

(2006) 01 GAU CK 0058

In the Gauhati High Court

Case No : Writ Appeal No (s.) 651 and 676 of 2005

Escorts Ltd.

APPELLANT

Vs

International Tractors Ltd. and Others

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2006 Guw 100 : (2007) 1 CTLJ 220 : (2006) 2 GLR 187 : (2006) 1 GLT 222

Hon'ble Judges : B. Sudershan Reddy, C.J.;B.P. Katakey, J

Bench : Division Bench

Advocate : A.K. Goswami, Md. Aslam, B.J. Talukdar, D. Senapati, G.N. Sahewalla, K.N. Choudhury and P. Bora, for the Appellant; A.K. Goswami, Md. Aslam, A.S. Choudhury, B.J. Talukdar, D. Senapati, G.N. Sahewalla, K.N. Choudhury, M. Dev and P. Bora, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, C.J.—These two appeals have been filed against the same judgment of the learned Single Judge by which the writ petition filed by the respondent/petitioner (hereinafter referred to as "the writ petitioner") was allowed.

2. The dispute centers round purchase of 460 numbers of pneumatic wheeled agricultural tractors of not less than 25 BHP with accessories and equipments.

Factual background:

3. The tractors intended to be purchased through national competitive bidding is meant for development of mechanisation in the agricultural sector in the State of Assam for which purpose the Government of Assam has made a fund provision on the budget plan for the financial year 2005-06. The costs of such tractors, which are to be provided to small and marginal farmers, are to be borne in the ratio of 50 : 50 by the State and the small and marginal farmers. The process for

the purchase of the tractors has been initiated by means of Invitation for Bids (IFB) dated 4.7.2005 issued by the Chief Engineer, Agriculture, Office of the Director of Agriculture, Assam on behalf of the Director of Agriculture, Assam who is purchaser. The bidding documents which contains terms and conditions including technical specifications are very comprehensive in nature. Section VI of the bid documents deals with the technical specifications of tractors and accessories. Section VI(a) deals with the qualification requirement to be read alongwith Clause 13.3(b) of IFB.

4. That, altogether five bids including the one by the writ petitioner and the 5th respondent were submitted pursuant to the Notice Inviting Bids. The total price for different varieties of tractors including accessories and the implements offered by the bidders are as follows:

1. Tractor & Farm Equipment Ltd., Chennai

(a) Modal MF 1035 DI (35 HP) Rs. 14,22,09,000 (b) Modal MF 241 DI (40 HP) Rs. 14,80,97,000 (c) Modal MF 245 DI (45 HP) Rs. 15,15,47,000

2. International Tractors Ltd., Sonalika

(a) Modal DI 730 111 (30 HP) Rs. 11,96,18,860 (b) Modal DI 35 (35 HP) Rs. 12,16,30,900 (c) Modal DI 740 (45 HP) Rs. 12,16,70,000.00

3. Escorts Ltd. Modal Escort 435 (35 HP) Rs. 14,04,93,200

4. Eicher Modal Eicher 368 (35 HP) Rs. 14,66,07,980

5. Punjab Tractors Ltd.

(a) Modal Swaraj 834 FE (31 HP) Rs. 14,69,47,000 (b) Modal Swaraj 735 FE (34 HP) Rs. 15,38,47,000.00

5. The Govt. of Assam vide notification dated 9.8.2005 constituted a Bid Evaluation Committee with the following members:

(1) Director of Agriculture, Assam - Chairman

(2) Jt. Secretary to the Govt of Assam, Agriculture Department - Member

(3) Representative of Finance Deptt. - Member

(4) Director, Farm Machinery Training & Testing Institute, - Member

Biswanath Chariali

(5) Sr. F.A. Agriculture Department, Dispur - Member

(6) Chief Engineer (Agril), Directorate of Agriculture, Assam - Member-Secretary

6. The Bid Evaluation Committee first of all discussed about the suitability of the tractors taking into account the Assam Agro Climatic Condition and had a threadbare discussion and after taking into account the expert view decided to

