
(1993) 05 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 776 of 1993

Gorakhnath Upadhyaya

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 19-05-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 216, 299

Evidence Act, 1872 — Section 114

National Saving Certificates Act, 1959 — Section 12

Citation : AIR 1994 All 283 : (1993) 2 UPLBEC 1191

Hon'ble Judges : S.N. Agarwal, J; R.A. Sharma, J

Bench : Division Bench

Advocate : Shitla Prasad Pandey and Dinesh Dwivedi, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Executive Engineer of Public Works Department, Deoria, published a notice in local HINDI Newspaper named "GRAM SWARAJYA" on 23-10- 1992, inviting tenders for collection of toll at Bhagalpur and Narampur Ghats for a period of three years. Tenders were required to be submitted on 2-11-1992. According to the conditions of the tender notice the tenders were to be submitted in two parts, part one of which was to contain the amount offered and part two to consist of all necessary papers. It was further mentioned therein that if part two of the tender, which consists of necessary papers, is not found in order, part one, which contains the amount offered will not be opened.

2. According to the terms and conditions of the tender and the proforma of its first part, which is reproduced below, price was required to be mentioned by the intending purchaser for the first year only. Price of the second year would be the amount offered for the first year plus 10% thereof and the price of the third year will be calculated by adding 10% to the price of the second year.

"I/We tender the following amount for payment for leasing out. for three years from taking over the charge as per special condition in Schedule of toll

manual form 30 and tender notice etc. attached with part II of this tender which I/we read and understand fully.

- (i) Amount tendered (in words)..... (Total) Rs. In figure for the 1st one year,
- (ii) For second one year 10% above of the amount mentioned in Item No. (1),
- (iii) For third one year 10% above the amount mentioned in Item No. (II).

3. Four persons, namely, petitioner, Sri Vinod Kumar Pandey, his father, Sri Beni Madho Pandey and Sri Jagat Singh submitted their tenders on 2-12-1992. On 2-12-1992 itself the tenders were opened by the Executive Engineer. The tender of Sri Jagat Singh is said to have contained blank paper only and was accordingly rejected. Although both parts of the tenders of Sri Beni Madho Pandey and Sri Vinod Kumar Pandey were opened on the above date but part one of the tender of petitioner, which consists of the amount offered, was not opened. Price offered by Sri Vinod Kumar Pandey and his father, Sri Beni Madho Pandey for Bhagalpur Ghat for the first year was Rs. 2,25,561.00 and 1,55,525.00 respectively. Price offered by them for Narainpur Ghat was Rs. 11,560.00 and 5,555.00 respectively. Although the first part of the petitioner's tender was not opened but it has been stated in the writ petitions that he has offered Rs. 2,55,000.00 and Rupees 71,100.00 for the first year for Bhagalpur and Narainpur Ghats. Learned Standing Counsel has produced the original record before us and we have opened the first part of the tenders of the petitioner in the Court, from the perusal of which it is apparent that the statement made by the petitioner in his writ petition about the offer of the money for both the Ghats is correct. The price offered for the two Ghats in question for the first year by the three contenders namely, the petitioner, Sri Vinod Kumar Pandey, and his father, Sri Beni Madho Pandey and the price for the second and third years by adding 10% to the price of preceding year is as follows:

FOR BHAGALPUR GHAT :

1.

Petitioner :

Rs. 2,55,000.00 for first year

Rs. 2,72,855.00 for the second year calculated by adding 10% to the price of first year.

Rs. 3,08,505.00 for the third year calculated by adding 10% to the price of the second year.

2.

VinodKumar Pandey.

Rs. 2,25,561.00 for the first year

Rs. 2,48,117.00 for the second year calculated by adding] 0% to the price of first year.

Rs. 2,72,926.00 for the third year calculated by adding 10% to the price of second year.

3.

Beni Madho

Rs. 1,55,525.00 for the first year

Rs. 1,71,077.50 for the second year calculated by adding 10% to the price of first year.

Rs. 188,185.25 for the third year calculated by adding 10% to the price of second year.

NARAINPUR GHAT.

1.

Petitioner :

Rs.71,100.00

for first year

Rs.78,110.00

for the second year calculated by adding 10% to the price of first year.

Rs.85,921.00

for the third year calculated by adding 10% to the price of second year.

2.

