

(1989) 10 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 14991 of 1989

Mechanical, Civil Engineers and Contractors

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 21-10-1989

Acts Referred:

Citation : AIR 1990 Kar 205

Hon'ble Judges : K. Shivashankar Bhat, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy, for the Appellant; A.G. Holla, P. Ramachandra Rao and K.G. Raghavan and M.R. Achar, Government Advocate, for the Respondent

Judgement

1. The acceptance of the tender of and entrustment of the works pertaining to station building and miscellaneous works to, the 4th respondent, by the 2nd respondent (referred as "the Corporation") is under challenge in this writ petition. The construction to be put up under the impugned contract is stated to be of Station Building and Miscellaneous Works such as providing panel walls, false-ceiling, insulation works, etc., for Unit-III, which is a component of the Raichur Thermal Power Station Stage-II, with an installed capacity of 210 MW.

2. According to the 2nd respondent, the draft tender specifications for the works were formulated by M/s. Tata Consulting Engineers, who were the consulting engineers by the second respondent. These were scrutinised by the Chief Engineer (Civil Designs) of the 2nd respondent Corporation and with his note, were, further considered by the Civil Committee of the Corporation. The brief tender notification dated 27-12-1988 was thereafter issued by the Chief Engineer concerned, as per the approval of the aforesaid Committee.

Initial estimated cost of work was Rs. 180 lakhs period for completion was twenty months.

The petitioner, who submitted his tender, is aggrieved by the acceptance of the

4th respondent's tender on several grounds.

3. The contentions urged by Sri Sundaraswamy, learned counsel for the petitioner, are :

I. The 4th respondent was not eligible or qualified to be furnished with the tender books and the awarding of contract in terms of the tender notification.

II. The date on which qualification/eligibility has to be determined, was 17-1-1989 which was the last date for acceptance of application form for issue of tender books and the 4th respondent failed to produce the certificates in proof of its qualification.

III. The 2nd respondent, in the guise of seeking clarification, extended the time to prove the qualification and thus varied the terms of tender notification. This clarification varying the tender notification was not given due publicity, and only, the four persons who submitted the tenders were informed of it.

The extension of time given to prove the eligibility/qualification was done, only to favour the 4th respondent, in view of the differences that existed between the petitioner and the Managing Director of the 2nd respondent (who is a party as 3rd respondent).

IV. The 2nd respondent has not acted fairly and reasonably while considering the tenders. There has been no comparative evaluation of the respective tenders of the petitioner and of the 4th respondent.

4. To a large extent, these contentions overlap each other and the respective contentions and replies could be considered by formulating two main points, as arising for consideration :

(I) Whether the 2nd respondent acted fairly, reasonably and properly while inviting and considering the various tenders submitted in respect of the works in question?

(II) Whether the 4th respondent was qualified at all for the award of the contract in question?

5. The tender notification inviting tenders were issued on 27-12-1988. Tenders were invited from registered contractors as stated therein. Nature of the work, estimated cost of work, brief details of the work etc., were also stated therein. Thereafter the first para (I) bearing the marginal heading "Minimum qualifying requirement" gives three requirements :

"1. Should have executed civil and architectural works including insulation in a power plant/industrial complex, preferably in power plant.

2. Should have executed at least 1000 M3/ Month of concreting and at least 300 M3/ per month of brick work at one site.

3. The annual turnover for each of the preceding three years should be 1 crore."

Para-II referred to the period of completion of work.

Para-III refers to the particulars of issue and receipt of tender, which reads :--

"(a) Last date for receipt of application form for issue of blank tender books

17-1-1989

(b) Period of issue of blank tender books

23-1-89 to 27-1-1989.

(c) Last date and time for receipt of completed tender books

6-2-89 up to 3.00 p.m."

Para-IV pertains to the requirement of financial soundness etc., of the tenderer.

