

(1989) 06 CAL CK 0034
In the Calcutta High Court
Case No : Matter 3821 of 1988

General Saw and Blades Co. and others	APPELLANT
Vs	
Bharat Coking Coal Ltd. and others	RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19(1), 226, 226(2)

Citation : AIR 1990 Cal 96

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

1. It is the case of the writ petitioner that like previous occasions the respondent 1 Bharat Coking Coal Ltd. in or about March, 1987 issued tender notice whereby sealed tenders were invited from intending buyers for the sale and disposal of various iron and steel scrap materials from various places of Central Coal Washeries Organisations situate at Dugda, Bhojudih and Patherdih. The terms and conditions for the said tender were inter alia as follows:--

(a) All items as mentioned in the Schedule of disposal would be sold on "AS IS, WHERE IS" basis.

(b) The intending tenderers should quote their prices against the items in which they are interested on the body of the Schedule only. Quotations given on plain paper would not be accepted.

(c) The earnest money as indicated against each item quoted must accompany the tender in full, otherwise quotation will not be considered at all. Such deposit should only be in the form of Bank Draft drawn on State Bank of India, Dhanbad in favour of "Bharat Coking Coal Ltd." A/C Central Coal Washeries Organisation Dhanbad". No cheque will be accepted towards earnest money. The tender would be rejected outright unless accompanied with the earnest money as prescribed in the tender. This earnest money would be adjusted against the security deposit to be furnished by the successful tenderer. If the tenderer fails to deposit the

security money on acceptance of this rate by CCWO as required in clause 4(b) the earnest money would be forfeited.

(d) The tenders shall remain open and valid for acceptance by CCWO for a period of 6 months from the date of opening of tender.

On or about 6th April, 1987 the petitioner purchased one tender notice and/or conditions of sale which were sold in cyclostyled form against payment of Rs. 100/-. Such tender forms were sold at various places including Dhanbad and 6 Lyons Range, Calcutta. On or about 10th April, 1987 petitioner 1 duly submitted tender for purchase and lifting the various scrap and rejected iron and steel materials, conveyor belt scrap lying at Dugda, Bhojudih and Patherdih coal washeries. Petitioner duly quoted rate for purchase of individual items of scrap materials and the said rates were highest rate in respect of different such items. Petitioner 1 in terms of the said tender conditions on or about 10th April, 1987 duly deposited a sum of Rs. 67,000/- being an aggregate amount of earnest money with respondent 1 at the office of the respondent 3. On 10th April, 1987 the tender of the petitioner 1 along with other tenders submitted by other intending buyers was opened and it was found and declared that the petitioner I was the highest bidder/ offerer in respect of several items of material lying at Dugda and Bhojudih. The particulars of the materials with prices in respect of which the petitioner 1 was declared highest bidder/ offerer are mentioned hereunder:--

BHOJUDIH COAL WASHERY

Particulars of items Qty. Rate

1. M. S. & C. I. Scraps 541 M. T. Rs. 2,211.00 per M. T.
2. Mixed lot of Brass/Bronze/Copper Scraps (Boring & Turning) 2,927.5 Kgs. Rs. 31.51 "Kg.
3. Scraps Super enamelled Copper Wire/Binding Wire of motors. 1,092 Kgs. Rs. 33.81 " "

DUGDA COAL WASHERY

1. M. S. & C. I. Scraps 841 M. T. Rs. 2,305.00 Per M. T.
2. Conveyor belt Scraps 35 " Rs. 8,599.99 " "
3. Bearing Scraps 7 " Rs. 10,111.00 " "
4. Chain links Scraps 80 " Rs. 2,411.00 " "

