committee and on that ground he was asked to supply the articles with effect from 1st May, 1981 as wrongly stated in the petition. It has also been stated that with a view to obtain a Rule and interim order wrongfully the petitioners deliberately made false statements by suppressing receipt of the order, set out in annexure "D" to the affidavit-in-opposition and as such for this suppression and misrepresentation of facts and misleading this Hon'ble Court the writ application should be rejected in limine and the interim order should be vacated. It has been stated that respondent No. 6 is not a close associate of the respondent No. 2 nor any unusual favour was shown to respondent No. 6 as the respondent No. 6's tender is the lowest in accordance with the resolution of the Diet Committee and so it was accepted.

7. An affidavit-in-reply has been filed on behalf of the petitioner reiterating the statements and allegations made in the petition. It has also been stated in the affidavit-in-reply in para 4 that the petitioner did not know when and how such resolution was adopted for considering the case of successful Dietary Contractor

for 1981-82. It has also been stated that in the tender notice no such restriction or condition was imposed in respect of rates of the articles and as such the resolution adopted on 30-4-1981 is a clear departure from the terms of the open tender notice for 1981-82. It has also been stated that the petitioner was not aware of the arrangement of the extension of the period of contract up to 15-5-1981 and he was not aware also of any such resolution as alleged to have been made.

8. Mr. Kashikanta Moitra, learned Advocate appearing on behalf of the petitioner made a four-fold submission before this Court. His first submission is that in the tender notice no guideline was set UP as to the eligibility for acceptance of tender to be submitted by intending candidates by the District Diet Committee and as such it was not open to the members of the District Diet Committee to lay down a norm or a guideline at its meeting for the selection of tenders submitted by different contractors. It has also been submitted that public authorities are bound by the terms and conditions as set out in the tender notice and they cannot lay down a different guideline for selection of tenders after tenders are submitted on the basis of such tender notice. It has also been secondly submitted that as a rule lowest tender is to be accepted unless exceptional circumstances justify the decision of the authorities concerned in accepting tenders offering higher rates exist. The existence of such exceptional circumstances are necessary and or imperative to justify the decision of the tender committee to accept a tender quoting higher rate rejecting the tender quoting lowest rates. Mr. Moitra has referred in this connection to West Bengal Health Manual Vol. I (Administration) published in 1970 at page 56-57 in support of his above submission. It has been further submitted by Mr. Moitra that the tender notice expressly provides that the intending tenderers may quote rates "Below" "At par" or "Above" the schedule rates. Therefore, this tender notice does not indicate that rates offered below certain percentage of the Schedule rate will not be entertained. The resolution by the District Diet Committee adopted on the date of opening the tender that is. 30-4-1981 is arbitrary and contrary to the terms and conditions of the tender notice. As such selection of tenders solely on its basis is illegal, unwarranted and arbitrary. It has been further submitted that after sealed tenders are opened by the District Diet Committee, formation of such a norm by resolution of the committee for selection of tenders at higher rates in preference to tender quoting lowest rates will be per se discriminatory and ultra vires of Article 14 of the Constitution. It has also been lastly submitted that non-acceptance of the tender without recording any specific reasons or assigning reasons therefore is a case of non-application of mind and it is arbitrary and mala fide.

9. Mr. Gupta, learned Additional Advocate General appearing on behalf of the respondent No. 7, State of West Bengal has urged in the first place that the tender-in-question is not an ordinary kind of tender but it is a special kind of tender invited for supply of dietary articles for patients in the hospitals and health centres in the District of Murshidabad and as such it is essential that the