Para-V states that the intending tenderers shall furnish the information stated therein along with the application for issue of blank tender books, i.e., --

"(a) Audited balance sheet/certificate from chartered accountant for preceding three years;

(b) Latest Income Tax Clearance certificate.

(c) Copy of the Registration Certificate.

(d) Annual output of the works of the above nature at any site accompanied by a certificate from the organisation for whom the tenderer had carried out the works furnishing details such as rate of pouring of concrete, manufacturing of hollow concrete blocks, precast, concrete blocks..... (not clear) etc., and period of completion scheduled/envisaged, equipments and their deployment, i.e., man months etc."

Para-XII is also relevant, which reads :

"Corporation also reserves the right to verify any information / documents furnished, inspect the works carried out by the party and also to carry out assessment of the capability and capacity of the tenderer should the circumstances warrant such assessment in the overall interest of the Corporation."

5A. There is no dispute that the petitioner applied for tender books on 13-1-1989 along with all the required certificates, information etc. The 4th respondent also applied on 11-1-1989. According to the 2nd respondent six applications were received out of whom, except the petitioner, other five applicants did not furnish some of the requisite certificates/ information. It is stated by the 2nd respondent in its objection statement at para-12, that, since the Corporation had knowledge about the good performance of these five applicants in the past and desired better competitors for the work, the Corporation decided to seek information through clarifications from the applicants for tender books. Accordingly, 4th respondent and two other tenderers were informed by a letter dated 25-1-1989.

All applicants were individually intimated of the extension of time for further information/clarification, issue of tender forms, receipt of completed tenders etc. Annexure-E dated 25/27-1-1989 is the letter informing all the applicants of the changes effected in the tender notification and they are :

"1. Last date for receipt of clarifications

10-02-1989

2. Period of issue of blank tender books

13-02-1989 to 16-02-1989.

3. Last date and time for receipt of completed tender books

27-02-1989 up to 3 p.m.

4. The Part I of the Tender containing the technical and commercial conditions will be opened on 27-2-1989 after 4 p.m. if possible, or on any subsequent date, in the presence of available tenderers or their authorised representatives.

Other terms and conditions remain same."

6. On 25-2-1989 petitioner submitted his tender. The 4th respondent also submitted its tender within the time fixed as per the changed timings. On 27-2-1989 Part-I of the tenders were opened and Part II were opened (containing the rates) on 10-4-1989. They reflected the position as follows :

"Estimated cost Rs. 212.34 lakhs (.....Rs. in lakhs --

S.I.No.

Name of the Tenderer.

Tendered amount.

Loading amount

Evaluated Cost.

% over estimated mated amount.

1.

4th respondent

Rs. 209.39

Rs. 3.32

Rs. 212.71

+0.135

2.

5th respondent

214.30

3.40

217.70

+2.48

3.

Petitioner

222.42

3.78

226.20

+6.48."

The tender of the 4th respondent was the lowest in all respects and that of the petitioner, highest. Till 1st June 1989, the petitioner, was keeping quiet. The petitioner, on 1-6-1989 wrote to the Managing Director of the 2nd respondent (as per Annexure-G) persuading him to accept the petitioner's tender. One of the reasoning of the petitioner was :

"I am sure, the KPCL's purpose in introducing prequalification clause, cannot and should not be to deprive a target number of people in the profession with valid registration and to benefit only a handful of select bidders. The conditions of prequalification stipulated could be only for making a right choice in the interest of timely and proper execution of the projects of national importance of the type we are dealing with. Therefore, it is imperative that the authorities inviting the tender should examine the bids received with due seriousness by proper analysis and verification of records and certificates furnished by the tenderers."