2. It is the case of the petitioner that on the date of opening of the tenders the respondent 2 and/or his representatives and/or subordinates duly assured petitioners and/or their representative that the formal acceptance of the said tender in respect of the said tender will be issued in due course. In terms of the said conditions of sale the tender was to be kept open and valid for six months

for acceptance by the respondents. It has been alleged that the respondent 2, did not take any step whatsoever for issue of acceptance letter until 27th October, 1987 when the respondent 3 by his letter dated October 27, 1987 addressed and received at 83, Madan Mohan Burman Street, Calcutta asked the petitioner 1 to extend the validity of the tender till 30th November, 1987 within seven days. It has been alleged that by issuing the said letter the respondents evinced an unequivocal intention to issue letter of acceptance in respect of the petitioners' highest offer though not within the originally stipulated time but within the mutually extended period. Petitioners by a letter dated 31st October, 1987 duly extended the validity of the said tender up to 31st Dec., 1987. By the said letter dated 31st October, 1987 the petitioner requested respondent 3 being an authorised person for the purpose, to issue formal letter of acceptance to the petitioner 1. It has been further alleged that upon being found and/or declared the highest bidder/ offerer as aforesaid and more so, after receiving the said letter asking for extension of validity period petitioners have altered their position by arranging money for the purpose of purchase of the materials and further negotiating with various customers for resale of the same. Immediately after receipt of the said letter dated 31st October, 1987 by the respondent 3 petitioner 2 duly visited from time to time the office of the respondent 2 and/or 3 and requested for issuance of formal letter of acceptance. It has been alleged that whenever the petitioner 2 visited the office of the respondent 2 and/or 3 it was assured for and on behalf of the respondent 1 that formal letter of acceptance would be issued very soon. It has since transpired, however that the respondent did not take any effective step whatsoever for issuance of formal letter of acceptance. It is the further case of the petitioners that when the petitioners had been expecting to get formal letter of acceptance, the petitioner in or about March, 1988 received a letter dated 10/15th March, 1988 addressed for and on behalf of the respondent 2 along with a cheque for Rs. 67,000/- whereby the earnest money of Rs. 67,000/- was refunded. The said letter dated 10/15th March, 1988 was addressed to and received by the petitioner 1 at 83, Madan Mohan Burman Street, Calcutta. The petitioner 1 by letter dated 13th April, 1988 protested against such Illegal and unilateral action of refund of the said sum of Rs. 67,000/- by or on behalf of the respondents. It has also asked for the reasons for refund of the earnest money. Having received reply to the said letter dated 13th April, 1988 the petitioner again demanded of the respondents and each of them to issue formal letter of acceptance. By the said letter dated 7th June, 1988 petitioner 1 extended the validity of the said tender in order to enable respondent to issue formal letter of acceptance. By the said letter the respondent 1 informed the respondent 3 that the said cheque of Rs. 67,000/- had not been encashed. On or about 24th June, 1988, petitioner 1 received a letter dated 18th June, 1988 from the respondent 3 at 83, Madan Mohan Burman Street, Calcutta. Petitioner 1 thereby and thereunder gave no information regarding acceptance or rejection of the said tender submitted by petitioner 1. The said letter merely quoted a clause contained in the tender notice which read as follows:

The undersigned reserves the right to withdraw from sale any item advertised prior to acceptance of any tender and to accept or to reject any or all tenders or to decrease/ increase the quantity as advertised without assigning any reason thereto."

It has been alleged that by the said letter dated 18th June, 1988 there is no order of rejection of the said tender either by the General Manager being respondent 2 or by any other authority. It will appear from the said clause of the said tender (the validity and legality whereof is disputed) that the respondent 2 alone will exercise such right. It has been contended that nowhere from such letter it would appear that respondent 2 has exercised any such right. It has been further submitted that assuming but not admitting that such clause is valid and legal and official concerned vested with such discretion should not abuse the same which is to be exercised very sparingly and only in an extreme case. In fact the said impugned letter dated 18th June, 1988 is not an act of exercise of power under the said clause. It has further been alleged that none of the respondents had any power or authority after declaring the petitioners' offer as highest to reject the tender taking advantage of the said clause. It has also been alleged that the rejection, if any, is illegal, unconstitutional, arbitrary and whimsical. It has further been alleged that the refusal to entertain the said offer/ tender of the petitioner resulted in violation of the rule of natural justice by reason of the fact that no opportunity of hearing was given by the respondent to petitioner before taking such action. It has also been alleged that the respondents by asking the petitioners for extension of the validity of the tender held out a promise for issuance of letter of acceptance. Petitioners and each of them acting upon such promise bona fide altered their position by, inter alia, arranging money and further negotiating with various parties for resale of the materials. It is the contention of the petitioners that respondents and each of them are bound to issue letter of acceptance of such tender. The respondents being governmental agencies are not entitled to act in such illegal and capricious manner as they did. The petitioners have also challenged the said clause in the tender as illegal and invalid as the same militates against the principles of natural justice, sense of propriety and fair play.

