
(2007) 05 AHC CK 0100
In the Allahabad High Court

City Infrastructure (India) Pvt. Ltd.

APPELLANT

Vs

New Okhla Industrial Development Authority, DLF Ltd. and
State of Uttar Pradesh

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2007) 05 AHC CK 0100

Hon'ble Judges : R.K. Agrawal, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—We have heard Sri C.S. Vaidyanathan, Senior Advocate, assisted by Sri Vikas Pahwa and Sri A.D. Prabhakar, Advocates for the petitioner. Sri K. Ramamoorthy, Senior Advocate, assisted by Sri Anirag Khanna and Sri Rohit Mammen Alex, Advocates have been heard for respondent No. 1, Shri Gourab Banerji, Senior Advocate, assisted by Sri Ajit Singh have been heard for respondent No. 2 and Sri C.S. Singh, Additional Chief Standing Counsel has been heard for respondent No. 4.

2. By this writ petition, the petitioner questions the action of New Okhla Industrial Development Authority (hereinafter referred to as the NOIDA) dated 23rd May, 2006 awarding housing project "Express City" to respondent No. 2, Unitech Ltd, in Sectors 96, 97 and 98, NOIDA, Gautam Budh Nagar.

3. The NOIDA constituted under the provisions of the U.P. Industrial Area Development Act, 1976 has been entrusted plan development of the industrial development areas. u/s 6 of the said Act amongst several functions entrusted to NOIDA one of the functions is to allocate and transfer either by way of sale or lease or otherwise land for industrial, commercial or residential purposes.

4. The NOIDA floated a scheme for allotment of "Express City" Group Housing in Sectors 96, 97 and 98 of an area 340 acres. Notice was issued inviting tenders

on 30th March, 2006. Reserve price of the entire plots was fixed as Rs. 5,740/- per square meters. The earnest money of Rs. 25 crores was to be submitted with the bid. The complete tender documents were to be submitted with the NOIDA by 1st May, 2006 at 2.00 P.M. The tender was to be submitted with the NOIDA in three envelopes, first containing earnest money deposit, second containing the qualification documents and the third containing the financial tender. The technical bid of all the bidders was to be opened on 1st May, 2006 at 3.00 P.M. at Indira Gandhi Kala Kendra, Sector VI, NOIDA. The date of opening of financial bid was to be communicated to the applicants who qualified in the technical bid. The petitioner, respondent No. 2 and respondent No. 3 submitted their tenders. The tender was not opened on 1st May, 2006. The Chief Executive Officer, NOIDA sent a letter dated 5th May, 2006 to the Managing Director of the U.P. Industrial Consultants Limited requesting to nominate a technical expert for evaluation of technical bids of "Express City". The U.P. Industrial Consultants Limited accepting the offer communicated its willingness to do the job and an order dated 15th May, 2006 was issued by the Chief Executive Officer of NOIDA asking the U.P. Industrial Consultants Limited to start its work and submit a report within a week. The Tender Evaluation Committee appointed by NOIDA, which also included the Consultant of U.P. Industrial Consultants Limited submitted report dated 22nd May, 2006 on all the three tenders. The Tender Evaluation Committee found the technical bids of respondents No. 2 and 3 in conformity with the qualifications as required in the notice and a letter dated 22nd May, 2006 is said to have been issued by the Additional Chief Executive Officer to respondents No. 2 and 3 informing that financial bid be opened on 23rd May, 2006 at 5.00 P.M. in the Board Room of NOIDA. The petitioner was not found qualified after evaluation of the technical bid. On 23rd May, 2006 the contract was awarded in favour of respondent No. 2.

5. Before coming to the respective submissions of counsel for the parties, a brief look of terms and conditions for "Express City" Group Housing is necessary for appreciating the issues raised in the writ petition.

6. An area of 13,17,000/- square meters spread over in Sectors 96, 97 and 98 of Gautam Budh Nagar was to be awarded for a period of 90 years. The reserve price fixed was" 5,740/- per square meter with earnest money of Rs. 25 crores. The terms provided that developer are free to undertake plotted residential development or Group Housing or both. Clause 3 contained eligibility/pre-qualification conditions. Clause 3.1 provided as under:

3.1. The applicant/tenderer should be any person, trust, firm, registered co-operative society, private limited company, public limited company registered in India.

7. Clause 3.4 contemplated that application submitted by a consortium of companies/firms may also be considered. There was no restrictions on the number of members in a consortium but there shall be no change in the consortium shareholding structure till completion of the project without prior

approval of NOIDA. The relevant clause pertaining to eligibility are Clauses 3.3.1, 3.3.2 and 3.3.3, which are extracted below:

3.3.1. Should have developed or constructed minimum 300 Acres in real estate in last 3 years i.e. 2002-03, 2003-04, 2004-05 anywhere in India.

3.3.2. An average turnover of minimum Rs. 500 (Five hundred) crores during the last three years i.e. 2002-03, 2003-04 and 2004-05 out of which at least lead member should have minimum average of turnover of Rs. 200 crores during the last three years in real estate.

3.3.3. Minimum net worth of Rs. 250 (Two hundred and fifty) crores out of which the lead member should have a minimum net worth of Rs. 150 crores.

8. Clause 4.3 contains certain conditions in case of consortium. Clauses 4.3.1, 4.3.2 and 4.3.3 are as follows:

4.3.1. The members of Consortium with equity stake of 10% or above will be considered as RELEVANT MEMBER. Technical and financial capabilities of relevant members shall be considered relevant for evaluation.

4.3.2. At least one of the RELEVANT MEMBER(s) should have the technical capability given in Clause 3.3.1 and the combined net worth & turnover of all RELEVANT MEMBERS should meet the minimum requirement as given in Clauses 3.3.2 and 3.3.3.