dietary articles supplied must conform to the standard, otherwise it will tell upon the health of the patients of the hospitals and with this end in view the District Diet Committee which consisted of high and responsible officers like the District Magistrate. The Chief Medical Officer of Health etc. considered this aspect of the matter and in order to ensure the supply of food articles of the standard quality they came to the opinion that standard quality articles could not be supplied at low rates. As such after deliberation they adopted a resolution that rates quoted by the tenderers at the rate of 25% below the schedule rates would be accepted. It has been submitted by the learned Additional Advocate General that if tenders at such rates are accepted it will ensure supply of articles of standard quality. This norm as laid down in the resolution taken in the meeting of the Diet Committee cannot be termed as arbitrary or mala fide and acceptance of the tender submitted by the respondent No. 6 whose rate conforms to the rate as specified in the above resolution cannot be termed as arbitrary or discriminatory. This decision cannot also be assailed on the ground of mala fide. It has been further submitted that it is not possible to ensure absolute equality where conflicting interests are involved, still then considering the overall aspects of the thing the norm that has been laid down in the resolution is expected to maintain supply of food articles of standard quality. It has been next submitted by the Additional Advocate General that the authority has the discretion to accept a tender and reject another. Non-acceptance of the tender of the petitioner does not involve any arbitrariness and particularly when the selection was made on the basis of the norm provided by the decision taken in the meeting of the Diet Committee. It has been lastly submitted by Mr. Gupta that the conduct of the petitioner disentitles him to get the contract. It has been submitted that in para 7 of the petition it has been stated that the tender of the petitioner being lowest and accepted by the committee he was asked to continue supply in respect of articles in categories 1 and 2 and 3. It has been stated that the authority being satisfied with the performance of the petitioner in respect of the purity of articles considered the petitioner's case by allowing him to continue the supply and was further told that formal letter of appointment will be sent soon. Thereafter on the basis of the said assurance the petitioner was directed by the D. M. O. to supply dietary articles in categories I, II and III with effect from 1-5-1981 and up-till now the petitioner has been supplying such articles. It has been stated in para 9 of the affidavit-in-opposition that in order to obtain a rule and interim order wrongfully the petitioner deliberately made these false statements by suppressing receipt of the order as mentioned in the annexure "D" to the affidavit-in-opposition, that is, the petitioner was asked to continue the supply of dietary articles from 1-5-1981 to 15-5-1981. It has been submitted that by making this false statement and suppressing receipt of the copy of the order from the respondent No. 2 the petitioner obtained the instant Rule and the interim order and as such for the suppression of the material facts this rule should be discharged in limine and no relief should be given to the petitioner.

10. Mr. Dutt, learned Advocate appearing on behalf of the respondent No. 6 has

submitted that the rule prima facie has become infructuous as the impugned order whereby the respondent No. 6 was appointed as contractor or, in other words, whereby the tender of respondent No. 6 was accepted has not been annexed and as such relief in terms of prayer "A" of the petition as to why the impugned order should not be quashed or withdrawn or should not be given effect to cannot be granted. It has also been submitted that the selection cannot be challenged as selection is in the hands of the Expert Committee and the decision is final and it is not open to judicial review. Mr. Dutt has referred to the provisions of the Health Manual regarding tenders in support of his submission. It has been next submitted that the petitioner has got no legal right to get a contract or to have his tender accepted and as such non-acceptance of tender does not entitle the petitioner to come before this court to challenge the same in a writ petition. Some decisions have been cited at the bar in this respect. It has been next submitted that the writ petition will also fail inasmuch as the petitioner did not challenge the tender notice in the writ petition.

11. The preliminary objection that has been raised in this case by Mr. Dutt, Advocate for respondent No. 6 that this writ application is not maintainable as no legal right of the petitioner has been infringed requires to be decided first. It has also been submitted that the District Diet Committee consisting of the respondents Nos. 1 to 5 has the absolute discretion to accept one tender and reject another tender and its decision is final and even if its decision is wrong such a decision cannot be challenged in a writ petition as no legal right of the petitioner has been impaired or infringed by such decision of the public authority. This preliminary rejection, in my opinion, is liable to be rejected in limine. The meaning of the word "locus standi" for the purpose of maintaining a writ application has now been widened very much by the pronouncements of the Supreme Court as well as of our court. Ordinarily the petitioner who seeks to file an application under Article 226 of the Constn. should be one who has a personal or individual right in the subject matter of his petition. This personal right need not be in respect of proprietary interest, it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates a person who has been prejudicially affected by an act or an omission by an authority can file a writ petition even though he has no proprietary or fiduciary interest in subject-matter thereof. The above observation has been made in the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . This view has been further elaborated in a latter case in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . It has been observed by Sar-karia, J. who spoke for the Supreme Court that the expression "aggrieved person" denotes an elastic, and to an extent an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition, Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. It is flexible

enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority even though he has no proprietary or even a fiduciary interest in the subject-matter. In the case of *In Re : Monoranjan Maity v. District School Board, Midnapore* decided on 31-3-1981* I have held that in order to maintain an application for a writ in the nature of mandamus or in the nature of certiorari Or for any other appropriate order or directions under Art, 226 of the Constn. it is not the sole test to be specified that the person making the application must show that any of his individual or personal rights either conferred by Part III of the Constn. or by any statute has been infringed illegally by the purported action or inaction on the part of the statutory authority. If a person has been shown to have a genuine grievance by an action or inaction on the part of the authority to discharge his public duties enjoined upon him by the Act. in that case such person will be an aggrieved person having locus standi to maintain an application for a writ in the nature of Mandamus and/or Certiorari against the purported action or inaction on the part of such public authority.

12. In the instant case the petitioner who submitted tender in compliance with the tender notice inviting tenders within the time specified is entitled to have his tender considered as it is a case of distribution of public contracts. True that the petitioner has got no legal right to claim that the tender submitted by him must be accepted by the Tender Committee, that is. District Diet Committee still he has a right to have his tender fairly and properly considered by the public authority before the same is rejected. The arbitrary rejection of his tender without considering the same at all and the acceptance of the tender of respondent No. 6 who quoted rates much higher than the rates quoted by the petitioner undoubtedly affects the petitioner and the petitioner is an aggrieved person. Therefore the instant writ application at the instance of the petitioner is maintainable. The decision in *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, does not apply as the facts are totally different from the facts of this case. In that case the highest bid offered by the respondent No. 1 for country liquor shop was rejected as in the opinion of the Government it did not fetch adequate price as a result of collusion between the bidders. Thereafter tenders were invited and tenders were duly received. The Government accepted the tender in respect of one shop and rejected the other tenders as price offered was inadequate. Ultimately the 7 shops were settled by negotiations with some of the tenderers and the price fetched was much higher than that offered either at the auction or by the tenderers. It was held that the Government reserves the powers to accept or to reject the highest bid. The highest bid was rejected as it did not fetch appropriate price and as such the writ application was rejected. There was no arbitrariness or unfairness in settling 7 shops by private negotiations with some of the tenderers at a much higher price. Similarly the decision in the case of *Manjula Manjari Dei Vs. M.C. Pradhan, Director of Public Instruction*, also has got no application to this case as the facts of that case are different from the facts of the instant case. In that case the petitioner, a publisher of text books for schools challenged the action of the Director of Public

Instruction in accepting the decision omitting some books of the petitioner from the list of text books made by a committee set up by the Director of Public Instruction. It was held that the petitioner has no legal right which could be enforced against a public officer and the choice of text books is entirely within the discretion of the Director of Public Instruction. He exercises his discretion according to the direction of the Government and as such held that he acted bona fide and in good faith.

13. The respondent No. 2 issued a tender notice in the year 1981-82 inviting sealed tenders from bona fide contractors for supply of dietary articles to the State owned hospitals, Health Centres, etc. in the district of Murshidabad. It has been specifically mentioned in the said tender notice that the intending tenderers are to quote rates either "below" or "at par" or "above" the schedule of rates of dietary articles for the year 1981-82 in respect of three categories mentioned therein. A copy of the said schedule of rates have been annexed as annexure "A" to the petition. It has also been provided in the said tender notice that the Governor reserved the right to reject any tender without assigning any reason thereof and acceptance of lowest rates will not be obligatory to the contracting officer. It was also provided in the said tender notice that all the tenders are to be submitted by 30-4-1981 up to 12 noon and the tenders will be opened by the Chairman of the District Diet Committee on that day at 3 p. m. The petitioner undoubtedly submitted tenders within the specific time provided in the tender notice and rates quoted by him are undoubtedly the lowest rates in respect of articles mentioned in all the three categories -- the rates being much below the schedule rates. The respondent No. 6 also submitted tender but the rate quoted by him was much higher than the rate quoted by the petitioner. On April 30, 1981, the District Diet Committee at its meeting adopted a resolution to the effect that rates quoted by the tenderers 25% below the schedule rates would be accepted. This resolution has been annexed as annexure "A" to the affidavit-in-opposition sworn by the respondent No. 5 on 8th of June, 1981. It has been stated that the respondent No. 6 whose rates in the tender submitted by him having coincided with the rate as specified in the resolution of the District Diet Committee was accepted and the respondent No. 6 has been selected for appointment as a contractor for supply of dietary articles to the hospitals in the district. This order of the respondent No. 2, Chief Medical Officer of Health, Murshidabad who is the Chairman of the District Diet Committee has been assailed and or questioned in the writ petition as arbitrary and unfair and also discriminatory. It has also been alleged that no reason has been recorded or assigned by the respondent No. 2 while rejecting the lowest tender of the petitioner and accepting the tender of the respondent No. 6 at a much higher rate. It has, therefore, been contended that this order of respondent No. 2 is violative of Article 14 of the Constn. In a Division Bench decision of this court to which myself was a party reported in (1978) 2 Cal LJ 166 Kanchanoor Bhaskar Shetty v. State of West Bengal a similar question was raised. It has been observed that Article 298 of the Constn. provides that the executive powers of