3. Mr. P.K. Roy, learned Advocate for the petitioner submitted that such a clause in the contract is bad. He also submitted that power was specifically conferred upon the General Manager but in this case letter has been issued by Technical Manager and as such the same is not valid and binding. He has further submitted that the respondent being a government company cannot act arbitrarily and whimsically. In any event he submitted that such rejection clause on the basis of which the cheque has been refunded is not applicable in the present case. It has also been submitted that on the basis of specific assurance the validity of period of the offer has been extended by the petitioner and it is not open for the respondent thereafter to reject the offer. In support of his contentions Mr. Roy relied upon the following decisions:--

Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, ; In Re: Om Prakash Pariwal and Another,

4. In the case of Ramanna Dayaram Shetty v. International Airport Authority (supra) the facts inter alia are that the tender notice stated in clear terms that "sealed tenders in the prescribed form are hereby invited from registered second class hoteliers having at least five years" experience for putting up and running a second class restaurant and two snack bars at this airport for a period of three years". It was held that on a proper construction whereby the notice required was that only a person running a registered second class hotelier or a restaurant and having at least five years" experience as such should be eligible to submit a tender and it is difficult to see how this condition of eligibility could be said to be satisfied by any person who did not have five years" experience in running a second class hotel or restaurant. The acceptance of tender contrary to the terms and conditions was held to be improper. It was held by the Supreme Court that "it is well settled rule of administrative law that an executive authority must be rigorously held to the standard by which it professes its action to be judged and it must scrupulously observe that standards on pain of invalidation of an act in violation of them". It was further held that the Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotes or licences only in favour of those having grey hair or belonging to a particular political party professing a particular religious faith. The Government is still the government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position "as a private individual".

5. In the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, cited by the learned Advocate for the petitioner it was held by the Supreme Court as follows. "That when the government is trading with the public, the democratic form of government demands equality and absence of arbitrariness and discrimination in such transactions The activities of the government have a public element and, therefore, there should be fairness and equality. The State need not enter into contract with any one, but if it does so, it must do so fairly without discrimination and without unfair procedure." This propo proposition would hold good in all cases of dealing by the government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licence or granting other forms of largess, 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 standards or norm which is not arbitrary, irrational or irrelevant. The power of discretion of the government in the matter of grant of largess including award of jobs, contracts, quotas, licence etc., must be confined to be 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".

In the aforesaid decision the question was whether black-listing of a person without giving him any opportunity was bad.

6. In the case of *In Re: Om Prakash Pariwal and Another*, it was held by this court that a clause in a contract between F.C.I. and its contractor being Clause 37 whereby F.C.I. was entitled to unilaterally terminate the contract of storing without giving an opportunity to be heard as unreasonable. It was also held that in view of the extensive sweep of Art. 14 of the Constitution the court will not enforce and will when called upon to do so strike down an unfair and unreasonable clause in a contract entered into between the parties were not equal in bargaining power. The learned Advocate on the basis of the said judgment and decision urged that this court should strike down the unreasonable clause in the contract which provides for unilateral power to the authority to withdraw from sale any item advertised prior to acceptance of any tender and to accept or to reject any or all of the orders or to decrease/increase the quantity as advertised without assigning any reason thereof.

7. Mr. Gautam Chakraborty, learned Advocate for the respondent submitted that this court had no jurisdiction to entertain this writ petition. All transactions took place outside the jurisdiction. Tender papers were issued from Dhanbad. Deposit was to be made at the office of the Coal India Limited, Saraibhalla; Dhanbad, Bihar. Request was made from Saraibhalla, Dhanbad, by letter dated 27th October, 1987 for extension of the validity period of the tender up to 30th Nov. 1987. Pursuant to such request extension of the validity period of the tender was made by the petitioner from Calcutta which is received at Dhanbad. A cheque for Rs. 67,000/- was sent from Saraibhalla, Dhanbad to the office of the petitioner at Calcutta. No part of the cause of action according to Mr. Chakraborty took place within the jurisdiction of this court. In support of his contention he relied upon the following decisions:

State of Rajasthan and Others Vs. Swaika Properties and Another, ; *Abdul Kafi Khan Vs. Union of India (UOI) and Others*, .