4.3.3. The Consortium must specify the equity shareholding & nominate a lead member among the relevant members of the Consortium. The Lead Member will have to satisfy the criteria laid down in 3.3.2 and 3.3.3. This shall be enshrined in the Memorandum of Agreement (MoA) signed by all consortium members and submitted along with this tender.

9. Clause 7.8.1 provided that tenders shall be opened by the Committee constituted by the Chief Executive Officer, Noida. Clause 7.8.2 gave the Chief Executive Officer authority to reject any tender including highest tender without assigning any reason. Clauses 7.8.2 is quoted below:

7.8.2. The Chief Executive Officer or any other officer authorised by the Chief Executive Officer reserves the right to reject any tender/tender including the highest tender/tender without assigning any reason.

10. Clause 7.9 pertains to evaluation of tenders, which was required to be done in two stages. Clauses 7.9.1, 7.9.2 and 7.9.3 are extracted below:

7.9.1. In Stage-1, the Processing Fess and Earnest money in Envelope 1 shall be first checked. Tenders without the appropriate Processing Fees and Earnest Money will be rejected. Thereafter, Envelope 2 containing the Qualification Documents submitted by the renderers will be opened. The applications not meeting the eligibility criteria as stipulated will be rejected outright. The tenders meeting these eligibility criteria would be considered to have passed Stage 1

Evaluation and shall be treated at part for evaluation of Financial Tenders.

7.9.2. In Stage-II of evaluation, the financial tenders in the Envelope-III of only the shortlisted tenders shall be opened by the Tender Evaluation Committee so appointed by CEO, NOIDA. The selection will be on the basis of the highest Financial tender amount per sq.m (F1). Other Tenderers shall be ranked F2, F3 etc. in decreasing order of their financial offers.

7.9.3. NOIDA would have the right to review the tenders and seek clarifications where necessary. The response from the tender(s) shall only be in writing but no change in the substance of the tender would be permitted.

11. The petitioner's case in the writ petition is that although tenders were notified to be opened on 1st May, 2006 at 3.00 P.M. but the respondent No. 1 did not open the tender on 1st May, 2006 at 3.00 P.M. and informed that date of opening of the tenders shall be communicated to the tenderers. The petitioner pleads that respondent No. 1 did not inform the petitioner any date for opening of tender. The technical bid of the petitioner was evaluated by a Committee with regard to which the petitioner was never informed. An expert was asked for by the Chief Executive Officer from the U.P. Industrial Consultants Limited, which according to the materials brought on the record was informed only on 15th May, 2006 to nominate an expert. On 22nd May, 2006 the Tender Evaluation Committee including the expert of the U.P. Industrial Consultants Limited completed the entire exercise and rejected the petitioner's technical bid on the ground of non fulfilment of the qualification. The petitioner was not communicated any reason for rejection of his technical bid. The petitioner's financial bid was more than 500 crores to the bid given by respondent No. 2, the offer of the petitioner being 2100 crores and whereas Unitech-respondent No. 2 has offered Rs. 1582.84 crores and respondent No. 3 offered only 1401.48 crores. The financial bid of the petitioner was not even considered, which could have brought more revenue to respondent No. 1. The entire exercise has been done by respondent No. 1 to somehow reject the technical bid of the petitioner to award the contract in favour of respondent No. 2 violating all norms governing the rule of law. The decision of respondent No. 1 is illegal, unreasonable and arbitrary taken on extraneous considerations. The exclusion of the petitioner from participating in Stage-II of evaluation is contrary to public interest and is deliberate act to facilitate the allotment of land to respondent No. 2. It was open for respondent No. 2 to ask for clarification as per Clause 7.9.3 but without seeking any clarification giving opportunity to the petitioner to explain its tender, the petitioner's technical bid has been rejected on technical ground.

12. The respondents No. 1 and 2 both have filed counter affidavits and contested the writ petition. The case of respondent No. 1 in the counter affidavit is that petitioner do not qualify conditions 3.3.1, 3.3.2, 3.3.3 it being not fulfilling the requirement of having developed or constructed minimum 300 acres in real estate in the last three years, i.e., 2002-03, 2003-04 and 2004-05. It did not had average turnover of minimum Rs. 500 crores during the above last three years

nor its lead member (Yunus Zia) had minimum average turnover of Rs. 200 crores during last three years in the real estate. It did not have minimum net worth of Rs. 250 crores nor its lead member had minimum net worth of Rs. 150 crores. The Tender Evaluation Committee after evaluating all the tenders submitted its report on 22.5.2006 giving detail reasons for not finding the petitioner qualified. The report of the Tender Evaluation Committee has been brought on the record as Annexure CA-1 to the counter affidavit. Both respondents No. 2 and 3 were invited for opening of the financial bid on 23rd May, 2006. The NOIDA, according to the conditions, had reserved right to reject or accept any tender and it had no obligation to inform the applicants the reason for rejection. The respondent No. 2 also supported the action of respondent No. 1 in awarding the contract to respondent No. 2. Rejoinder affidavits have also been filed by the petitioner to the counter affidavits filed by respondents No. 1 and 2. An additional affidavit has also been filed by the petitioner bringing certain documents and materials on record.