Vinod Kumar Pandey

Rs.11,561.00

for the first year

Rs.12,717.10

for the second year calculated by adding 10% to the price of first year.

Rs.13,988.81

for the third year calculated by adding 10% to the price of second year.

3.

Beni Madho Pandey

Rs. 5555.00

for the first year

Rs. 6,110.50

for the second year calculated by adding 10% to the price of first year.

Rs. 6,721.25 of second year.

for the third year calculated by adding 10% to the price

4. As on 2-12-1992 first part of the tenders of petitioner was not opened, he made application/representation on 3-12-1992, addressed to the Commissioner, Gorakhpur Division, Gorakhpur, and the Executive Engineer against non-opening of his tender's part one. Petitioner appears to have made another representation/application on 19-12-1992. However, the petitioner's request for opening the first part of his tenders was not accepted by the Executive Engineer. The Executive Engineer submitted a report dated 24-12-1992 to the Commissioner, recommending for acceptance of the tenders of respondent, Sri Vinod Kumar Pandey for both the Ghats after adding 10% to the amount offered for all three years. Regarding the petitioner two things were mentioned in the above report, firstly, that signatures of the petitioner on his aforesaid application/representation dated 3-12-1992 and on his tender dated 2-12-1992 do not tally, and secondly, that it is not possible that the application could have been sent by the petitioner from Ballia to Deoria on 3-12-1992, but no reasons for not opening the first part of his tender was given in the report.

5. As no action was being taken at the level of the Commissioner, the petitioner filed writ petitions Nos. 776 of 1993 and 589 of 1993 before this Court for quashing the recommendation of the Executive Engineer dated 24-12-1992 and for direction to the respondents to open to the first part of his tenders. Further prayer for appropriate direction to the respondents so as to prohibit them from granting contract to others was also sought. This Court, vide order dated 8-1-1993 passed in Writ Petition No. 589 of 1993, directed for maintenance of status quo. It is alleged by the petitioner that he has submitted the certified copy of the aforesaid stay order before the Commissioner as well as the Executive Engineer, respondents Nos. 2 and 3, but even then the Commissioner vide his order dated 11-1-1993, has granted contract of both the Ghats to Sri Vinod Kumar Pandey. On 23-1-1993 this Court passed another interim order, which is reproduced below:

"List on 12-2-1993.

Till that date the Commissioner, Gorakhpur will make an interim arrangement regarding operation of the Bhagalpur ferry in District Deoria. We also direct the Commissioner to make enquiry as to whether the petitioner has got ten big boats and ten small boats as mentioned in the affidavit which is Annexure 13 to the petition. The Commissioner will send his report to this Court by special messenger which may be produced before the Court on the date fixed by the Standing Counsel. The report will also clearly mention as to whether the

petitioner has complied with the condition No. 5 of the Conditions of the tender regarding no dues certificate.

The original record regarding the Bhagalpur Ferry shall also be produced by the Standing Counsel on the date fixed.

It is being brought to the notice of the Court that the Commissioner has accounted the bid of Sri Vinod Kumar Pandey. Until 15-2-1993, we direct that neither Sri Vinod Kumar Pandey nor Sri Gorakh Nath Upadhyaya will have any right to operate the ferry. As directed above the Commissioner will make the interim arrangement till 12-2-1993 for operating the ferry through some official, nominated by him.

6. By the above interim order, which has been extended from time to time and is still in operation, this Court directed the Commissioner to make interim arrangement for operating the ferry and to make enquiry on the question as to whether the petitioner has got 10 big and 10 small boats as mentioned in his affidavit filed along with tender (Annexure 13 to the writ petition) and send his report to this Court by special messenger. It was further directed that report will also mention as to whether the petitioner has complied with the condition No. 5, regarding no dues certificate. In view of the above interim order of this Court, the Commissioner directed the District Magistrate to make enquiry and submit a report to him. The District Magistrate, Ballia after making enquiry sent his report dated 2-2-1993 to the Commissioner, mentioning therein that the petitioner has 21 big boats and 26 small boats. It appears that the Commissioner asked for further details from the District Magistrate, who in response thereto made further enquiry and submitted another report dated 11-2-1993 giving details of big and small boats and the power-barge, owned by the petitioner. The Commissioner has, thereafter submitted two reports regarding the two Ghats to this Court in which six infirmities have been pointed out, from which, it is alleged, the two tenders of the petitioner for the two Ghats suffer. Parties have filed objections and counter objections in the form of affidavit against the report.