the Union and the State shall extend to carrying on of any trade and to the acquisition holding and disposal of property and the making of contracts for any purpose. Thus the State can carry on this executive function either by making a law or without making a law. The exercise of this executive power is subject to Part III of the Constn. and as such Article 14 of the Constn. is applicable to the exercise of such powers. So in the matter of public contract equal opportunities are to be given to the citizens who apply and they cannot be discriminated against in the matter of giving their offer for such contracts and of having the same considered. In other words, there cannot be any discrimination at the threshold or at the time of entry in the field of consideration of persons with whom contracts will be made by the Government. The decision in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, and *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, were referred to. Therefore, I hold that the petitioner having genuine grievance against the impugned order dated 30-4-1981 accepting the tender of respondent No. 6 at rate much higher than that offered by him in his tender is an aggrieved person competent to maintain the instant writ petition and this preliminary objection raised on behalf of respondent No. 1 having no merits is rejected.

14. As regards the second submission of Mr. Moitra, learned Advocate for the petitioner contends that the discretionary power of the public authority in accepting or rejecting a tender has to be exercised according to rule of law and reasonably and fairly on a proper consideration of the individual tenders submitted and not arbitrarily, capriciously or according to its own whims. It has also been submitted that in the tender notice no guideline nor any norm has been laid down specifying the eligibility for acceptance of tenders to be submitted. Public authorities cannot deviate from it and set out a different norm subsequent to the submission of tenders laying down a different guideline for acceptance of tenders. If this is done then such action of the public authority will be arbitrary capricious rendering the same as invalid and void. It has been submitted that the tender of the petitioner has been rejected arbitrarily without considering it at all even though the rates offered were lowest and no reasons were assigned for such arbitrary rejection of the tender of the petitioner and acceptance of tender of respondent No. 6 at a higher rate though he had no experience in this regard. This has been done simply following the resolution of District Diet Committee passed on 30-4-81.

15. It appears from the tender notice annexed as annexure "B" to the petition that it has been specifically mentioned therein that intending tenderers may submit tenders quoting rates either "Above" or "At Par" or "Below" the schedule rates prepared for the purpose which has been annexed as annexure "A" to the petition. There is no restriction nor inhibition nor any guideline as to the rates to be quoted in the tenders. The petitioner submitted tender for supply of dietary articles included in all the three categories at the lowest rates whereas the tender submitted by respondent No. 6 quoted rates much higher than that of the petitioner. The tender of the petitioner has been annexed as annexure "C" to the

petition. It appears from para 3 of the affidavit-in-opposition sworn on 8th June, 1981 by the respondent No. 5 that the tenders were opened on the 30th of April 1981 by the District Diet Committee consisting of respondents Nos. 1 to 5 and a resolution was adopted by the members of the Diet Committee on that very day that "rates quoted by the tenderers at the rate 25% below the Scheduled rates would be accepted." It has been further stated that on the basis of this resolution that respondent No. 6 was selected. The respondent No. 2 appointed respondent No. 6 to supply dietary articles to the hospitals. It is, therefore, evident from the above averments that the tender of the petitioner offering lowest rates was not at all considered on merits and the tender of respondent No. 6 was accepted solely on the basis of the guideline embodied in the resolution of the District Diet Committee even though there was no such guideline or restriction as to the rates to be quoted by intending tenderers in their tenders in the notice inviting tenders.