13. Sri C.S. Vaidyanathan, learned Senior Advocate, appearing for the petitioner, contended that the decision of respondent No. 1 to the effect that petitioner is not qualified is incorrect and has been taken only with a view to eliminate the petitioner from competition to facilitate the award of contract in favour of respondent No. 2. He submits that petitioner fulfilled all the conditions required in the terms and conditions. The action of respondent No. 1 in awarding the contract to respondent No. 2 is against the public interest the petitioner bid being astronomically higher to the bid given by respondent No. 2. The minimum requirement of developed area was only 300 acres in the real estate whereas the area developed by the petitioner was 750 acres. In so far as the average turnover of consortium is concerned, the average turnover was Rs. 689.25 crores whereas the average turnover of the lead member, Mr. Yunus Zia, was Rs. 254.05 crores. The net worth of consortium comes to Rs. 650.80 crores and the net worth of Mr. Yunus Zia, the lead member, was more than Rs. 456.99 crores. The certificates submitted by the Chartered Accountant have not been accepted without there being any valid reason. The tender process had not been carried out in a fair, transparent and reasonable manner but is actuated by malafides and corruption. The respondent No. 1 did not open the technical bids on the date specified but the same was opened in absolute secrecy contrary to the terms of tender. Had the petitioner called for clarification as provided in Clause 7.9.3, the petitioner could have very well explained all the doubts and misrepresentations of respondent No. 1. Clause 7.9.3 vested in the respondent No. 1 power coupled with a duty and failure to discharge the said duty has vitiated the entire evaluation process. The terms and conditions have to be construed from a stand point of a prudent businessman with commercial point of view. At the stage of consideration of technical bid the Tender Evaluation Committee has no role to play. The Tender Evaluation Committee was to come into picture only at Stage-II, i.e., for evaluation of the financial bid. The decision making process has been completely discriminatory and arbitrary and has been actuated by malafides. It is

a case of constantly shifting the goal post with the sole intent of benefiting certain parties while excluding the petitioner, which resulted in great loss to public interest as well as breach of petitioner's right. Learned Counsel for the petitioner has also placed reliance on judgments of the Apex Court in *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, *Union of India and others Vs. Hindustan Development Corpn. and others*, 1994(6) S.C.C. 651 *Tata Cellular v. Union of India* *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, and *Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another*,

14. Sri R. Ramamoorthy, learned Senior Advocate, appearing for respondent No. 1, contended that petitioner being not qualified, its technical bid has rightly been rejected. There is no condition in the tender document that it be opened in presence of tenderers. The NOIDA was fully competent to constitute Tender Evaluation Committee for evaluating the tender. It is not demonstrated that opinion of the Committee is wrong or perverse which may warrant any interference by this Court under Article 226. There are no allegation of favouritism. The terms and conditions permitted a consortium to be an applicant. The members of the consortium as disclosed by the petitioner itself consisted only Yunus Zia as individual with 21% equity, I.B.C. Knowledge Park Private Limited with 20% equity, U.T.L Infrastructure Limited with 5% equity, Purvankar Projects Limited with 34% equity, United Telecom Limited with 10% equity and United Telelink Bangalore with 10% equity but while giving the details of area developed by petitioner, the area developed/contracted by Yunus Zia and family having more than 23 sundry, firms and company have been given. The area developed by members of consortium could alone be considered. Yunus Zia and family is not member of consortium and the area developed by Yunus Zia and family and 23 firms and companies cannot be taken into consideration. The average turnover of consortium is less than 500 crores. In turnover of lead member Yunus Zia, the turn over of 19 other entities have also been mentioned, which are not the member of consortium and even 23 units whose turnover have been mentioned, the petitioner has limited share and taking into consideration the limited share of the petitioner, the average turnover of lead member, Yunus Zia, comes less than 200 crores. Again the requirement of net worth is not being fulfilled. The real estate, does not include receiving rent whereas the petitioner has shown large extent of income from rent only. Al Ameen Medical College is only a Trust. The turnover and net worth of Yunus Zia and family was not required to be taken rather turnover of only Yunus Zia individual was required to be taken. Learned Counsel for the respondents has placed reliance on judgments of the Apex Court in *J.T. 2006 (10) 424 Reliance Airport Developers Pvt. Ltd. v. Airport Authority of India and Ors. Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others*,

15. Learned Counsel for the respondent No. 2 contended that petitioner being not qualified its technical bid has rightly been rejected and there is no error in

the decision which requires any interference by this Court under Article 226 of the Constitution. The judicial review on a very limited ground is permissible. There being two qualified tenders in eligibility zone, i.e., respondents No. 2 and 3, no error has been committed in accepting the tender of respondent No. 2. The petitioner immediately took back deposit of Rs. 25 crores. The only experience of Yunus Zia individual could have been looked into. The other bidders have not challenged the action of the respondents. Even if it is alleged that there are some procedural aberration, it is not sufficient to set-aside the action. Reliance has been placed on judgments of the Apex Court in : 2006(14)SCALE224Jagdish Mandal v. State of Orissa and Ors. and on a Division Bench judgment of this Court in Shree Balaji Coal Linkers Vs. Bharat Sanchar Nigam Ltd. and Others,

16. We have considered the submissions of counsel for the parties and perused the record.

17. The submissions raised by counsel for the petitioner, challenging the action of respondent No. 1 are basically on two grounds. Firstly attacking the decision of respondent No. 1 holding the petitioner not fulfilling the eligibility qualification and secondly challenging the procedure adopted by respondent No. 1 in awarding the contract.

18. As noticed above, the eligibility/pre-qualification conditions relevant in the present case are Clauses 3.3.1, 3.3.2 and 3.3.3. The first eligibility condition is that the applicant should have developed or constructed 300 acres in real estate in last three years. It is useful to refer the comments given by the Committee regarding eligibility of having developed or constructed 300 acres in real estate. Following is the extract of the report of the Committee:

Summary Sheet for Yunus Zia Eligibility/Pre-qualifi cation									
Conditions ----- ----- ----- ----- -----									
----- ----- Clause Condition Complied Remarks Refer No Yes(Y)/									
Not Page Applicable No./File (NA) No. ----- -----									
----- ----- ----- ----- ----- 3.3 Applicant/Tenderer									
with the following three conditions will be eligible ----- -									
----- ----- ----- ----- ----- 3.3.1									
Applicant/Tenderer 1.The area exclusively developed/ 150 should have									
developed or constructed by Mr. Yunus Zia, one of constructed 300 acres									
the relevant member has not been in real estate in last shown separately in									
the Tender Form three years i.e.2002-03, (in Annexure3) 2003-04,									
2004-05 any where in India ----- ----- ----- ---									
----- ----- ----- 2.The total area developed/									
constructed given in Annexure 3 is 715 acres, which 150 includes the									
area developed/constructed by Mr. Yunus Zia and family (having									
more than 23 firms and companies) Mr. Yunus Zia and family is not									
the relevant member of the consortium. Mr. Yunus Zia alone is the									
relevant member and the land member of the consortium. So the									

total area developed/ | | | |constructed by Mr. Yunus Zia and | | | |family cannot be taken into account. He| | | |has defined "YUNUS ZIA" separately | | | |beyond the consortium agreement, | | | |which is against the Consortium | | | |agreement. | | | | | |3.The area developed / constructed by | 150 | | |150 Mr. Yunus Zia & his family has been| | | |shown in Annexure 3 which also includes| | | |the area developed/constructed by IBC | | | |Knowledge Park Pvt. Ltd.(13 Acres), | | | |which has also been separately shown as| | | |a member of the consortium having 20% | | | |equity stake in the consortium. | | | | | |4.The area developed and constructed by| 149 | | |another member, M/s Purvankara Projects| | | |Ltd. having 34% of equity stake in the | | | |consortium is 211.91 acres, out of | | | |which only 25.61 acres is developed/ | | | |constructed and the remaining area of | | | |186.30 acres are on going projects. | | | | | |Hence, M/s. Purvankara Projects Ltd. | | | |is also not complying with the stipula-| | | |ted condition relating to development/ | | | |construction of minimum area in real | | | |estate. | | | | | |5.Area developed/constructed by other | | | |remaining relevant members have not | | | |been given by the consortium. | | | | | |6.The applicant is also required to | 149 & | | |furnish certificates from municipal/ | 150 | | |other government authority/client in | | | |support of area developed/constructed | | | |by the members of the consortium as per| | | |note 3 of annexure 3 which has not been| | | |furnished. However, CA certificate has | | | |been attached. | | | |

-----+-----+-----+-----
+----- 3.3.2 |1.An average turnover of| No |1. The turnover of the consortium for | 147 |minimum Rs. 500 (Five | |relevant three years comes to | |hundred) crores during | |Rs. 1430.15 crores and the average | |the last three years | |turnover comes to 476.72 Crores which | |i.e. 2002-03, 2003-04 | |is less than the minimum of Rs. 500 | |and 2004-05 out of which| |crores. | | | |Refer Annexure-4 (page 147) & CA | | |Certificate page 74. | | | | | |Yunus Zia has defined "YUNUS ZIA" | | |separately beyond the consortium. | | |agreement, which is against the | | |Consortium agreement. | -----

----- 19. As noticed above, the petitioner's tender is a consortium consisting of Yunus Zia and five others. The members of consortium as disclosed in the tender of the petitioner are as follows:

Name of Members Proportion of equity Role

1. Mr. Yunus Zia 21 Lead Member
2. IBC Knowledge Park Pvt. Ltd. 20 Member
3. UTL Infrastructure Limited 5 Member
4. Purvankara Projects Limiteds 34 Member
5. UTL Telecom Limited 10 Member
6. UTL Telelinks Limited 10 Member

Total ----- 100 -----

20. The details of experience in development/management of real estate has been given by the petitioner in Annexure-3 to the tender. For ready reference summary of technical capability as well as Annexure-3 is as follows:

S No.	Name of the Tenderer	Name of the Project	Type of Project	Super Built Area	Cost of Project	Month of Completion	Nature of Project
1.	Yunus Zia & family	Silver Springs, Bangalore	LD only	56	11.2	Apr-02	Developer
2.	Yunus Zia & family	Ali Estate, Yelahanka	LD only	250	37.5	Jun-03	Developer
3.	Yunus Zia & family	Legend City, Bangalore	LD only	76	17	Jun-03	Developer
4.	Yunus Zia & family	Binny Gardens, Bangalore	LD only	80	19	Apr-04	builder
5.	Yunus Zia & family	Platinum City, Bangalore	LDAC	36	68	Jun-04	builder
6.	Yunus Zia & family	Al Ameen Medical College, MC	MC	200	100	Jul-04	builder
7.	Yunus Zia & family	Presidency, New Delhi	CC	4	60	Dec-04	builder
8.	IBCKP	Knowledge Park, Bangalore	CC	13	300	Mar-06	builder

- Yunus Zia-includes the following companies/partnerships and proprietorship wholly owned by him and his family - IBC Knowledge Park Pvt. Ltd., Platinum City, Diamond District, Golden Enclave, Warthyhutti Estates, Ossoor Estates, Matsagara Coffee Estates, IBC Raxidi Estates, IBC Adaravalli Estates, Varma Industrials, Ramashree Towers, Century Galaxy Developers, Sangam Enterprises, Gold View Homes, The Presidency, Sheriff Towers, The Estate. Rich Homes, Century Park, India Builders Corporation, Ziaulla Sheriff, Salima Sheriff, Sharmeen Yunus, etc.; ...