go for recommending to procure 35 HP tractors. The Committee accordingly scrutinized all the documents/bids of the 1st, 2nd and 3rd lowest bidders. The price offered by the writ petitioner, i.e., Rs. 12,16,30,900 (Rupees twelve crore sixteen lakh thirty thousand and nine hundred) only was found to be the lowest offer followed by the offer of the 5th respondent which quoted Rs. 14,04,93,200 (Rupees fourteen crore four lakh ninety three thousand and two hundred) only. The offer by another bidder, namely, Tractor & Farm Equipment Ltd., which had quoted Rs. 14,22,09,000.00 (Rupees fourteen crore twenty two lakh nine thousand) was found to be the 3rd best offer in terms of price. The Committee thereafter considered the technical suitability based on the necessary technical and performance data supplied by the bidders as well as expert technical opinion offered by Mr. H Singh, Director, Farm Machinery Training & Testing Institute and Mr. M.R. Patowary, Chief Engineer (Agril) i/c as well as Budni test reports of the 1st, 2nd and 3rd lowest bidders of tractors. The Committee took into consideration the reports which are considered to be more pertinent to judge the quality as well as the effectiveness of the tractors. Having made such detailed scrutiny the Committee found the offer made by the 5th respondent comparatively suitable than the other two bidders. The Committee found that although the writ petitioner quoted the lowest price but having regard to the technical suitability and the field performance data decided to recommend the 2nd and 3rd lowest bidders, namely, (i) Escorts Ltd. (5th respondent) and (ii) Tractor & Farm Equipment Ltd. (not a party to the proceeding). Thereafter on 19.9.2005 an offer for procurement of 503 tractors (against 460 numbers as mentioned in the NIT) with an amount of Rs. 15,36,26,260.00 (Rupees fifteen crore thirty six lakh twenty six thousand two hundred and sixty) was made to the 5th respondent. The decision taken to award the purchase order to the 5th respondent has been assailed in the writ petition. The decision making process has been challenged on various grounds.

7. It was mainly contended before the learned Single Judge that the award of contract in favour of 5th respondent has been made contrary to the provisions contained in Clause 29 and 30 of Section II of the bid documents inasmuch as the offer made by the writ petitioner is a lowest one and the State being the purchaser was obliged to award the contract in favour of the writ petitioner. It was contended that even the Bid Evaluation Committee found that the bid of the writ petitioner satisfies the technical specification stipulated u/s VI of the bid documents. The contention was, it was not open for the Bid Evaluation Committee as well as the purchaser to make any further assessment to determine the relative suitability of the offers made, once the lowest offer satisfied the technical requirements spelt out in the bid documents.

8. It was contended on behalf of the State that the tractors offered by the 5th respondent were relatively more suitable and technically sound. The purchaser was not bound to accept the offer of the writ petitioner merely because it was lowest. It was urged that the decision making process selecting tractors of superior quality is not vitiated in any manner whatsoever.

Finding by the learned Judge:

9. The learned Single Judge after an elaborate consideration of the matter noted that the price of each tractor offered by the writ petitioner is Rs. 2.99 lakh (approx.) whereas the price offered for each tractor by the 5th respondent is Rs. 3.46 lakh (approx.). The learned Judge found that the additional burden of Rs. 47,000.00 (Rupees forty seven thousand) half of which will fall on small and marginal farmers if possible, must be avoided. The technical superiority of the machines offered by the 5th respondent even if assumed must be balanced in such a manner so as to avoid the burden on small and marginal farmers. The learned Judge found - "between two sets of machinery, both of which satisfy the minimum requirements, the procurement of the still better of the two must always have a relation with the cost.... If resources are plenty, surely, out of the two which satisfies the minimum requirement the better is to be preferred provided such a course of action is indicated in the tender documents so that the intending bidders are not taken by surprise". The learned Judge accordingly quashed the decision to award the contract.

Submissions:

10. In these appeals Mr. K.N. Choudhury, learned, Additional Advocate General, Assam appearing on behalf of the State and Mr. G.N. Sahewalla, learned Senior Counsel appearing on behalf of the 5th respondent, inter alia, submitted that the decision making process in awarding the contract in favour of the 5th respondent is in no manner vitiated. The purchaser is not bound to accept the lowest offer. The bid offered by the 5th respondent alone is a technically responsive one which is one of the major factors taken into consideration while awarding the contract. The opinion of the expert body cannot be interfered by this Court in exercise of its judicial review jurisdiction. The decision in no manner runs contrary to any of the terms and conditions indicated in the bid documents. It was urged, the court was not hearing any appeal against the decision to award the purchase order to the 5th respondent and, therefore, ought not to have entered into the merits of the decision taken in the matter and that too on the advice of the expert committee constituted for the specific purpose.