16. Therefore, the decision of the District Diet Committee which was adopted at its meeting on 30th April 1981 laying down the manner of selection of tenders is wholly arbitrary and contrary to the terms and conditions laid down in the notice inviting tenders. It has been tried to be submitted by the learned Additional Advocate General appearing on behalf of the State that this decision was taken in order to formulate and/or to lay down a norm or standard for acceptance of tenders for the purpose of ensuring supply of dietary articles of standard quality and as such the norm set out in the resolution is not arbitrary nor it can be said to be mala fide. The selection of respondent No. 6 on the basis of above norm laid down by the District Diet Committee cannot be questioned as arbitrary or discriminatory. This argument cannot be entertained on the ground that the petitioner has been supplying dietary articles to the hospitals and health centres in the district being the lowest tender and there was no allegation that articles supplied by him were much below the standard. Similarly Tapan Kumar Ghosh also supplied dietary articles in the year 1977-78 successfully and there was no adverse report against him as to the quality of foodstuff supplied by him. It is impossible to hold that a contractor who has quoted rates 25% below the Schedule rates will surely supply dietary articles of the standard quality whereas the lowest tenderer quoting rates much below that rate will invariably supply articles of lower standard and quality. Moreover, this decision of the District Diet Committee taken on the day when the sealed tenders are opened by the respondent No. 2, the Chairman of the District Diet Committee, is not only arbitrary but also contrary to the standards laid down in the said tender notice. The Supreme Court in no uncertain terms observed in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, that it is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards and on pain of invalidation of an act violation of them. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. It is indeed unthinkable that in a democracy governed by rule of law

the executive government or any of its officers should possess arbitrary powers over the interests of individual. Every action of the executive government must be informed with reason and should be free from arbitrariness. That is the very essence of rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of power involves affection of some right or denial of some privilege. It has been tried to be contended on behalf of the respondent No. 6 that in view of the term embodied in the tender notice that the "Governor of West Bengal reserves the right to reject any tender without assigning any reason thereof and acceptance of lowest rates will not be obligatory to the contracting officer, "the Chairman of the District Diet Committee or for that the District Diet Committee has got the absolute power to pick and choose any of the tenderers who according to them is fit and proper to supply dietary articles and decision of the selection committee is final. Such a decision selecting a particular tenderer even though his rate is higher and not selecting the tenderer who offered the lowest rate cannot be questioned as discriminatory and violative of Article 14 of the Constn. of India. In support of this submission some decisions have been cited. The Supreme Court in the case of *Purxotoma Ramanata Quenim Vs. Makan Kalyan Tandel and Others*, held that Clause 7 of the tender which provided that the highest tender shall ordinarily be accepted but the Government reserved the right to select any tender or reject a tender without assigning any reason thereof is not violative of Article 14 of the Constn. It was further held that in matters relating to contracts with the Government the latter is not bound to accept the tender of the person who offers the highest amount. This decision was rendered by the Supreme Court relying on its earlier decision in the case of *C.K. Achuthan Vs. The State of Kerala and Others*, . In this case the petitioner and the third respondent, the Co-operative Milk Supplies Society, Cannanore, submitted tenders for supply of milk to the Government hospitals at Cannanore for 1948-49. The Superintendent accepted the tender of the petitioner who offered the lowest rate and communicated his decision to the department of Public Health. Subsequently, the contract of the petitioner was cancelled and the tender of respondent No. 3 was accepted after giving requisite notice in terms of Clause 20 of the tender. The petitioner was intimated that it was the policy of the Government that in the matter of supply to Government Medical Institutions in Cannanore the Co-operative Milk Supplies Union was to be given contracts on the basis of price fixed by the Revenue Department. It was held that there was no discrimination because it was perfectly open to the Government even as it was to a private party, to choose a person to their liking. to fulfil contracts which they wished to be performed. When one person is chosen, rather than another, the aggrieved party cannot claim the protection of Article 14 because the choice of the person to fulfil a contract must be left to the Government. Similarly a contract held from the Government stands on no different footing from a contract held from a private party. This view of the Supreme Court no longer holds the field as it is evident from the decision of the Supreme Court in the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, where it