21. The reason by the Committee is that the experience of Yunus Zia or members of Consortium should have been looked into. The experience of Yunus Zia individual has not been given. The experience of another member of consortium, M/s Purvankara Projects Limited is 211.91 acres out of which only 25.61 acres have been developed/constructed and remaining area is on going projects. It is stated by the Committee that Yunus Zia and family is not the relevant members of the consortium. In additional affidavit filed by the petitioner details of various projects undertaken during the period April, 2002 to March, 2005 have been given in paragraph 3(ii). From a perusal of the details, it is clear that the projects which have been included were projects which were undertaken

not by Yunus Zia as individual but Yunus Zia as Managing Partner of various Company, Firms, Charitable Trust etc. For example, the biggest area developed is one Ali Estate i.e., 250 acres, which according to paragraph 3(ii) is developed by India Builders Corporation (IBC). which is a company of which the petitioner is shown to be Managing Partner having 25% interest. Another entity, which claimed to have been developed 200 acres land, is Al Ameen Medical College, which is accomplished by Al Ameen Charitable Fund Trust of which Yunus Zia claims to be Secretary. The terms and conditions of the tender permitted application by any person, trust, firm, registered cooperative society, private limited company, public limited company including a consortium. An individual can very well be member of a consortium as Yunus Zia in the present case being lead member. Clause 4.3.1 provides that member of the consortium with equity stake of 10% or above will be considered as relevant member and technical and financial capabilities of relevant member shall be considered relevant for evaluation. Thus any member of consortium with equity stake of 10% can be considered for evaluation of technical and financial capability. All those entities, which are shown in Annexure-3 to the tender are different from those which are members of consortium. The petitioner has tried to explain this by saying that Yunus Zia as individual includes various companies and partnership as mentioned in Annexure-3. A individual, a firm, a company etc. all are distinct entities and the terms and conditions of the tender clearly contemplates any of them to be member of the consortium. The submission of counsel for the petitioner is that Yunus Zia, individual is behind all the companies and firm, hence the area developed by those entities as mentioned in Annexure-3 were required to be considered relevant for technical evaluation.

22. Learned Counsel for the petitioner contended that this Court should pierce the veil to find out the real person behind all the entities. He submits that Yunus Zia being behind all those entities, the land developed by those entities are relevant. Reliance has been placed by counsel for the petitioner on the judgment of the Apex Court in New Horizons Limited's case (supra). In the said case the tender was invited for awarding contract for providing and publishing telephone directory. The New Horizons Limited and few others submitted their tender. The New Horizons Limited joined Thomson Press (India) Limited, Living Media (India) Limited, World Media Limited and Integrated Information Private Limited, a wholly owned wherein 60% of share was held by Sri Arun Puri. The tender of New Horizons Limited was rejected. A writ petition was filed in the High Court challenging the decision rejecting the tender of New Horizons Limited. The High Court while dismissing the writ petition observed that experience of share holders cannot be experience of the Company. It is relevant to quote the following observations of the Apex Court made in paragraph 14 while noticing the judgment of the High Court:

14. ...The High Court has held that the experience of a shareholder cannot be the experience of the company nor is NHL the agent of its shareholders. Referring to the principle of lifting of corporate veil in modern company law the

High Court has observed that so far as NHL is concerned, it cannot invoke the said principle either as a ground of attack or as a ground of defence. In the view of the High Court it could not be said that the authorities had failed in their duty to look behind the facade of corporateness of NHL and that it was none of their duty and they rightly examined the experience, etc. of NHL and came to the conclusion that it did not satisfy the eligibility conditions and that there was no error in the said approach of the authorities. Dealing with the contention that NHL is a joint venture the High Court has observed that a joint venture is a one-time grouping of two or more persons in a business undertaking and unlike a partnership, a joint venture does not entail a continuing relationship among the parties and on that view the High Court has held that there is no joint venture as such and there is only a certain amount of equity participation by a foreign company in NHL....

23. The Apex Court observed that what has to be seen is whether the refusal by the Tender Evaluation Committee to consider the tender of NHL on the ground that the condition regarding experience as laid down in the tender notice was not fulfilled can be regarded as arbitrary and unreasonable. Considering the expression "joint venture" the Apex Court held that it connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. The Apex Court concluded following in paragraph 26:

26. Once it is held that NHL is a joint venture, as claimed by it in the tender, the experience of its various constituents namely, TPI, LMI and WML as well as IIPL had to be taken into consideration if the Tender Evaluation Committee had adopted the approach of a prudent businessman.

24. The Apex Court in the said judgment held that experience of joint ventures, i.e., Thomson Press (India) Limited (TPI), Living Media (India) Limited (LML), Word Media Limited (WML) and Integrated Information Pvt. Ltd. (IIPL) had to be taken into consideration. The Apex Court ultimately found that New Horizons Limited fulfilled the eligibility and allowed the claim of the writ petition in so far as the award of contract for 1995 was concerned. In the present case the experience of members of consortium is not being excluded. The experience, which are said to be excluded, are experience of those entities, which are not the member of consortium. For example, the India Builder Corporation which has developed 250 acres of land is a Corporation of which Yunus Zia is Managing Partner with 25% interest. The lead member has been described in the tender as Yunus Zia, i.e., individual. Yunus Zia, an individual cannot be equated with Yunus Zia and family or Yunus Zia as representing various firms, companies, corporation and trusts. There was no prohibition from including those trusts, companies and corporation in which Yunus Zia was a partner, Managing Director to be member of consortium.

25. Now comes the next eligibility clause, i.e., Clause 3.3.2. It is useful to refer

to the reasons of the Committee with regard to the above eligibility, which are as follows:

 --- |Sheet for Eligibility/Pre-| | Yunus Zia | |qualification Conditions | | | -----
 +-----+-----+-----+-----+
 +----- Clause| Condition |Complied | Remarks |Refer No | |Yes(Y)/Not | |
 Page | |Applicable | |No./File | | (NA) | | No. -----+-----+-----
 +-----+-----+-----+-----+----- 3.32 |I. An average
 turnover of | No |1. The turnover of the consortium for | 147 |minimum Rs. 500
 (Five | |relevant three years comes to | |hundred) crores during the| |Rs.
 1430.14 crores and the average | |last three years i.e. | |turnover comes to Rs.
 476.72 Crores | |2002-03, 2003-04, 2004-05 | |which is less than the minimum
 of | |out of which | |Rs. 500 crores. | -----+-----+-----
 +-----+-----+-----+-----+----- |II. at least lead member | NO |1.
 The turnover of Mr. Yunus Zia | |should have minimum | |mentioned in the
 Chartered Accountants| |average turnover of Rs. | |Certificate for the last given
 3 years| |200 crores during the last| |is Rs. 112.03 crores and the average | |
 three years in reale state| |turnover is Rs. 37.34crores which is | | |less than
 the required turnover of | | |Rs. 200 crores in condition 3.3.2. | | | | | | |
 2.The turnover of Mr. Yunus Zia as per| | |the CA certificate for the given last
 | | |d3 years is Rs. 112.03 crores, whereas| | |as per the copies of Income
 Tax Return| | |furnished the turnover for the given | | |three years is Rs.
 55.83 crores only. | | | | | | |Note. It is not clear that the whether| | |the
 turnover mentioned in the CA cert-| | |ificate is form real estate or not. | | | |
 | | | |For YZ (Lead Member): | | | |(In Rs. Crores) | | | |2004-05 - 73.96 Crore
 | | | |2003-04 - 18.53 Crore | | | |2002-03 - 19.54 Crore | | | |Total -112.03
 crores | | | |Average-Rs. 37.34 crores | | | |Documents: | 74 | | |CA
 certificate for attached\\- | 147 | | |Annexure 4 attached | -----
 ----- 26. The turnover
 of the consortium for the relevant three years comes to Rs. 1430.15 crores but
 average turnover comes to Rs. 476.72, which is less than Rs. 500 crores. Clause
 3.3.2 further provides that lead member should have minimum average turnover
 of Rs. 200 crores during the last three years. For meeting the said, certificate of
 turnover has been filed at page 68 of the writ petition by the petitioner where
 average of three years is shown as Rs. 254.05 crores. The document at page 68
 of the writ petition indicates that the said turnover is again turnover of various
 different entities, which are not the member of consortium (except IBC
 Knowledge Park). The turnover of the aforesaid entities are claimed to be wholly
 owned by Yunus Zia and family hence the said turnover is claimed to be turnover
 of lead member. At page 181 6f the additional affidavit filed by the petitioner the
 said figures have been explained by mentioning the status of the said entities
 and the share of Yunus Zia. It is relevant to extract the chart of turnover of
 Yunus Zia as mentioned at page 181 of the additional affidavit:

No	Mr Yunus Zia	PAN	Status	Turnover in crores	Name			
						31.03.2005	31.3.2004	31.3.2003
	Mr. Yunus's				Share			
1.	Ossoor Estates Ltd	AACF10135J	Public LC					
3.04	2.75	2.70	16.26					
2.	Warthyhully Estates	AAACW1666R	Public LC					
2.55	2.44	16.25			Ltd.			
3.	Raxidi Estates	AADF15846D	Partnership					
0.36	0.02	20.00						
4.	Matsagara Estates	AADFC9279M	Partnership					
0.61	0.76							
5.	Adarvalli Estates	AACF10137L	Partnership					
0.06	17.00							
6.	Century Galaxy	AAACC9836F	Public LC					
11.70	12.61	7.99	40.00		Developers Ltd.			
7.	Verma Industrials	AAACV4976F	Public LC					
1.05	1.46	2.35	50.00		Ltd.			
8.	Ramashree Towers	AABCR1746A	Private LC					
0.54	0.47	0.34	50.00		Pvt. Ltd.			
9.	Silver Springs	JAAFS7576B	Partnership					
0.04	0.04	0.04						
33.33								
10.	Sheriff Construct-	AACFS2856C	Partnership					
4.94	2.02	2.40	32.00		ion			
11.	Sangam Enterprises	AAPF7532N	Partnership					
0.05	0.06	10.01						
60.00								
12.	Platinum City	AAFFP0063M	Partnership					
2.89	1.74	1.96	48.00					
13.	India Builders	AAAF13406J	Partnership					
11.71	20.43	118.50	50.00		Corpn.			
14.	Golf View Homes	AABCG4059M	Private LC					
117.42	15.49							
14.77	40.00				Pvt.Ltd.			
15.	Diamond Disuict	AAAFD3745P	Partnership					
2.26	3.82	42.00						
16.	Century Park	AABFC0284H	Partnership					
0.12	0.33	0.16						
76.00								
17.	The Senate	AAAF4001A	Partnership					
45.91	23.40	2.71	50.00					
18.	Yunus Zia	AAAPZ3852F	Proprietor					
73.96	18.53	19.54	100.00					
19.	Ziaulla Sheriff	ABXPS2695R	Proprietor					
3.59	1.81	2.73						
20.	IBC Knowledge Park	AABCI0816L	Private LC					
111.34	103.35	7.00	90.00		Pvt. Ltd.			
Total								
394.88	211.64	195.64						
Average								
267.39								

----- 27. A perusal of the said chart clearly indicate that some of the entities are public limited company, some are private limited company, some are partnership firm and some are proprietorship firm. The said entities include Yunus Zia as individual as in Item Nome 18 and apart from Yunus Zia individual with reagrad to other specific share has been assigned. We inquired as to whether calculating the turnover on the basis of share of Yunus Zia in each entity whether the average turnover of Rs. 200 crores with regard to lead member is achieved. The answer came in negative. According to specified share in different entities the average figure of last three years shall be much less than 200 crores.

28. The Tender Evaluation Committee and the respondent No. 1 on above reasons rejected the technical bid of the petitioner. The question to be answered is as to whether the said decision is arbitrary and what is the extend of judicial review in the matter of awarding contract.