11. Mr. A.S. Choudhury, learned senior counsel appearing for the writ petitioner, however, contended that the decision making process is totally vitiated. The decision, according to him, is totally arbitrary which was taken at the instance of the Minister to confer favouritism on the 5th respondent. It was urged that the bid documents submitted by the 5th respondent is totally defective as it failed to mention the total amount in correct figures. The Budni test report is totally against the 5th respondent which ought to have been taken into consideration. Even in terms of technical qualifications the writ petitioner is superior to the 5th respondent and, thus, viewed from any angle the decision to award the purchase order to the 5th respondent cannot be countenanced since it has resulted in causing loss to the State and as well as imposed additional burden on the small and marginal farmers. It was urged that this Court while judicially reviewing the

decision making process in the matter of awarding contract is always required to bear the public interest parameters in its mind and if the same is taken into consideration the decision making process is totally unsustainable.

12. We have given our anxious consideration to the rival submissions made during the course of hearing of these appeals and perused the entire materials and records available on record.

13. The short question that falls for our consideration in these appeals is whether the decision making process in awarding the purchase order to the 5th respondent by the State of Assam is vitiated in any manner whatsoever? Whether the learned Single Judge was justified in scrutinising the decision making process in such details?

Parameters of judicial review:

14. The parameters of judicial review in the matter of contractual powers of the Government bodies are too well settled. The principles of judicial review would apply to the exercise of contractual powers by the State and its instrumentalities in order to prevent arbitrariness or favouritism but the courts have always noted that there are inherent limitations in exercise of that power of judicial review. The option to refuse the lowest or any other tender is always available to the Government and its authorities. The right to choose cannot be considered to be an arbitrary power but the power cannot be exercised for any collateral purposes. The State and its authorities are bound to act fairly and the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. The action or the procedure adopted by the authorities while awarding contracts in respect of properties belonging to the State, can be judged and decided in the light of Article 14 of the Constitution. The executives does not have an absolute discretion in the matter of awarding contracts like private individuals/bodies. Certain precepts and principles have to be followed. There is no escape from the rigour of Article 14 of the Constitution of India; the public interest being the paramount consideration.

15. However, by way of judicial review the court is not expected to act as a court of appeal while examining the decision to award a contract and to record finding whether such decision could have been taken otherwise in the facts and circumstances of the case. Courts while exercising the power of judicial review, in respect of contracts entered into on behalf of the State, is concerned primarily as to whether there has been any infirmity in the "decision making process". By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court has inherent limitations on the scope of any such enquiry. "If the contract has been entered into, without ignoring the procedure, which can be said to be basic in nature and after all objective consideration of different options available taking into account the interest of the State and the public, this Court cannot act as an appellate authority by substituting its opinion in respect of selection made for

entering into such contract". These propositions have been stated and restated by the Apex Court in more than one decisions. See *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, *Tata Cellular v. Union of India* (1994) 6 SCC 651.

16. In *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, the Apex Court on consideration of its earlier decisions observed that-

19. ...different approach may be required in the cases of award of a contract by the Government for the purchase of items for its use. Judicial review would be permissible only on the established grounds for such review including mala fides, arbitrariness or unreasonableness of the *Wednesbury* variety.

It is observed-

9. The award of a contract whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:

- (1) the price at which the other side is willing to do the work;
- (2) whether the goods or services offered are of the requisite specifications;
- (3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;
- (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;
- (5) past experience of the tenderer and whether he has successfully completed similar work earlier;
- (6) time which will be taken to deliver the goods or services; and often;
- (7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would

be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work, thus, involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

17. In *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, the Supreme Court observed that-

...while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences 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 the standards of norms which are not arbitrary, irrational or irrelevant. It is, however, recognized that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere.

18. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, the Supreme Court observed-

7. ...The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny.... Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

19. In *Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another*, the principles stated by the Supreme Court in *Tata Cellular, Sterling Computers Ltd. and Air India Ltd.* (supra) have been reiterated and held that-

12. 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.

20. In *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, the Supreme Court while reiterating that the principles of judicial review apply to the exercise by a Government body of its contractual powers observed-

46...the inherent limitations on the scope of the inquiry are themselves a part of those principles. For instance, in a matter even as between the parties, there must be shown a public law element to the contractual decision before judicial review is invoked.

Question requiring our decision:

21. The question that arises for consideration in the present case is whether the materials placed before the court justify or require our interference?