7. Both, the State and Sri Vinod Kumar Pandey, whose tenders were accepted for the two Ghats by the Commissioner, have filed counter-affidavit and the petitioner has filed rejoinder affidavit in reply thereto. The petitioner has filed application for amendment of the writ petition so as to enable him to challenge the order dated 11-1-1993, passed by the Commissioner, accepting the tenders of respondent, Vinod Kumar Pandey and report of the Commissioner submitted to this Court. We have allowed the amendment application. Supplementary affidavit and supplementary counter-affidavit have also been exchanged by the parties. We have heard Sri Dinesh Dwivedi learned counsel for the petitioner and Sri Sudhir Chandra and the learned Standing Counsel for the respondents.

8. Learned counsel for the petitioner has made four submissions in support of the writ petition, viz., (i) the notice which was published on 23-10-1992 in local HINDI Newspaper, inviting tenders for the two Ghats, was deliberately made

defective so as to mislead the intending purchasers in order to eliminate the competition (ii) the Executive Engineer while submitting his report date 24-12-1992 did not give any reason as to why the first part of petitioner's tender has not been opened and the Commissioner while accepting the tender of the respondent also did not specify ground/reason for not opening and not accepting the tender of the petitioner, (iii) the tenders of the petitioner have been rejected on irrelevant and uncalled for grounds and tenders of the respondent have been accepted on account of irrelevant consideration without applying mind to the facts and circumstances of the case and the whole action was absolutely arbitrary and mala fide; and (iv) it was not open to the Commissioner to accept tenders of respondents by enhancing the amount by 10% without giving such an opportunity to the petitioner and others. The learned counsel for the respondents have disputed the above submissions.

9. From the perusal of the tender notice, as published on 23-10-1992, it is clear that tenders were required to be submitted on 2-11-1992, although in the latter part of the notice, it was mentioned that tender form can be purchased on 1-12-1992. The submission of the learned counsel for the petitioner is that although 2-12-1992 was the date fixed for entertaining and opening the tenders, 2-11-1992 was mentioned in the notice as published in the newspaper deliberately, so as to eliminate competition in order to help the respondent. The submission of the learned counsel for the respondent, on the other hand, is that the date 2-11-1992 mentioned in the notice is printing error and it should be read as 2-12-1992 on which date both the petitioner and respondents submitted their tenders.

10. Although 2-12-1992 was fixed for entertaining and opening the tenders, but in the notice which was published in the newspaper 2-11-1992 was mentioned as the date on which the tenders were to be accepted and opened. One of the above dates, viz., 2-12-1992 is obviously wrong. As 2-11-1992 was shown in the notice as the date on which tenders were to be submitted, there is great possibility of intending purchasers being misled. The gap to time between 23-10-1992 on which date the notice was published in the local news paper and 2-11-1992 on which date the tenders were required to be submitted, was not much. It is on account of the above reasons that only four persons, namely, petitioner, Sri Vinod Kumar Pandey (respondents), his father, Sri Beni Madho Pandey and another person, named, Jagat Singh submitted their tenders and all of them excepting the petitioner are residents of Deoria/Gorakhpur from where the paper containing the notice was published. Petitioner, although a resident of Balia, was an existing contractor of Bhagalpur Ghat for which tenders were invited by the above notice also filed his tenders. It was the duty of the respondents Nos. 2 and 3 (Commissioner and the Executive Engineer) to correct the printing error either by publishing a fresh notice or by publishing a corrigendum so as to enable more persons to submit their tenders, but it was not done. Both the Commissioner and the Executive Engineer are the custodians of the interest of the State. While entertaining and dealing with tenders, they have

to safeguard two things, firstly, the revenue of the State and secondly, the interest of the travelling public who use the Ghat for crossing the river. This can be done by them by giving contract to the highest bidder provided he fulfils the eligibility qualifications. If due to printing error in the notice, there was possibility of people being misled, it was incumbent on them to correct the mistake. By not doing so they have allowed the revenue of the State and the interest of travelling public to suffer.