29. Before we proceed further, it is relevant to have a look in the parameters of judicial review of such decision of the State or its instrumentalities. The Apex Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, laid down following:

12. Where the government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the government in the matter of grant of largesse must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the government would be liable to be struck down, unless it can be shown by the government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

30. The three Judges Bench in Tata Cellular's case (supra) taking into consideration the earlier pronouncements of the Apex Court laid down the parameters on which judicial review is permissible. Following was laid down by the Apex Court in paragraphs 70, 74 and 94:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There

can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

74. Judicial review is concerned with reviewing not to merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

94. The principles deducible from the the above are:

- (1) The modern trend points to judicial restrain 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 ior an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only 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 administrative burden on the administration and lead to increased and unbudgeted the expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

2. Whether the selection is vitiated by arbitrariness?

31. The same principles were reiterated by the Apex Court in Master Marine's case (supra). Following was laid down in paragraphs 11 and 12 of the said judgment:

11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three Judge Bench in Tata Cellular v. Union of India. It was observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review.

Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (See para 85 of the Report, SCC para 70.)

12. After an exhaustive consideration of large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. 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. The Government must have freedom of contract. In other words, 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 principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)

32. The Apex Court while considering the scope of judicial review on the award of contract in Reliance Airport Developers" case (supra) laid down following in paragraph 7:

7. Appellant has contended that EC has given marks on the basis of RFP parameters. According to it, the parameters were fixed by the GOI or the EC. The question is not of allotting marks, the real issue is whether right parameters have been applied. It has been emphasized that the other Committees consisted of mainly bureaucrats or persons with inadequate technical knowledge, only the EC was an expert body and, therefore, its view had to be given primacy.

33. The Apex Court in the same judgment cautioned that if there are two views possible and one view has been taken, the Court should not proceed to review the decision in absence of any case of mala fide. Following was laid down in paragraph 81:

81. While exercising power of judicial review courts should not proceed where if two views are possible and one view has been taken. In such a case, in the absence of mala fide taking one of the views cannot be a ground for judicial review.....

34. From the pronouncements of the Apex Court, as noticed above, it is well

settled that the decision of the Government/authorities even in case of award of contract are not beyond the scope of judicial review but the judicial review shall confine only in limited cases, as observed above. Furthermore, while examining the decision the High Court shall not substitute its own view in a case where two views are possible and one has been taken by the administrative authority. However, any arbitrary decision taken by unfair procedure can very well be set-aside by the Court by exercising the power of judicial review. In the present case from the reasons as given by the Tender Evaluation Committee, the opinion has been formed on the premise that the entities whose experience of construction/development and turnover are not to be included are those entities who are not the members of consortium. As noticed above, there was no prohibition in including any of the entities whose experience or turnover is being relied by the petitioner to be member of consortium and thereafter to properly include and relied the experience and turnover. As notice above, the consortium includes Yunus Zia as a natural person i.e., an individual. The net worth of an individual may include his financial capacity as individual including his extent of share in a firm, company or any other entity.

35. As observed above, the average turnover of lead member, i.e., Yunus Zia even taking into consideration all his shares in respective entities, which are not the member of consortium is less than 200 crores average per annum. In view of the foregoing discussions, the decision of respondent No. 1 rejecting the technical bid on the ground that petitioner did not fulfil the qualification, as noticed above, cannot be said to be arbitrary, perverse or irrelevant.

36. Now comes the second ground of attack of Sri Vaidyanathan to the decision of respondent No. 1. At the very outset learned Counsel for the petitioner contended that the respondents have not disclosed or communicated any reason to the petitioner for rejection of the technical bid, hence the decision is liable to be set-aside on this ground alone.. Reliance was placed upon the judgment of the Apex Court in *Star Enterprises*" case (supra). The Apex Court in the said judgment observed that availability of reasons for actions on the record assures credibility to the action. The reasons in support of such action provides an opportunity for an objective review. The Apex Court in the said judgment observed that the stand of the authority should be made available and ordinarily the same should be communicated to the concerned department. Following was laid down in paragraph 10 of the said judgment-

10. In recent times, judicial review of administrative action has become expansive and is becoming, wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including case of rejection of highest offers. That very often

involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr. Dwivedi, therefore, commends itself to our acceptance, namely that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so.

37. There cannot be any denial that there cannot be any exclusion of a tenderer in the process without there being any valid reason. There has to be valid reason for exclusion of a tenderer from the process. In the present case only communication to the petitioner as disclosed on the record is a letter dated 25th May, 2006 sent by NOIDA to the petitioner that his bid failed to fulfil the eligibility criteria of technical bid. The said is not a communication of any reason but only informing the decision. The reasons have been brought on the record along with the counter affidavit, along with which the report of the Technical Foundation Committee dated 22nd May, 2006 has been filed. Thus when called upon, the respondent have disclosed the reasons on the basis of which the bid of the petitioner was rejected. Although Clause 7.8.2 reserves the right of Chief Executive Officer to reject any tender including the highest tender without assigning any reason but the valid reason has to be there for any action of the authority. The reasons having come on the record, we are not inclined to quash the decision of the espondents only on the ground that reason was not communicated. The judgment of the Apex Court in *Star Enterprises*" case (supra) laid down that reasons has to be there and they should be ordinarily communicated but from the above no such proposition can be carved out that non communication of the reason is always fatal.