8. In the case of *State of Rajasthan v. M/s. Swaika Properties (supra)* it was held by the Supreme Court that the mere service in the State of West Bengal of notice under S. 52(2) of the Rajasthan Urban Improvement Act (35 of 1959) on the owner of a land situate in (he State of Rajasthan intimating the State Government's proposal to acquire that land does not constitute an integral part of the cause of action sufficiently invest the Calcutta High Court with jurisdiction to entertain the petition under Art. 226 of the Constitution challenging the validity of the notification acquiring the land. Cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff right to relief against the defendant. The notification issued by the State Government became

effective the moment it was published in the official gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the owner to plead the service of notice on him u/s 52(2) for the grant of an appropriate writ, direction, or order under Art. 226 of the Constitution for quashing the notification issued by the State Government. Accordingly it was held that Calcutta High Court has no jurisdiction to entertain such writ petition. Mr. Chakraborty relying upon the said judgment submitted that this court should not exercise its jurisdiction in the writ petition inasmuch as entire cause of action arose outside the jurisdiction of this Court.

9. In the case of Abdul Kafi Khan Vs. Union of India (UOI) and Others, the facts inter alia were that disciplinary proceeding against railway servant was taken by the authorities in Bihar and show cause notice against removal from service was also issued in Bihar. Writ petition was made challenging this order in this court. It was held that this court has no jurisdiction to entertain the petition merely because head office of Railway was located in Calcutta when neither the cause of action nor any part thereof arose within its territorial jurisdiction. Relying upon the said judgment Mr. Chakraborty submitted that in this case also although there is a branch office at Calcutta of Coal India Limited but this court should not exercise its jurisdiction in writ proceeding inasmuch as no part of the cause of action arose within Calcutta.

10. Mr. Chakraborty further submitted that there was no concluded contract between the parties. Validity period of the tender offer lapsed on 31st December, 1987. The petitioner did not keep the offer open. Mr. Chakraborty submitted that no person has a right to compel Government to enter into any contract. He also submitted that there is no question of arbitrary discrimination inasmuch as it cannot be said that the petitioners' tender has been wrongfully rejected whereas another person's tender was wrongfully accepted. In fact the authorities have taken decision to retender the materials thereby inviting fresh offers. It cannot be said that any particular person has been favoured in this case and the petitioner has been wrongfully discriminated. It is always open to the authorities to accept or not to accept the tenders and to call for retender. Therefore, the decisions cited on behalf of the petitioners according to Mr. Chakraborty has no application in the facts and circumstances of this case. In support of his contention Mr. Chakraborty relied upon the following decisions.

State of Orissa and Others Vs. Harinarayan Jaiswal and Others, ; Purshotoma Ramanata Quenim Vs. Makan Kalyan Tandel and Others, .

11. In the case of Purshotoma Ramanata Quenim v. Makan Kalyan Tandel (supra) it was held by the Supreme Court that a clause in tender for lease of distillery by which the Government reserves its right to select any tender or reject all tenders without assigning any reason therefore is not violative of Art. 14. It was held that the Government is not bound to accept the tender of the person who offers the highest amount. According to Mr. Chakraborty the doctrine of promissory estoppel is not applicable in the facts and circumstances of the instant case. The

learned Advocate referred to paragraphs 12 and 18 of the petition and submitted that from the said paragraphs it does not appear that the respondent made any promise or representation on the basis of which they can be bound to accept the offer of the petitioner. In fact the offer of the petitioner has never been accepted, Government cannot be compelled to accept such offer even if it is highest. The respondent never promised or made any representation that the offer of the petitioner as highest bidder will be accepted. It is always open for the respondent to retender the materials if it considers that better price would be available thereby.