Thereafter, petitioner pointed out that the second respondent had entertained tenders of others, who cannot be considered eligible; the petitioner reasoned in the letter to urge the ineligibility of other two tenderers. No specific objection was stated against the extension of time for receiving the completed tenders and the furnishing of the proof of eligibility. Again on 1-7-1989 petitioner wrote another letter to the 3rd respondent, wherein a general assertion was made, that "the contents of the notice inviting tender and tender documents have to be implemented by the tenderers and scrupulously enforced by the KPCL authorities, in order to maintain the sanctity of the tendering system." But no objection was raised against considering other tenders based on the particulars furnished by them after the time fixed by the original notification. The protests lodged with the Addl. Chief Secretary to the State Government and the Governor, also are general in terms; even otherwise, they are of no significance in view of the delay and the nature of the contents of those letters.

7. Therefore, it is clear that the petitioner did not protest against the alteration of the agenda (time-schedule for filing tenders and their consideration) at the earliest. Sri Sundaraswamy, the learned counsel for the petitioner, repeatedly questioned the propriety and legality of this alteration by the original of Annexure-E dated 25/27-1-1989. As a matter of legal principle, also, I don't find any legal bar to the procedure adopted by the 2nd respondent in this regard. Till the tenders are considered and finally one of them is accepted, no right accrues to a tenderer; he cannot insist that the particular procedure or policy should be followed. The ratio of the decision in *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, is relevant here :

".....There is no reason why the power vested in the Government to refuse to accept the highest bid should be confined to inadequacy of bid only. There may be a variety of good and sufficient reasons, apart from inadequacy of bids, which may impel the Government not to accept the highest bid. In fact, to give an antithetic illustration, the very enormity of a bid may make it suspect. It may " lead the Government to realise that no bona fide bidder could possibly offer such a bid if he meant to do honest business. Again the Government may change or refuse its policy from time to time and we see no reason why change of policy by the Government, subsequent to the auction but before its confirmation may not be a sufficient justification for the refusal to accept the highest bid. It cannot be disputed that the Government has the right to change its policy from time to time, according to the demands of the time and situation and in the public interest. If the Government has the power to accept or not to accept the highest bid and if the Government has also the power to change its policy from time to time. It must follow that a change or revision of policy subsequent to the provisional acceptance of the bid but before the final acceptance is a sound enough reason for the Government's refusal to accept the highest bid at an auction."

Having regard to the tenders submitted, their incompleteness regarding certain information/particulars, need to have competitive tenders for consideration and the general reputation of the tenderers if the State or its instrumentality chooses to extend the time to furnish better particulars/information/certificates, it cannot be said that the authority who invited the tenders acted arbitrarily or unreasonably. Public interest would be served by enabling reputed contractors tendering properly, so that the State (and its instrumentalities) could have the advantage of selecting a proper bid for the entrustment of the work.

8. Eligibility/qualification of the tenderers, here, are not sought to be conferred by the change. The tenderers had to prove their pre-qualifications i.e., qualifications as on the date of their tender. The 2nd respondent did not in any way, permitted an ineligible tenderer to get rid of the ineligibility. The experienced contractors, who had filed tenders were asked to clarify and prove their eligibilities/experiences. The situation is comparable to the situation, before the Supreme Court in *Charles K. Skaria v. Dr. K. U. Gopalakrishnan* AIR 1980 SC

1230, where, Supreme Court permitted the proof of eligibility for selection to M.D. Course, if the proof was adduced before the actual date of selection. At p. 1237, Supreme Court observed :--

"To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor, because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board is to make procedure not the hand-maid but the mistress and form not as subservient to substance but as superior to the essence."

At para-23, the Supreme Court again pointed out that, "a method of convenience for proving possession of a qualification is merely directory."

9. The 2nd respondent did not favour any particular tenderer. All the tenderers were permitted to file the tenders within the time newly fixed.