38. The next submission of Sri Vaidyanathan is that at the stage of consideration of technical bid the Tender Evaluation Committee has no role to play. The Tender Evaluation Committee was to come into picture only at Stage-II, i.e., for evaluation of the financial bid. The relevant clauses relied by counsel for the petitioner is Clause 7.9.1 and 7.9.2. Although it is true that under Clause 7.9.2 the financial tender is to be opened by the Tender Evaluation Committee appointed by the Chief Executive Officer, NOIDA, from this the submission advance is that in Stage-I, i.e., at the stage of opening of technical bid, the Tender Evaluation Committee does not come into picture. In the present case the technical bid also has been evaluated by Tender Evaluation, Committee as is clear from the report dated 22nd May, 2006. One more relevant clause in this context to be noted is Clause 7.8.1. Clause 7.8.1 provides "the tender shall be opened by the Committee constituted by the Chief Executive Officer, NOIDA". Clause 7.8.1, thus, empowers the Chief Executive Officer, NOIDA to constitute a committee for opening the tender. Clause 7.8.1 does not qualify tenders as only

financial tender. Clause 7.8.1 has to be read along with Clauses 7.9.1 and 7.9.2. From harmonious reading of these clauses, it is clear that although financial bids have been specifically provided to be opened by the Tender Evaluation Committee in Clause 7.9.2 but there is no prohibition in constituting a Tender Evaluation committee for evaluation of even technical bids. Clause 7.8.1 is a general enabling power given to the Chief Executive Officer to constitute a committee to open the tenders, which shall also encompass in it opening of technical tenders. Thus opening of technical bids by the Tender Evaluation Committee cannot be said to be in breach of any clause nor on this ground any fault can be found with the decision.

39. The submission on which the petitioner laid much emphasis is that although the tender notice itself provided that tender shall be opened on 1st May, 2006 at 3.00 P.M. but it was not opened at the appointed time, rather the petitioner was told that tenderers shall be informed. In paragraph 10(vi) of the writ petition, the petitioner has made specific pleading to the following effect:

10(vi). The technical tender was supposed to be opened on 1.5.2006 by 3 pm. Respondent No. 1 however did not open the tender and stated that the date for opening the tender shall be communicated to the tenderers by post.

40. It is relevant to note that in the counter affidavit filed by respondent No. 1 it has not been specifically stated as to what actually transpire at 3.00 P.M. on 1st May, 2006. It has not even been stated that any further date for opening the tender was informed. The Tender Evaluation Committee appointed by NOIDA for evaluation of the tender was constituted and completed only on 15th May, 2006 when a letter was written to the Managing Director of the U.P. Industrial Consultants for sending a technical expert, who was sent and the Tender Evaluation Committee evaluated the technical bids on 22.5.2006. It is not even claimed by the respondents that on 22nd May, 2006 the petitioner or other tenderers were informed. The case of respondent No. 1 is that after technical bids of respondents No. 2 and 3 were found eligible they were informed of opening of the financial bid on 23rd May, 2005 at 5 P.M. by the letter send on 22nd May, 2006.

41. Sri Sri K. Ramamoorthy, Senior Advocate, in reply to the submission contended that there is no condition in the tender which requires that tender should be open in presence of the tenderer. For appreciating the submission of the parties, it is relevant to refer Clause 2 and Clause 7.8 of the terms and conditions which are as follows:

2. Tendering Schedule

Activity Date, Time & Place

Sale of tender documents Forms Canara bank Sector-1, Vijaya Bank Sector-6 and Bank of Maharastra, Sector-19 NOIDA from 30.3.2006 to 0 29.4.2006 at NOIDA against cash payment of Rs.5,000/-

Submission of completed tender upto 2.00 P.M. on 1.5.2006 or before in the tender box kept in the Office of Officer document on Special " Duty, Residential Plot Department, Noida Administrative Office, Sector-6 NOIDA

Date of Opening of Technical Bids on 01.05.2006 at 3.00 P.M. at Indira Gandhi Kala Kendra, Sector-VI, NOIDA

Date of Opening of Financial Bids Will be communicated to applicants who qualify in the Technical Bid.

7.8 OPENDING OF TENDERS

7.8.1 The tenders shall be opened by the Committee constituted by the Chief Executive Officer, NOIDA.

7.8.2 The Chief Executive Officer or any other officer authorised by the Chief Executive Officer reserves the right to reject any tender/tender including the highest tender/tender without assigning any reason.

7.8.3. Incomplete tender will be summarily rejected.

7.8.4. No request for modification or withdrawal shall be entertained by NOIDA in respect of such tenders.

42. The tender schedule as noted in Clause 2 itself mentions the date of opening of technical bid as 1st May, 2006 at 3.00 P.M. With regard to date of opening of financial bid the said clause provides a stipulation that the said date be communicated to the applicants who qualifies in the technical bid. The date 1st May, 2006 itself being in the tender along with the time and place and there being stipulation of communication of the date of financial bid, the clause itself suggest that both technical bid and financial bid are stipulated to be opened in presence of tenderers. The opening of tenders in presence of the parties ensures transparency and healthy competition. The submission of counsel for the respondent No. 1 that it is not required under the tender notice to open the tender in presence of tenderers does not merit acceptance. In case the said submission of counsel for the respondent No. 1 is accepted tenderers shall be denied their participation in the process, which will not be in public interest, Thus we are satisfied that petitioner was not made aware of the date of opening of technical bid.

43. Now the question remains as to whether on such procedural aberration whether interference is called in the award of contract by respondent No. 1. The Apex Court in Jagdish Maridal's case (supra) has laid down that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. However, if the decision in award of contract is bonafide and is in public interest, the Court will not exercise the power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Following was laid down in paragraph 19 of the said judgment:

19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that "the court can say; "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached."

(ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

44. We have already held while considering the question of eligibility of the petitioner that petitioner according to the terms of tender was not eligible and the decision of the respondents rejecting the technical bid cannot be said to be arbitrary or unreasonable. This Court has permitted the petitioner to file an additional affidavit bringing on record the materials to substantiate its claim that it is fully eligible according to terms and conditions of the tender. We have looked into the additional affidavit and other documents brought on the record by the parties. After having examined the eligibility of the petitioner we are satisfied

that the decision of respondent No. 1 in rejecting the tender of the petitioner as having not fulfilling the eligibility conditions cannot be faulted. In view of the fact that we have not found the petitioner eligible, we are not satisfied on the ground that petitioner was not informed of the date of opening of the tender, the contract is liable to be set-aside. The petitioner is not entitled for the relief claimed in the writ petition.

45. The writ petition is dismissed. Parties shall bear their own costs.