12. In the case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., it was held by the Supreme Court that it is open to a party who has acted on a representation by the government to claim that the government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of formal contract as required by the Constitution. In that case by the export promotion scheme for woollen textile as extended to exports to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods and it was represented that the exporters were entitled to import raw materials of the total amount equal to 100% of the f.o.b. value of the exports. Machinery for scrutiny of the applications and the issue of import entitlement was provided by S. 9 of the scheme and the Textile Commissioner was invested with the authority to determine whether in any given case the declared value of the goods exported was higher than real value of the goods and to assess the correct value of the goods exported and to issue import certificate on the basis of such assessed value. Undoubtedly the Textile Commissioner had authority, if it was found that fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported to reduce the import certificate. But the authority vested in the Textile Commissioner by the rules even though executive in character was from its nature had authority to deal with the matter in manner consonance with the basic concept of justice and fair play. His proceeding was open to scrutiny and rectification by the courts. The Textile Commissioner acted upon a report of the committee appointed by him and before that committee the respondents had no opportunity to present their case. He collected evidence ex parte and did not disclose it to the respondents and without giving an opportunity to them to represent their case reduced the import certificate. In dealing with a representation made by the respondent, the Government of India also declined either to make available the evidence on which the Textile Commissioner had acted or to give a hearing to the respondents. The Textile Commissioner and the Union of India did not purport to act in exercise of the power under Cl. 10 of the scheme; they have sought to support the order on the plea that the subjective satisfaction of the Textile Commissioner is determinative of the extent of the import certificate which may be granted to the respondents. It was held under such circumstances that the claim of the respondent was appropriately founded upon the equity which arises in their favour as a result of the representation

made on behalf of the Union of India in the Export Promotion Scheme and action taken by the respondents acting upon that representation under the belief that the government would carry out the representation made by it. On the facts proved in that case no ground has been suggested before the court for exempting the government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation. In the facts of the instant case, however, as has already been noted there is no promise or representation on the part of the government that the offer of the petitioner would be accepted. The petitioner was requested to extend the validity period of the offer only. It does not appear from records that the respondent ever suggested that if the validity period of the offer is extended the respondent would accept the said offer. Accordingly the principles decided in the said judgment in the case of Union of India v. Anglo Afgan Agencies (supra) cannot have any application to the facts and circumstances of the instant case. On the question of jurisdiction it is the case of the petitioner that the respondent 2 by letter dated 27th Oct. 1987 addressed to and received at 83, Madan Mohan Barman Street, Calcutta asked the petitioner 1 to extend the validity of the tender till 30th Nov. 1987 within 7 days. By issuing the said letter, according to the petitioner, the respondents evinced an unequivocal intention to issue letter of acceptance in respect of the petitioners' highest offer. It has been alleged that the letter was sent on 10/15th March, 1988 addressed for and on behalf of the respondent along with a cheque for Rs. 67,000/- purporting to refund the said earnest money. The said letter was received at No. 83, Madan Mohan Barman Street, Calcutta. The said letter really amounted to the rejection of the said tender. Another letter was received by the petitioner on 24th June, 1988 from the respondent 3 at No. 83 Madan Mohan Barman Street, Calcutta whereby it was mentioned as follows: "The undersigned reserves the right to withdraw from sale any item advertised prior to acceptance of any tender and to accept or reject any or all tenders or to decrease/increase the quantity as advertised without assigning any reason thereto." From the averments made in the petition as aforesaid it is clear, therefore, that the part of cause of action for the writ petition arose at 83, Madan Mohan Barman Street, Calcutta within the jurisdiction of this court.

13. In the case of State of Rajasthan and Others Vs. Swaika Properties and Another, it was held by the Supreme Court on the facts already noted that the mere service of notice under S.52(2) of the Act on the respondents at their registered office at 18B, Brabourne Road, Calcutta, i.e., within the territorial jurisdiction of State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of cause of action -- It was also held that the entire cause of action culminating in the acquisition of the land u/s 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Art. 226(2) of the Constitution

must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under S. 52(1) of the Act became effective the moment it was published in the official gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under S. 52(2) for the grant of an appropriate writ, direction or order under Art. 226 of the Constitution for quashing the notification issued by the State Government under S. 52(1) of the said Act. But in the facts of the instant case the part of cause of action really arose within the jurisdiction on the basis of the said letters issued by the respondent and served upon the petitioner at 83, Madan Mohan Barman Street, Calcutta which were received by the petitioner from the respondent at the aforesaid address within the jurisdiction of this court really constitute integral part of the cause of action and as much it cannot be said that this court has no jurisdiction.