has been held that before the discretion conferred by Section 237(b) of the Companies Act, 1956 to order an investigation can be exercised, there must exist circumstances which in the opinion of the authority suggest what has been set out in Sub-clause (i) (ii) or (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute. The formation of opinion may be subjective but the court can interfere if question whether circumstances for formation of opinion as provided in Section 237(b) of the said Act exist or not. Therefore, even in this case of administrative decision made on subjective satisfaction by the executive officer the party aggrieved can question the administrative decision and or the formation of the opinion for exercise of the administrative power and it is incumbent on the concerned authorities to show that the opinion was formed on considering all relevant circumstances which exist. Similarly in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, A. N. Ray, C, J. who spoke for the Supreme Court observed. "The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constn. Article 14 speaks Of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has therefore the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination." This decision was referred to in *Hindusthan Sugar Mills Vs. State of Rajasthan and Others*, and it was held that Article 14 of the Constn. imports a limitation or imposes an obligation upon the State's executive power under Article 298 of the Constn. All constitutional powers carry corresponding obligations with them. Therefore these decisions clearly laid down that in the exercise of executive powers by administrative authorities or public authorities they cannot act arbitrarily and cannot select a tenderer having offered a higher rate in preference to another offering lowest rate according to their whims without assigning cogent reasons therefor. Article 14 of the Constn. of India applies to such cases of arbitrary selection of a tenderer as the authority concerned is under an obligation to consider all the tenders on their respective merits and he cannot pick and choose. It will be pertinent to refer in this connection the observation of the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, where it was held that administrative authorities in making orders affecting rights of the person must act fairly and not capriciously or arbitrarily. In other words, rules of natural justice are called in aid to prevent miscarriage of justice and to ensure a just decision. Similar view was also expressed in the case of *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, . It has been already stated hereinbefore that in a Division Bench judgment of this Court in (1978) 2 Cal LJ 166 it has been observed that principles of natural justice can be invoked in cases of decision of public officers

affecting civil rights of a person In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, it has been held that the doctrine of equality envisaged in Article 14 of the Constn. posits that a corporation which is an instrumentality or agency of Government in exercise of its discretion cannot act arbitrarily while dealing with public whether by way of giving jobs. or largesse or entering into contracts or otherwise. Its action must be in conformity with some principle which meets the tests of reason and relevance. The Government is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints inherent in its position in a democratic society. A democratic government cannot lay down arbitrary and capricious standards with whom it will deal. Therefore from these decisions cited hereinbefore it is well settled that the Public Authorities cannot exercise its discretion arbitrarily in the matter of giving contracts to a party at its own sweet will and pleasure. It has to exercise its discretion in the matter of selecting right person for the giving of largesse or contract or for selecting persons for giving contract fairly and on a just consideration of all the tenders submitted on a reasonable basis and in the case of selecting a tender of a person offering higher rate in preference to another offering a lower rate it has to record valid, relevant and cogent reasons therefor. A selection of higher tender in preference to a lower tender without assigning any reason will be violative of the provisions of Article 14 of the Constn. In the instant case the tenders were invited and the petitioner and other persons including respondent No. 6 submitted tenders offering rates below the schedule rates as stated hereinbefore. In the tender notice there was no such term that tenders offering rates more than 25% below the schedule rates will not be considered for selection. The District Dietary Committee on 30-4-81 that is, the date fixed for opening the sealed tenders, adopted a resolution to the effect that only tenders offering to supply dietary articles in categories 1 to 3 at rate 25% below the schedule rate would be accepted. The tender of respondent No. 6 was accepted solely on the basis of this decision without considering at all that the tender submitted by the petitioner offering rates much below the rates that was offered by the respondent No. 6 and as such if the tender of the petitioner was accepted there will be a great deal of saving of public money. The acceptance of the tender of respondent No. 6 on the basis of the above decision of the Dietary Committee is, in my opinion, wholly arbitrary inasmuch as it is contrary to the terms and conditions laid down in the tender notice. Secondly, this decision of the Dietary Committee imposed a restriction in consideration of the tender of the petitioner and thereby it discriminates between the petitioner and the respondent No. 6. Such a decision is clearly in violation of the provisions of Article 14 of the Constn. as it does not provide equal opportunity in the matter of consideration of the tenders submitted by all the tenderers including the petitioner himself for the purpose of selection of the tenderer to be entrusted with the supply of dietary articles. Furthermore this decision of District Diet Committee is a clear deviation from the terms and conditions embodied in the tender notice inviting tenders and therefore the selection of respondent No. 6 is