11. From the perusal of the report dated 24-12-1992, submitted by the Executive Engineer, whereby he recommended for acceptance of the tender of Sri Vinod Kumar Pandey, it is apparent that no reasons were given therein as to why first part of the tender of the petitioner has not been opened although two objections regarding the application representation of the petitioner filed on 3-12-1992 namely, non tallying of signatures on the application and the tender and improbability of sending the application from Ballia to Deoria on 3-12-1992 were raised. Regarding these objections, petitioner has asserted that that was his application and the distance between Ballia and Deoria is only 135 Km., which can easily be Covered by a car within three hours. Even if it is presumed that petitioner's application/ representation filed on 3-12-1992 was liable to be rejected, it was the duty of the Executive Engineer to tell the Commissioner through his report as to why he has not opened the first part of his tender. It is true that both the Executive Engineer and the Commissioner while dealing with the tenders exercise merely administrative powers but when dealing with competitive claims of rival claimants, they should have disclosed the reasons for not accepting the claim of one while accepting that of the other. Such course is necessary in order to avoid arbitrariness and to eliminate favouritism.

12. From the perusal of the report of the Commissioner which is submitted in pursuance of this Court's interim order dated 23-1-1993, quoted earlier, it is quite apparent that this Court merely asked the Commissioner to get the enquiry made and submit report on two points, (i) whether the petitioner has got 10 big and 10 small boats, as mentioned in his affidavit, which he filed along with tenders (Annex. 13 to the writ petition) and (ii) whether the petitioner has complied with condition No. 5 regarding the "no dues certificate". Instead of submitting report on the above two points the Commissioner has pointed out suo moto following six infirmities/ defects on account of which the first parts of the tenders of the petitioner, containing the amount, were not opened, (i) the character certificate submitted by the petitioner was of the date beyond three months from the date of tender, hence violation of condition No. 3 of the tender notice; (ii) the experience certificate submitted by the petitioner did not disclose the period, hence violation of condition No. 4 (iii) the no-dues certificate did not mention the details and the period and was defective, as such, violation of condition No. 5 (iv) absence of revenue stamp of 20 paise on non-judicial stamp of Rs. 100/-, which is violation of condition No. 7 (v) ownership certificate in respect of 10 big and 10 small boats not furnished by the petitioner resulting in violation of condition No. 8, and the last (vi) the earnest money given in the

shape of National Savings Certificate contain interpolation and was not properly pledged in favour of the Executive Engineer.

13. The authority, which invites tenders is expected to give effect to terms and conditions of the tender notice but it is not every condition which is required to be complied with strictly. Supreme Court in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, has, in this connection, laid down as follows at page 1580:

"It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause No. 6 of the tender notice was not obeyed literally, but the question is as to whether the said non compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tender is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other case it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases."

14. Although strict compliance of the essential conditions of eligibility is required but substantial compliance of ancillary or subsidiary conditions is sufficient and it is open to the authority not to insist on strict and literal compliance of these conditions.

15. It is true that condition No. 3 of the tender notice requires that the intending purchasers have to submit, along with tender a character certificate, which should not be of more than three months old from the date of tender. A photostat copy of the character certificate, which was filed by the petitioner along with tender, has been filed as Annexure 5 to the writ petition, from the perusal of which it is apparent that it is dated 10-9-1992. Tender was issued to the petitioner on 1-12-1992 and it was submitted by him before the Executive Engineer on 2-12-1992. The certificate is as such, not older than three months from the date of tender and no exception can be taken to it. The submission to the learned counsel for the respondent is that as the Collector has signed the certificate on 1-9-1992 though it is dated 10-9-1992, three months period is to be counted from the date of signature (1-9-1992) and not from the date of certificate, from which date there is delay of one day on account of which the certificate cannot be acted upon. The submission is that when there is substantial gap of time between the date of certificate and the date on which it was signed by the certifying officer, the date of certificate cannot be relied upon for ascertaining the character of the person concerned. Presuming it is so, such a contingency does not arise in the instant case inasmuch as the certificate is

dated 10-9-1992 and it was signed by the District Magistrate on 1-9-1992 and there is hardly a gap of 9 or 10 days between the date of certificate and the date of signature. Under the circumstances, certificate cannot be said to have lost its efficacy.

