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**(1996) 02 CAL CK 0036**  
**In the Calcutta High Court**  
**Case No : C.O. No. 21966 (W) of 1995**

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| Madan Mohan Kundu and Others | Vs | APPELLANT  |
| The State and Others         |    | RESPONDENT |

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**Date of Decision :** 28-02-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1996) 2 CALLT 77

**Hon'ble Judges :** Bijitendra Mohan Mitra, J

**Bench :** Single Bench

**Advocate :** Ashok Banerjee and Sarajit Sen, for the Appellant; Dilip Kumar De and Arabinda Ghosh, Ashok Maity and Anup Kuma Biswas, for the Respondent

**Final Decision :** Allowed

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## Judgement

Bijitendra Mohan Mitra, J.—In the instant petition, on the factual score, it appears that a tender, vide No. 1927 dated 3.8.95, was issued by the Chief Medical Officer of Health of Malda on behalf of the Governor of West Bengal inviting tenders for supply of different articles, as detailed in that notice, to different Government Hospitals and Health Institutions including the Malda District Hospital for the period as mentioned therein. The petitioner has submitted a tender form with the requisite earnest money. The petitioner has made the offer of tender along with other participants and on a given date being 25th August, 1995. A list was caused to be published about the selected Diet Contractors of different Health Districts. The petitioner's name figures in the third item of the first group. The same was caused to be hung up in a Notice Board.

2. Pursuant to the direction given by this Court, the relevant records were produced by the learned advocate appearing on behalf of the Government authorities and on scrutiny of the same it appears that some proceedings took place in a meeting of the District Diet Committee held on 25.8.95 and the same was attended by other members including the concerned District Magistrate at

Malda. The notice showing the selection of candidates as demonstrated in the Notice Board is itself appended to the writ petition and that incidentally coincides with the date of proceedings being 25.8.95. Therefore, it can be reasonably inferred that on 25.8.95 a decision was arrived at as otherwise the selection made by the authorities would not have seen the light of the day. On the very next day on 26.8.95 another notice was hung up in the Notice Board from which it appears that it is decided by the District Diet Committee and the said decision seems to be at variance to a decision arrived at on the previous day by a Committee of Executives constituted by numerous members. The other Notice displayed on the Notice Board on the succeeding day does not indicate as to whether the members of the said Committee attended the meeting and as to whether the proceedings were drawn up. The same only bears the signature of a lone person without making any mention about the details held on any specific date. It is not possible to reconcile the inherent element of inconsistency with the display of two decisions in the Notice Board within the interval of a period of less than 24 hours. There has been further adumbration in the subsequent notice displayed in the Notice Board from which it appears that the petitioner is found to have no experience.

3. In support of the justification of the said explanation being given in the notice displayed on 26.8.95, reference of this Court has been drawn from Annexure "C" appended to the writ petition from which it appears that experience certificates are required to be annexed with the tender form. It is nobody's case before this Court that the tender submitted by the petitioner is incomplete and it did not enclose the certificate of experience. An attempt has been made by way of oblique reference to such stipulations about annexation of certificate of experience that experience is the sine qua-non of one's eligibility for being selected in a tender. To repel that condition, Mr Banerjee, learned Advocate appearing on behalf of the petitioner, has produced a copy of the terms and conditions of the general tender in respect of dietary articles for the year 1995-96, from a reading of which it appears that as many as 23 stipulations were" there and it can be reasonably opined that it is an exhaustive catalogue and the same is not illustrative. Secondly, no stipulation has been mentioned in the terms and conditions about experience. Now an oblique reference to annexation of experience certificate in the Notice Board is made to prevail and supersede the general terms and conditions. The notice of tender form must owe its origin to the terms and conditions of general tender and there cannot be any supersession of the general terms and conditions. As such, there is a basic element of repugnance between an oblique reference to annexation of certificate of experience and the general terms and conditions of the tender and this Court is not in a position to harmonise the said basic repugnance. It is also interesting to note as to how in such a cryptic way without recording the proceedings of 25.8.95 a lone person can substitute his decision in place of a collective decision taken on the previous day. The Court cannot lean in favour of wisdom of lone person within a spell of about 18 hours of gap of time.

4. In the affidavit it has been specifically averred that in some cases allotments of tender have been made in favour of persons without experience but this Court is not required to go into that question. The authorities being a creature of statute are required to subserve themselves to their norms and conditions and they cannot be permitted to deviate from the same by a round about way. As it has been indicated earlier that in the absence of any case made out by any of the parties that the tender from submitted by the petitioner is not in form or it is incomplete, therefore, the rejection unless made on that ground cannot withstand the test of scrutiny. The petitioner is very much there within the zone of consideration and he cannot be left aside because of the inconsistent conduct on the part of the authorities. Both the sides have referred to and relied upon a recent case of tender being Tata Cellular Vs. Union of India, and reference of this Court has been drawn to paragraphs 84 and 85 of the said judgment. Paragraph 84 provides the indicia of requisites of a valid tender put in by the Apex Court. In paragraph 85 the Apex Court has given a caution as it is not unmindful that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. It must not be tainted by colourable exercise of power in making a selection on an unbiased basis. The way in which the decision seems to have been taken by a lone person on 26.8.95 at complete variance to that of a collective decision taken on 25.8.95, this Court cannot sustain the latter decision taken on 26.8.95 by the District Diet Committee. The said decision is denuded of compliance with the formalities. It is bereft of any reason whatsoever. Any executive decision is also expected to be resonant with reasons as otherwise the court in judicial scrutiny cannot lend its ears to whatever the sound that may be discovered from the cryptic comments.

5. As such, this Court is constrained to set aside the purported decision taken by the District Diet Committee at Malda being displayed on the Notice Board on August 26, 1995.

6. Accordingly, the writ petition, stands allowed and the impugned decision as displayed in the Notice Board on August 26, 1995 is hereby set aside.

The concerned authorities will be required to act by way of follow, up measures on the basis of the instant order as the order displayed in the Notice Board on August 25, 1995 is sustained.