wholly illegal and the same cannot be given effect to. Reference may be made in this connection to the observation of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, where it has been held that public authorities must conform to the standards or terms and conditions laid down in the tender notice and they cannot be permitted to deviate from it. Therefore the acceptance of tender of the respondent No. 6 without at all considering the lowest rate submitted by the petitioner in his tender is wholly arbitrary, unwarranted and bad. It is a well settled rule of administrative law that 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.

17. Mr. Dutt, learned Advocate for respondent No. 6 submitted that governmental action is presumed to be 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 public interest. Mr. Dutt referred in this connection the decision in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, . I have already held that the petitioner proved that impugned action in appointing respondent No. 6 as successful tenderer and in giving him the contract is arbitrary, unreasonable and not in public interest. It will be pertinent to refer to the Memorandum No. Medi. 980/H/R. 3D-10-48 dated 16th Mar. 1949 issued by Asst. Secretary to the Government of West Bengal contained in Health Manual Vol. I (Administration) page 57 excerpt from the said memorandum is quoted herein below :--

"1. (b) Tenders should be invited from the open market and the lowest tender should, as a rule, be accepted. Higher rates may, however, be accepted in exceptional cases to ensure supply of better quality of articles, and the reasons for such acceptance should invariably be recorded." in the instant case the lowest tender submitted by the petitioner was neither considered nor accepted but the tender of respondent No. 6 quoting rates higher than those of the petitioner has been accepted by the District Diet Committee without recording any reasons for such acceptance as required by this memo. Therefore, the impugned order made by the District Diet Committee accepting tender of respondent No. 6 is also illegal and bad.

18. The last submission advanced on behalf of the respondents that the writ application is liable to be dismissed on the ground of suppression of material facts, in my opinion, has got no merits. True that a statement has been made in the petition to the effect that on 30-4-81 at 3 p. m. the respondents 1 to 5 opined that the petitioner's tender being the lowest could be accepted and he would be declared successful. It has also been stated that thereafter he came to know on enquiry that his tender was not accepted and the tender of respondent No. 6 was accepted. This statement made in the writ petition cannot be considered to be a suppression of material facts inasmuch as this statement did

not at all influence the mind of the court in the matter of issuance of the rule and the interim order. Of course, an observation was made by this Court that such loose statements ought not to have been made by the petitioner in the writ petition. I am, therefore, of the opinion that there was no suppression of material facts. The main challenge against the impugned order was that the tender of the petitioner quoting the lowest rate was not accepted and the tender of respondent No. 6 quoting the rate higher than that of the petitioner was accepted. Therefore this contention is devoid of any merit and hence it is overruled.

19. For the reasons aforesaid the contentions raised on behalf of the petitioners having succeeded the rule succeeds and the same is made absolute.

20. Let a writ of Mandamus be issued directing the respondent Nos. 1 to 5 to forbear from giving effect to the order dated 30-4-81 accepting the tender of respondent No. 6 for supply of items in category nos. 1, 2 and 3 in the hospitals and health centres within the district of Murshidabad.

21. Let a writ of Certiorari be also issued directing the respondents to quash and set aside the impugned order dated 30-4-81 passed by the District Diet Committee or for that the Chairman of the said Committee appointing the respondent No. 6 as contractor for supply of the said dietary articles.

22. There will be no order as to costs.

23. This order will govern all the three matters, in re : (1) Barun Kumar Sinha, in re : (2) Tapan Kumar Ghosh and in re: (3) Dhirendra Nath Ghosh.

24. Let operation of the order be stayed up to 17-9-1981 as prayed for.