Another facet of the petitioner's contention was that, the rescheduling of the agenda should have been notified afresh so that, some more tenderers could have come forward; opportunity to the members of public, duly qualified was thus denied. But, this contention overlooks the fact that not a single person has challenged the procedure adopted by the 2nd respondent. There is no material to hold that any one else would have submitted application for tender book. Petitioner, is interested in projecting his business interest and he has not invoked the writ jurisdiction, as the one espousing a public cause. His grievance throughout, has been, that he was the sole eligible tenderer and hence by rejecting other tenders, his tender should have been accepted. Seeking such clarification/ information is a prevailing practice in all governmental departments, according to respondents 2 to 4.

10. Another procedural unfairness pleaded by the petitioner, pertains to the subsequent stage. According to the petitioner, the 2nd respondent and its Civil Committee did not consider the petitioner's case at all, and, at any rate, there has been no comparative evaluation of the respective tenders. This is stoutly denied by the second respondent. It has explained the nature of the consideration, the evaluation of the tenders by its technical consultants (Tata Consulting Engineers), its Chief Engineer and the Civil Sub-committee. On the face of it the tender of the 4th respondent was the lowest and if the 4th respondent is otherwise eligible and competent, no fault can be found in accepting its tender.

11. By referring to the proceedings of the Civil Sub-Committee (Ann. R 2 filed by the 2nd respondent), it was further contended that nature of one of the items of the works was altered to benefit the 4th respondent i.e., use of cement hollow block masonry was to be replaced by brick masonry. In the further affidavit filed on behalf of the 2nd respondent, it is clarified that no such modification was

contemplated and the observation of the Civil Sub-Committee in this regard arose out of a suggestion by one of its Members, but, ultimately, the Corporation had not accepted it. The work regarding this cement hollow masonry is stated to be of minor significance, in the totality of the works to be done. On the facts of the case, I am of the view that, this part of the observation of the Civil Sub-Committee was not acted upon, as stated in the statement of objection dated 4-10-1989 filed by the 2nd respondent.

12. Though some arguments were advanced that there was no proof of the qualifications of the 4th respondent, ultimately it has turned out to be a belated proof of the already existing pre-qualification regarding some of the matters and hence, the acceptance of the 4th respondent's tender cannot be nullified on the ground of unfairness or as not in the public interest. This will be further clear, while considering the next question.

Re. Question II.

It was contended that the 4th respondent was not at all qualified to be the eligible tenderer. As per Para-I clause (1), the tenderer should have executed insulation in a power plant/industrial complex; this experience was alleged lacking in 4th respondent. Fourth respondent had produced on 3-2-1989, the requisite certificate (original of Ann. R 5) showing its experience in this regard. The 2nd respondent stated in its statement of objection that the value of insulation work was about 0.6% of the total value of the work and hence the certificate produced by the 4th respondent, issued by the Geophysical Research Institute, Hyderabad was accepted as sufficient.

13-14. The experience of the 4th respondent in the hollow cement work was certified as per Annexure R17, issued by the 2nd respondent in view of the works carried out by the 4th respondent in connection with the Mani Dam Second stage Part-I of Varahi Hydro Electric Project. The certificate was produced on 11-1-1989 itself along with the application for tender books. Regarding the experience in the works pertaining to "hollow cement block works", the ITI Ltd., issued the requisite certificate (Ann. R 18) to the 4th respondent which was, however, produced only on 21-6-1989. Annexure-R.7 is the copy of the certificate issued by Vasavadatta Cements as to the brick works done by the 4th respondent. This was produced on 3-2-1989. This was challenged by the petitioner by alleging Vasavadatta Cements as a sister concern of the 4th respondent; however, its accuracy has not been questioned. The 4th respondent has also produced, as Annexure-R3, a printed brochure, giving details of its activities, and works done, so far, since the year 1946. The works effected by the 4th respondent include, works such as the Mani Dam (for the 2nd respondent) for about 14.23 crores. Almatti Dam (Upper Krishna Project) valued at 7.30 crores; the Mavinakere Parallel Aqueduct (a part of Hemavathy Reservoir Project) which was a 280 lakh project; Narayanapur Dam, a Rs. 12 crore project for a 3000 TPD Cement plant at Gadchandur, Rs. 20 crore project for Harihar Polyfibres Ltd. Other several civil works, structural steel fabrication and erection