16. As regards the experience certificate, which has been treated as defective by the respondents, it may be mentioned that by condition No. 4 a certificate of experience of running Ghats for atleast three years is required to be filed. Certificates which were filed by the petitioner along with tenders have been filed as Annexures 6 and 7 to the writ petition. Annexure 6 is the certificate issued by the Executive Engineer, P.W.D., Deoria in which it has been mentioned that the petitioner is existing contractor of Bhagalpur ferry and he has full experience of running the same. Annexure 7 is the certificate issued by the Executive Engineer, Ballia in which it has been mentioned that the petitioner is running a ferry at Pramodpur and Majhi Ghats and has full experience of running ferry. It is true that in the above two experience certificates the period of three years have not been mentioned. But it is not disputed that the petitioner is existing contractor of Bhagalpur Ghat (ferry) in question for the last nine years and this fact was on the record before the respondents. The Executive Engineer, who has issued certificate (Annexure 6) is the same officer who has submitted report on 24-12-1992 against him. He very well knew that the petitioner has experience of nine years. That apart the certificate states that the petitioner has full experience of running ferry at Bhagalpur. The word "full" is to be read in juxtaposition with the conditions of the tender notice, whereby the experience certificate of three years is to be submitted. Hence when the certificate speaks of full experience it means the experience of minimum three years.

17. The objection regarding "no dues certificate" is also liable to be rejected. No dues certificate filed by the petitioner for the two Ghats have been filed as Annexures 8 and 9 to the writ petition. Annexure 8 is dated 10-9-1992, issued by the District Magistrate, Ballia in which it has been mentioned that there is no Government dues against the petitioner. Annexure 9 is the certificate issued by the Assistant Engineer, P.W.D., Deoria in which it has been mentioned that there is no dues against the petitioner in connection with Bhagalpur ferry. No exception can be taken to the above certificates. The submission however is that the certificate issued by the District Magistrate, being based on the report of the Tahsildar, cannot be said to reflect the position regarding the dues pertaining to ferring, which are under the control of P.W.D. of the State, and the only authority, who could give a correct certificate, is the Executive Engineer, P.W.D. This submission is devoid of merit. As per terms and conditions of the tender notice, such a certificate could be issued by the District Magistrate also. District Magistrate is a responsible officer and when he issued a no dues certificate, it is liable to be accepted as correct. It is for the District Magistrate to collect necessary informations from any person or authority whom he considers proper and his certificate cannot be rejected on that account. The fact that no dues certificate, issued by the Collector, Deoria (Annexure 8) is correct certificate is

borne out from the fact that it has not been mentioned in any of the counter affidavit that the petitioner owes some dues to the State. We have asked the learned Standing Counsel to tell us whether there is any outstanding dues, which are required to be paid by the petitioner. The answer was in negative. That apart, if there was any doubt in their mind about the certificate, respondents ought to have ascertained the position from the District Magistrate instead of not acting on it.

18. The objection relating to non-supply of revenue stamp of 20 paise on non-judicial stamp of Rs. 100/- deserves the same fate. As per conditions of the tender notice the petitioner was required to submit a non-judicial stamp of Rs. 100/- with revenue stamp of 20 paise. The submission of the learned counsel for the petitioner is that the petitioner did affix 20 paise revenue stamp on non judicial stamp of Rs. 100/- but the revenue stamp was either removed deliberately or got removed accidentally. This submission is disputed by the learned counsel for the respondents. It is not necessary to go into this controversy. Submission of non-judicial stamp of Rs. 100/- and revenue stamp of 20 paise are required for execution of contract, which is to be entered into after the tender is accepted. This cannot be said to be one of the essential conditions of eligibility. If the tender is accepted a revenue stamp of 20 paise can be supplied before the execution of contract. That apart, the petitioner has submitted non-judicial stamp of Rs. 100/- and even presuming that he has not submitted revenue stamp of 20 paise, there was no justification to reject it. Petitioner could have been asked to supply 20 paise revenue stamp.

19. Regarding the next objection pertaining want of certificate of ownership of 10 big and 10 small boats, it may be mentioned that the petitioner has submitted a certificate dated 22-11-1992 in which it has been mentioned that he has 10 wooden boats in good condition. Another certificate 7-11-1992, regarding power barge capable of carrying 250 passengers and 100 cycles, was also filed. The petitioner has also filed his own affidavit along with tender (Annexure 13 to the writ petition) in which it has been stated that he has 10 big and 10 small boats of which he is the owner. In this connection this Court vide order dated 23-1-1993, reproduced hereinbefore directed the Commissioner to make enquiry on the question as to whether the petitioner has got 10 big and 10 small boats, as mentioned by him in his own affidavit, which he filed along with his tender. The Commissioner got the enquiry made from the Collector, who submitted report dated 5-2-1992 mentioning therein that the petitioner is the owner of 21 big and 26 small boats. When asked to make detailed report by the Commissioner the Collector submitted report again in which it has been stated that apart from power barge the petitioner has aforesaid boats. In view of these reports, the Commissioner has submitted report to this Court in which it has been mentioned that on 2-12-1992 the petitioner was having 21 big and 26 small boats. But the objection raised is that as required by condition No. 8 the requisite certificate by the Prescribed authority regarding the above boats, was not filed along with tender. According to condition No. 8 an intending purchaser is required to submit