22. While considering the issue we shall bear in mind that the courts have entertained applications for judicial review to determine whether a decision to enter into a contract violated any of the substantive principles of public law developed by the courts to control abuse of power. The principles deducible from the long catena of decisions are that the courts accepted that the substantive public law principles developed by the courts to control power - such as reasonableness, relevancy, purpose and procedural fairness - may be relevant to the exercise of contractual power by public authority. That every applicant in a judicial review proceeding in order to succeed has to show that the decision maker has acted illegally, irrationally or in a manner which is procedurally unfair. The central tenet of judicial review, however, is that it is just that review and not appeal. The court is, required to consider whether the authority acted *ultra vires* or made an error of law, or whether it took into account irrelevant considerations or failed to take into account relevant considerations, whether it acted in bad faith or with an improper motive. The court will not act as an appellate body, and will not over turn a decision simply because it disagrees with the decision.

23. That even a cursory look at the terms and conditions incorporated in the bid documents reveal that the purchaser had reserved to itself to determine to its satisfaction whether the bidder that is selected as having submitted the lowest evaluated responsive bid meets the criteria specified in IFB Clause 13.3(b) and is qualified to perform the contract satisfactorily for which purposes it is entitled to take into account the bidder's financial, technical and production capabilities. It will be based upon an examination of the documentary evidence of the bidder's qualification submitted by the bidder pursuant to IFB Clause 13 as well as such other information as the purchaser deems necessary and appropriate. All bids submitted are required to include the information as regards the details of

experience and past performance on equipments offered and on those of similar nature within the past three years and the details of current contracts in hand or other commitments as provided for under Clause 13.3(b) of the terms and conditions.

24. Section VI of the bid documents deals with technical specifications of tractors and accessories. The bidders were required to furnish specific information as regards specific fuel consumption with documentary support.

25. It is also required to notice that the purchaser reserved to itself the right to accept or reject any bid and was required to consider and determine to its satisfaction that the lowest evaluated bid meets the criteria specified in IFB Clause 13.3(b) and is qualified to perform the contract satisfactorily. It is, thus, clear that the lowest bid itself may not be enough for awarding the contract unless it is also evaluated to be a responsive bid that satisfactorily meets the other requirements, i.e., that the documentary evidence made available about the bidder's qualification to perform the contract to the purchaser's satisfaction.

26. The Bid Evaluation Committee consisting of experts considered the technical suitability based on the technical performance data supplied by the bidders as well as the expert technical opinion including Budni test report. This exercise was undertaken by the Expert Committee in order to determine as to which of the three lowest bidders is comparatively better suited for awarding the contract. The Committee had taken the technical suitability ; and field performance data into consideration and accordingly recommended the 2nd and 3rd lowest bidders, namely, (i) Escorts Ltd. (5th respondent in the writ petition) and (ii) Tractor & Farm Equipment Ltd. (not a party to the proceedings). The writ petitioner was nowhere in the picture.

27. This decision of the Expert Committee is not challenged on any ground of mala fides. The whole contention was that once the writ petitioner meets the requirements in accordance with the terms and conditions of the IFB and once technically qualified and its offer being the lowest ought to have been accepted without making any further relative assessment as to which tractor is technically more suitable and viable for the purposes of awarding the purchase order. We are unable to accept the said contention for the simple reason that none of the terms and conditions referred to hereinabove precludes the purchaser from selecting and choosing the best out of the available. Price may not always be the sole criteria for awarding a contract. The quality of the goods which are offered, which is assessed on the basis of the technical qualifications made available, play an important role in deciding to whom the contract should be awarded. It is well recognised that even a higher price for much better quality of work can be legitimately paid in order to secure proper performance and good quality. Taking such parameters into consideration in no manner would be detrimental to public interest. The Expert Committee took the decision after taking the relevant parameters into consideration. It is not open for this Court to substitute its own decision unless it is clearly established that the decision of the Expert Committee

is based on no material or it has taken irrelevant factors into consideration and had left relevant factors from consideration. Such is not the case set up by the writ petitioner. The principle of awarding contract to the lowest tenderer applies when all things are equal. The quality of the goods to be purchased cannot be sacrificed only for the purposes of awarding contract to the lowest bidder. The writ petitioner cannot succeed and insist for awarding the contract on the sole ground of being the lowest bidder.

Whether bid submitted by 5th respondent suffers from any material defects?