works, a Rs. 4.5 crore project for Raichur Thermal Power Station for the Coal Handling systems and many other multistoried buildings/commercial complex, are also executed by 4th respondent. On 11-1-1989, 4th respondent had also produced Income Tax clearance certificate, registration certificate, balance sheet for 3 years and information as to its experience (Annexure-R4 series). The Sales-tax clearance certificate was produced only in August 1989 before the contract was awarded and the explanation offered is that, its production at the earlier stage was not a mandatory requirement.

15. A perusal of the material on record, shows that 4th respondent is perfectly eligible to have the contract awarded to it. The initial delay in furnishing a few certificates by the 4th respondent has given scope for the present attack by the petitioner against the procedure followed by the 2nd respondent, as also against the eligibility of the 4th respondent. However, the fact remains that the 2nd respondent considered the eligibility of the 4th respondent and there has been a comparative evaluation of the merits of the tenders submitted by the tenderers. The tenders were considered, at first, by an independent consultant (Tata Consulting Engineers) and thereafter by the various functionaries of the 2nd respondent.

A mere technical procedural flaw, if any, cannot vitiate the ultimate selection of one of the tenders. All the requisite certificates were before the 2nd respondent before it decided to award the contract to the 4th respondent.

16. It is not possible for me to accept the contention of the petitioner, that, the application of the 4th respondent for tender books, itself should have been rejected at the threshold. The requirements of paras I, IV and V are to furnish information, and if proof in support of the said information is furnished subsequently, the procedure adopted cannot be nullified as unfair or contrary to any public interest.

17. The judicial scrutiny of the tender-proceedings, is not to uphold the individual claim of any one of the tenderers; these proceedings are essentially to see whether the State (including its instrumentalities) acted fairly, reasonably, unarbitrarily and that public interest is not adversely affected by the transaction. The relief, in the way of a personal benefit to the petitioner, could be granted only as a by-product of the process of safeguarding requirement of fair play in action by the State, and the public interest. Normally, till the tender is accepted and contract is entered into, a tenderer has no enforceable right to have the contract awarded to him. But, other things being absolutely equal, the highest bid of a tenderer to purchase, or lowest quotation of attendees to supply goods or works may be directed to be accepted in the exercise of writ jurisdiction, as in the case of *Harminder Singh Arora Vs. Union of India (UOI) and Others*, .

18. In the instant case, I don't find any infirmity in the proceedings resulting in the award of the contract to the 4th respondent.

This court is not sitting in appeal against the decision of the authority which

awarded the contract. Examination of the process, commencing with the tender notification and ending with the awarding of contract is to find out whether any unreasonableness or arbitrariness vitiated the process and whether the resultant contract is contrary to the interest of the public. State and its instrumentalities are vested with any power for the Public good; they are trustees for the public; they have to act bona fide and fairly. Whoever may be the beneficiary of the ultimate contract, the public has a great stake in the performance of the State; the means adopted by the State to achieve or reach an end is as much relevant, as the object sought by the "end" itself. That is why, the requirement of fair play in action by the State, is an essential ingredient of the public interest. In this context the observations of the Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, has to be remembered :

"Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner, it has to be exercised for the public good. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise; deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

19. But, this Court, as the guardian of the public interest does not wait anxiously, for an opportunity to strike down every action of the State. The judicial power would strike down an executive action (whether in the field of ordinary administration or in the contractual field) only when the said action is obviously and patently unfair and arbitrary, or for any reason, the action is not in the public interest. The approach to be adopted by the Court, has been stated in *M/s. Kasturi Lal's case*, at p. 2000 :

".....We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Govt. is reasonable and in public interest. But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and

adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the Governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the Court must be ready to condemn it."