a certificate of having 10 big and 10 small boats. The submission of the learned counsel for the petitioner is that in his affidavit, which he filed along with tender, the petitioner has mentioned that he has got 10 big and 10 small boats and that is his certificate. In this connection it is also submitted that unlike other conditions the authority, who has to issue the certificate, has not been prescribed and as such, the petitioner himself can issue certificate regarding ownership of boats. In this connection reliance has been placed on the definition of word "certificate". Learned counsel for respondents has however, submitted that when certificate is spoken of in any condition it must be a certificate issued by an officer and the statement made in the affidavit cannot be said to be requisite certificate required by condition No. 8.

20. Certificate is a document by which a person certifies the existence of certain facts. It is a written testimony to the truth of the fact mentioned therein. In "BLACK'S LAW-DICTIONARY" "certificate" has been defined as under:

"Certificate/ Sartifikat: A written assurance or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with. A written assurance made or issuing from some court, and designed as a notice of things done therein, or as warrant or authority, to some other court, judge, or officer. A statement of some fact in a writing signed by the party certifying. A declaration in writing. A "certificate by a public officer is a statement written and signed but not necessarily sworn to, which is by law made evidence of the truth of the facts stated for all or for certain purposes. A document certifying that one has fulfilled the requirements of and may practice in a field. See also affidavit Birth certificate, License permit."

According to the New Lexicon Webster Dictionary" Certificate has been defined as "a written statement attesting some facts esp. the status and qualification of the person holding it." In "Webster's Third New International Dictionary" "certificate has been defined as "a document containing a certificate and usually official statement. A signed, written or printed testimony to the truth of something A document evidence ownership or debt." From the above definition, it is apparent that certificate is a document, which bears testimony to the existence of certain fact and is signed by the person, who certifies it. It may be issued by an official or by any person other than official. A document containing statement of some fact signed by the party can also be treated as a certificate. Merely because certificates are generally issued by officials, it cannot be presumed that a party cannot certify or bear testimony that a fact does or , does not exist unless the law or the condition under the certificate is required, provides for a certificate by an official only. In the instant case unlike other conditions, condition No. 8 does not require a certificate by an official. Statement of the party concerned certifying the existence of certain facts in the form of affidavit is a certificate in the eye of law. The affidavit of the petitioner filed along with the tender (Annexure 13 to the writ petition) is a certificate within the meaning of condition No. 8. That apart, the Commissioner himself on the basis of interim

direction, issued by this Court, stated that the petitioner was having 21 big and 26 small boats on 2-12-1992, the date on which the tenders were submitted.

21. The last objection pertaining to the earnest money is also devoid of merit. The petitioner has submitted earnest money in the form of National Savings Certificates. The objection raised against those certificates is that there has been some manipulation in those certificates and further that they have not been properly pledged in favour of the Executive Engineer and thus there is violation of condition No. 1. Learned Standing Counsel has produced the original records before us and we have seen the National Savings Certificates filed by the petitioner along with his tender. These certificates are of Rs. 5,000/- each. There is no interpolation in any of the certificates and they have been duly pledged in favour of the Executive Engineer by the post Master. It may be observed that the National Savings Certificates are issued by the Post Office and they are its property and can only be pledged by it. These certificates bear the signatures and seal of the Post Master, who has pledged them in favour of the Executive Engineer and no exception can be taken to such certificates. A new submission, in this connection, has been made at the time of argument, that these certificates were pledged earlier in favour of other officials but without getting released from them, they have been pledged by the Post Master in favour of the Executive Engineer. It is not possible to accept the above argument. When Post Master of the Post Office pledged the National Savings Certificates, which is the property of the Post Office, the presumption is that the same have been done properly and in case there was any doubt, it was open to the authority to make enquiry from the Post Office, or the party concerned. In the instant-case it was not done.