28. Now we shall examine the complaint of the writ petitioner that the bid documents submitted by the 5th respondent did not satisfy the terms and conditions of IFB. The whole contention is based on the observations made in the brief statement of bids for procurement wherein it is observed as against the offer made by the 5th respondent -"mathematical error have been found in totalling the bid price". There is no dispute whatsoever that the 5th respondent clearly stated in its bid as to the price of each individual tractor but committed an error in totalling the bid price. This, in our considered opinion, can never be considered to be fatal and on that ground the bid which is otherwise acceptable can not be thrown out. Clause 24.3 of the terms and conditions clearly enables the purchaser that it may waive any minor informality or non-conformity or irregularity in a bid which does not constitute a material deviation, provided such a waiver does not prejudice or affect the relative ranking of any bidder. A substantially responsive bid according to the terms and conditions is one which conforms to all the terms and conditions of bidding documents without material deviations. Deviations from or objections or reservations to critical provisions such as those concerning performance, security, warranty, force majeure, limitation of liability, applicable law and taxes and duties alone are considered to be a material deviation. The error in totalling resulting in arithmetical mistake can never be deemed to be a material deviation. The contention is not well founded.

29. Whether Budni (Expert Body) once and forever discredited the tractors manufactured by the 5th respondent and directed that they should not enter into the market until the defects pointed out by it were rectified, as contended by the learned senior counsel for the writ petitioner? We find no substance whatsoever in the submission. That a copy of the report, which is made available for perusal of the court, discloses that certain minor defects which are trivial in nature were pointed out by the Budni and required the 5th respondent to rectify the same. But there is neither any observation nor a direction restraining, or recommending that the tractors manufactured by the 5th respondent should not be allowed to enter into the market. The submission made in this regard is totally misconceived. That, at any rate, Budni report has been taken into consideration by the Expert Committee consisting of experts in the field and having considered all the reports including the Budni report it came to the conclusion that the tractors manufactured by the 5th respondent are technically superior and more

suitable to that of the tractors manufactured by the writ petitioner. That, at any rate, this accusation made against the 5th respondent is only an after thought inasmuch as there is no such pleading in the writ application. The allegations made in the short affidavit for the first time in the writ appeal are rebutted by the 5th respondent by filing a detailed affidavit in opposition thereto in which the facts are explained in details. In the affidavit, it is explained that the trivial defects pointed out by Budni were duly rectified by the 5th respondent and the suggestions made were carried out. It is further explained that the Government had already purchased number of tractors from the 5th respondent and there were no complaints as regards performance of the tractors supplied by the 5th respondent. There is nothing on record to suggest that the 5th respondent was prohibited from entering into the market until the defects pointed out by the Budni test report were rectified.

30. Both the counsel made an attempt to invite our attention, each asserting as to how tractors manufactured by them are superior to the other. Each tried to point out the defects of other. The submissions are to the effect as if we are required to select tractors and finalise the purchase order. Since such a course is impermissible in law, we do not propose to burden this judgment with the detailed submissions by both the counsel, each asserting superiority, over the other. Any attempt to heed to the submission and consider them on merits would amount to entering into merits of the decision and substituting our opinion for that of the expert body as well as the purchaser. We have restricted ourselves to judicially review the decision making process and accordingly decide the matter on the touchstone of well-recognised parameters.

Whether the action is mala fide?

31. It was urged that the Hon"ble Minister concerned was interested in awarding the contract to the 5th respondent. The Minister concerned is not impleaded as party respondent to the writ petition. It is not clear whether such an argument was at all advanced before the learned Single Judge when the writ petition was heard since there is no finding whatsoever recorded on this aspect of the matter. It was only during the course of hearing of the writ appeal the learned senior counsel suggested that the Hon"ble Minister had malus animus against the writ petitioner which was the operative cause of the award of the contract to the 5th respondent. The question before us is whether the action taken by the respondents includes any component of mala fides? and whether hostility against the writ petitioner were operational cause of the award of the contract to, the 5th respondent?

32. It is so well settled and we cannot overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, though such allegations demand proof of a high order of credibility. We find from a reading of the writ application that no foundational facts that are required to be stated are stated by the writ petitioner in the writ application. It would be appropriate to refer the manner in

which the petitioner raised the plea based upon which the action is sought to be challenged on the grounds of mala fide. They read:

14. That the petitioner states that the Scrutiny, Agriculture as well as the commission Agriculture had given their opinion in the file in favour of the lowest bidder and forwarded the file for approval to the Hon''ble Agricultural Minister. The Minister, Agriculture on receipt of the file gave instruction to the commissioner to settle/award the tender in favour of the respondent No. 5, Escorts Ltd. Therefore the Commissioner again send the file to Hon''ble Minister with his opinion that settlement of the contract in favour of the Second highest bidder ignoring the lowest bid will not be in accordance with Rules and procedure of Settlement of Government contract/tender and for necessary action. The Hon''ble Minister after receipt of the file from the commissioner for the second time reiterate his earlier stand and instructed the commission in the file to approve the bid of respondent No. 5, the Escorts Ltd. and for issuing notification, etc. Therefore, Commissioner by letter No. AGA 166/2005/PT-1/21 dated 15.9.2005 has approved the bid of respondent No. 5 and instructed the Director of Agriculture to go ahead with the required formalities as per approval of the Government. However, the Director of Agriculture has not yet issued the formal award order in favour of respondent No. 5 till date. But the said may be issued at any moment. The Director of Agriculture, it is learnt that has verbally instructed the Escorts Ltd. to get themselves prepared for the required formalities in this regard and they are found moving for such formalities at the speed. If the contract/award is finally made by the Director as per impugned approval of the Government, the petitioner will be prejudiced and serious injustices would be caused to him leading to multiplicity of suits. Therefore, the respondents authority are required to be restrained/prohibited from proceeding further and from settling the award in favour of respondent-No. 5 by passing appropriate order/Direction in the interest of justice.

17. That the petitioner submits that the respondent Nos. 3 and 4 over looking all the conditions laid down in the Bid document are contemplating to award the contract to the respondent No. 5 at Minister''s interference in a most illegal and arbitrary manner for extraneous consideration, depriving the legitimate claim and expectation of the petitioner who fulfilled all the conditions and instructions of the tender/bids and was the lowest successful bidder.

33. That a bare reading of the allegations suggests that it is the respondent Nos. 3 and 4 who have acted in a most illegal and arbitrary manner and on extraneous consideration at the instance of Minister. All that is suggested is Minister interfered in the matter. There is no further allegation levelled against the Minister as such. The pleadings are totally insufficient to substantiate the plea of mala fides. The suspicion entertained by the petitioner is not supported by any contemporaneous evidence and the court would, therefore, be slow to draw dubious inference from incomplete facts placed before it.

34. That, at any rate, in order to satisfy ourselves as to whether there has been

any illegal interference as such by the Minister concerned, we have perused the records made available by the State. The Minister concerned in a note to the Hon"ble Chief Minister stated:

the Bid Evaluation Committee which is represented by technical experts in addition to its other members has recommended second and third lowest (L-2 and L-3), i.e., M/s Escorts Ltd. (Model - Escort 435) and M/s Tractor & Farm Equipment Ltd. (Model - MF 1035 DI) respectively. The Bid Evaluation Committee's reasonings for not recommending the lowest bidder, i.e., M/s International Tractors Ltd. (Sonalika) may kindly be seen in the minutes of the Committee's meeting held on 1st August 2005 which is placed at Sl.3-6/C. I also feel that it would not be proper to award the contract to M/s. International Tractors Ltd. (Sonalika) for the reasons mentioned in the said minutes of the Bid Evaluation Committee meeting (Sl.3-6/C).

In view of the facts above, we have no other alternative but to go for awarding the job to M/s. Escorts Ltd. who is the second lowest bidder as per the Comparative Statement placed at Sl. 7-19/C.

The same has received the assent of the Hon"ble Chief Minister and action has been accordingly taken.

35. The note referred to hereinabove of the Minister concerned merely expresses his opinion that the view taken by the Bid Evaluation Committee consisting of technical experts and its recommendations should be viewed in proper perspective while evaluating the bids and the same cannot be ignored in the matter of award of the contract. We find it difficult to characterize the view taken by the Minister as mala fide. The decision taken by the competent authority, in our considered opinion, is not vitiated for any reason nor it smacks of any favouritism. Views expressed in the course of decision making suggesting to take into consideration the opinion expressed by an expert body consisting of more than one individual, unless a clear and exceptional case is made out, cannot be considered and characterized as a biased or mala fide one.

36. We do not agree with the submissions of Mr. A.S. Choudhury. The proposition that the decision must be arrived at after taking into account all relevant considerations, eschewing all irrelevant considerations, could not for a moment be doubted. We have already pointed out that relevant considerations were not ignored and, indeed, were taken into account by the decision makers with several factors that have to be independently weighed and considered. The decision and the reasons for the decision could be gathered looking at the entire course of events and circumstances stretching over period from IFB to the taking of the final decision. The transaction has been settled after protracted discussions, clarification and consultation amongst the persons involved in the decision making process.

37. No other point is urged.

38. For all the aforesaid reasons we find no merit in the writ petition. The impugned judgment is accordingly set aside. The Writ Appeals are allowed without any order as to costs.