Each and every deviation from minute details of procedure cannot vitiate the process of awarding a contract. Procedural requirements are always subject to modifications depending on the situation. If a contract has to be awarded on a consideration of competing tenders, the State may extend the time initially prescribed, for the receipt of tenders; or in a case, where, tenders were received, but the reputed tenderers have omitted to furnish any particulars, the State may permit them to furnish those particulars.

In *G.J. Fernandez Vs. State of Mysore and Others*, , the petitioner contended that the stated Rules governing the tenders were not followed, resulting in the rejection of the petitioner's tender. The Rules were found in the P.W.D. Code. The Supreme Court held that the Code contained only instructions, which had no force of law. Non-observations of such administrative instructions, did not confer any right on any members of the public, like a tenderer to ask for a writ against the Government. The attack there pertained to the procedure followed in awarding the contract.

20. However, in the instant case, the main attack was against the eligibility or the qualification of the 4th respondent, to be awarded with the contract; the principle invoked by the petitioner is the one found in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, .

The attack was that, the standards prescribed for the furnishing of the tender books, to the applicants, were, not adhered to by the 2nd respondent and that only the petitioner was eligible to have the tender books. This contention cannot be accepted, because, every registered contractor as stated in the opening sentence of the tender notification, can seek the tender book. Further, the test of pre-qualification is confined to the three factors stated in clause-I of the said notification. The marginal-heading of the said clause-I bears this designation and the heading -- "pre-qualification requirement" -- does not govern other clauses II to XI.

21. If, only the petitioner was to be given the tender books, nothing remained in the tender process. Public interest would be seriously damaged, by confining the

consideration of the tender of the petitioner only. Competition amongst competent tenders is an essential requirement of awarding the contract, so as to safeguard the public interest. Hence, it is not possible to accept the petitioner's contentions that tender-books should have been given only to the petitioner and that the extension of time to submit the tenders with requisite clarifications are per Annexure-E was illegal. I don't find any unfairness or unreasonableness in the procedure adopted by the 2nd respondent.

A ground, attributing motives to the 3rd respondent and his bias against the petitioner was also raised. The allegations in this regard were specifically denied by respondents 2 and 3, supported by the affidavit of the 3rd respondent (who is an Officer belonging to I.A.S. cadre). The relevant material in the statement of objection found in para-36 thereof reads as follows, which speaks for itself:

"Respondent-3 specifically denies every one of the allegations made against him personally in this para. The statement sought to be attributed to him at the Board meeting and in the report submitted to the Government is misleading, mischievous and wholly incorrect. A factual statement was made by him in the course of an inter-departmental official communication in the discharge of his official duty. The remarks contained in the statement are neither uncalled for nor false nor scandalous. The petitioner is put to strict proof of the alleged false remarks made against him. The petitioner has indulged in unnecessary, uncalled for and unfounded personal attacks against respondent-3 due to sheer despair and frustration as a result of his failure to secure the work in spite of all his efforts and pressure. The petitioner was all praise for respondent-3 when the latter turned down the request of respondent-4 to Presque life him for R.C.C./ C.W. System and helped the petitioner to secure justice in some pending contracts in Stages I and II of Raichur Thermal Power Station. But he has suddenly turned a volte face against respondent-3 only after his disappointment in securing the work in question and the work relating to C.W. System."

22. It is also necessary to note here that, all tenders were initially processed and evaluated by an independent consultant -- Tata Consulting Engineers -- which recommended the acceptance of the tender of 4th respondent. Thereafter, these materials were considered by the Chief Engineer and the Civil Sub-Committee and finally by the Board of the 2nd respondent. In the circumstances, it is difficult to infer that the alleged prejudice/ bias of the 3rd respondent against the petitioner, would have weighed effectively against the petitioner, in the process of evaluating the various tenders.

Consequently I do not find any merit in the writ petition.

23. In the result, for the reasons stated above, this petition fails and is dismissed, but without any order as to costs.

24. Petition dismissed.