22. In this connection it may be mentioned that the tenders were opened on 2-12-1992 and the Executive Engineer submitted his report to the Commissioner on 24-12-1992 and the Commissioner passed order accepting tender of the respondent on 11-1-1993. During this period of more than a month the Executive Engineer and the Commissioner could have written to the appropriate authority for getting the doubts removed regarding the National Savings Certificates and other certificates, which are said to be incomplete or defective. But nothing of the kind was done. Even the petitioner was not asked to explain the defect in any of the papers filed by him.

23. Another objection raised by the learned counsel for the petitioner is about the enhancement of the bid of respondent, Sri Vinod Kumar Pandey by 10%. The grievance of the petitioner is that such an opportunity should have been given to him as well as to others. The notice inviting tender does not contain any clause providing for enhancement of the amount by the Commissioner while accepting the tender. Under the circumstances the Commissioner could not have enhanced the amount, offered by Sri Vinod Kumar Pandey. If the bid of the respondent was found to be inadequate, actions could have been taken in accordance with law.

24. There is a vast difference between the amount offered by the petitioner and

the amount offered by Sri Vinod Kumar Pandey and by not opening part one of the tender of the petitioner, the State has lost its substantial revenue without any justification. It is true that this Court under Art. 226 of the Constitution of India does not act as a Court of appeal and it does not interfere with the findings of fact recorded by the subordinate authorities unless they suffer from manifest error of law or are without jurisdiction. In the instant case, as mentioned before, the tender of the petitioner has been rejected on flimsy and unwarranted grounds. When the findings of fact are recorded on the basis, which is not sustainable under law, it is open to this Court to interfere with such findings and that is the position in the instant case.

25. Relying on two decisions of the Supreme Court in *Harjinder Singh Arora Vs. Union of India (UOI) and Others*, and *Prestress India Corporation Vs. U.P. State Electricity Board and Others*, , learned counsel for the petitioner has submitted that as the tenders of the petitioner were rejected on erroneous grounds this Court should issue mandatory order to grant contract to the petitioner. It is true, as held above, that the tenders of the petitioner were rejected on untenable grounds but we are not inclined to issue any such direction for accepting tenders of the petitioner as we have accepted the first submission of the petitioner regarding the printing error in the notice published in the news paper.

26. After we have heard the learned counsel for the parties and have reserved the judgment, an affidavit has been filed by Sri Vinod Kumar Pandey, the respondent, in which an objection has been taken to the effect that offer of the petitioner does not envisage increase of 10% for the subsequent two years as he has made the offer of the fixed amount at the rate of Rs. 2,55,000.00 per year. The learned counsel for the petitioner has also filed a counter affidavit in reply to the affidavit mentioned above. According to the proforma of part one of the tender, the bidders are required to offer the amount for the first year only and the amount of second and third years is liable to be calculated by adding 10% to the amount offered for the preceding year. There is no option for any bidder to offer any other price for the second and third year and even if they do so, the same is liable to be rejected. In the instant case the petitioner has offered the amount for the first year and as per proforma he has given the total amount of three years at that rate. The Department has to add 10% for calculating the amount for second and third year. The petitioner has raised a grievance in his affidavit, that the departmental representative has refused to show him the first part of his tender, which was opened by us in the Court but the same has been shown to the respondents. Respondents have, in fact, filed the first part of the petitioner's tender as Annexure I to the affidavit filed after the judgment was reserved. On that basis the petitioner has raised the grievance that the departmental officials are in collusion with Sri Vinod Kumar Pandey. Although it is not necessary for this Court to go into this controversy but prima facie the grievance of the petitioner cannot be said to be without substance.

27. Writ petition is allowed with costs. The orders dated 8-1-1993 and 11-1-1993

as well as the contract, if any, executed by Sri Vinod Kumar Pandey in pursuance of the above orders are quashed. The respondents are directed to issue forthwith fresh notice inviting tenders for the two Ghats in question by publishing requisite notice in, local as well as in other news papers which have wide circulation. Till the new tenders are invited and are accepted, the interim arrangement made by the respondents Nos. 2 and 3 in accordance with the interim order of this Court dated 23-1-1993 for operating the two ferries shall continue.

28. Petition allowed.