14. In the case of Abdul Kafi Khan Vs. Union of India (UOI) and Others, the facts show that the entire cause of action arose outside the jurisdiction of this court. In that case disciplinary proceeding against the railway servant was taken by the authorities in Bihar. Show cause notice against removal from service were also issued by the authority in Bihar. In the writ petition the said disciplinary proceedings and show cause notice was challenged. It was contended on behalf of the petitioner that the Head Office of the Western Railway was situated at Calcutta. Under such facts and circumstances it was held that this court has no jurisdiction to entertain the petition merely because head office of railway was located at Calcutta, neither the cause of action nor any part thereof within its territorial jurisdiction. In my opinion, facts and circumstances of the aforesaid case is quite different from the facts in the instant writ petition. In the instant petition as already noted integral part of the cause of action arose within the jurisdiction of this court and as such this court has jurisdiction of this court and as such this court has jurisdiction to entertain and pass orders on this writ petition. On merit, however, it appears to me that there was no concluded contract between the parties. There was merely request by the respondent to extend the validity of the period of offer and accordingly such validity period was extended till 31st December, 1987. Admittedly thereafter the offer lapsed. There was no further extension of the validity period of the offer. Such request on the part of the respondent to extend the validity period of the offer does not constitute, in my opinion, any promise or assurance on the part of the respondent that if such extension is made the offer would be accepted. As held by the Supreme Court in the case of Purxotoma Ramanata Quenim Vs. Makan Kalyan Tandel and Others, that a clause in tender for lease of distillery by which the Government reserves the right to select any tender and reject all tenders without assigning any reason therefore is not violative of Art. 14. The Government is not bound to accept the tender of the person who offers the highest amount. Accordingly it cannot be said that the respondent authorities

have made any discrimination in this case. It is not the case that the respondents have wrongfully refused to accept the tender of the petitioner but accepted the tender of any other person and thereby caused discrimination. The respondents authorities have thought it fit to retender the materials. No particular person has been favoured in this case. This decision to retender cannot amount to discrimination. The case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., does not apply to the facts and circumstances of this case inasmuch as there is no promise or assurance on the part of the respondents authorities that the tender of the petitioner would be accepted. The facts and circumstances of the said case are absolutely different and cannot be of any assistance to the petitioner. On the similar ground the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, does not apply to the facts and circumstances of the instant application. The facts in the case of In Re: Om Prakash Pariwal and Another, are entirely different and cannot be of any assistance to the petitioner. In that case the writ petitioner was appointed as storing agent by the F.C.I. an instrumentality of the State under Art. 12 of the Constitution. There was an agreement whereby the appointment was made and the said agreement contained a clause being Cl. 37 whereby F.C.I. was entitled unilaterally to terminate the contract of storing without giving any opportunity of being heard. On the basis of the said clause F.C.I. terminated the contract. The writ petitioner challenged the order of termination on the ground that Cl. 37 of the said contract is one sided, arbitrary and oppressive and is liable to be adjudicated as violative of Art. 14 of the Constitution. It was held by the court that such a clause is oppressive, arbitrary and should be struck down. In the instant case no contract has been entered into by the petitioner and the respondent. It is always open for the government to accept a tender or to reject it or to retender the material as already noted from the facts on record. It cannot be said that there is unreasonable discrimination against the petitioner. Under such circumstances the said decision in the case of M/s. Omprakash Periwal v. Union of India (supra) cannot be of any assistance to the petitioner. The other case cited that is of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, also cannot be of any help to the petitioner in view of the fact that the said case is based on entirely different facts which are already noted. As held by the Supreme Court in the case of the State of Orissa and Others Vs. Harinarayan Jaiswal and Others, by merely giving bids, the bidders had not acquired any vested right. The fact that the Government was the seller does not change the legal position once it has exclusive right to deal with those privileges is conceded. If the government is exclusive owner of this privileges reliance on Art. 19(1)(g) or Art. 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or right belonging to the Government nor can there be any infringement on Art. 14 if the government tries to get best available price for its valuable right.

15. Accordingly in my opinion the petitioner has no right to claim that its tender has to be accepted by the respondents. It is always open for the government not

to accept the tender unless it can be shown that there is mala fide exercise of power which could not have been shown in this case. Accordingly this application fails and is dismissed. There will be no order as to costs.

16. The interim order already made in this matter will continue for a period of 3 weeks from date.

17. Petition dismissed.