(2004) 12 DEL CK 0095

In the Delhi High Court

Case No : WPC 9258 of 2004 and CM 6611 of 2004

Metcalfe and Hodgkinson Pvt. Ltd. — APPELLANT

Vs

Container Corporation of India — RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Insurance Act, 1938 — Section 42(4), 64UM

Citation : AIR 2005 Delhi 211 : (2005) 2 BC 48 : (2005) 1 CTLJ 177 : (2005) 116 DLT 457 : (2005) 79 DRJ 579

Hon'ble Judges : S. Ravindra Bhat, J;D.K. Jain, J

Bench : Division Bench

Advocate : I.S. Alag and J.S. Lamba, for the Appellant; R.K. Joshi, for Respondent No. 1, Chetan Sharma Manish Vashisht and Jeevesh Nagrath, for the Respondent

Judgement

D.K. Jain, J.—RULE D.B.

2. Having regard to the urgency of the matter, with the consent of learned counsel for the parties, it is taken up for final disposal at this stage itself.

3. Challenge in this writ petition under Article 226 of the Constitution of India is to the legality and propriety of the decision of the Container Corporation of India, a public sector undertaking and respondent No.1 herein, to award the work of survey o f containers and cargo at the Inland Container Depot (ICD for short) Tughlakabad, Delhi to one M/s.Master Marine Services Pvt. Ltd., respondent No.2 herein. The petitioner seeks quashing of the award of work, with a direction to the first respondent to a lot/award the same to them, being the sole bidder having the requisite qualification and experience as prescribed under the eligibility criteria in the Notice Inviting Tender (''NIT'' for short) dated 15 December 2003.

4. The factual matrix, on which the foundation of this judicial action is laid, is as follows:

4.1 In December 2003, respondent No. 1 floated a limited tender for hiring the professional services for survey of containers and cargo and ancillary facilities at the ICD for a period of 24 months. The tendering was to be through a two bid process. First part was to consist of ''''Pre-Qualification Bid'''', which was to be accompanied by various documents, inter-alia, showing the experience; constitution of the firm/company; the turn over for past three years; a copy of the license to act as surveyor or/loss assessor under the Insurance Act, 1938 and the earnest money in the form of a bank draft/pay order etc. The second part was to consist of the financial bid.

4.2. A reference to some of the relevant instructions regarding submission of the tender, contained in Chapter (I) of the tender documents at this juncture would be apposite. These are as follows:

9) Tenderer should clearly indicate the name and address of their Firm/company/ Individual, as the case may be, on both the envelopes and should clearly indicate the name of job/work for which tender is being submitted.

11)CONCOR reserves the rights to amend the tender document, if considered necessary with due intimation to respective tenderers prior to the last date of submission. CONCOR also reserves the right to extend the date of submission and opening of tender if considered necessary to allow reasonable time to the tenderers in such cases.

12)CONCOR also reserves the right to accept or reject any tender in part or in full without assigning any reason whatsoever.

Relax the tender condition at any stage if considered necessary for the purpose of finalising the contract in the overall interest of the CONCOR and the trade.

Accept/reject any or all the technical bids or financial bids.''''

4.3. The eligibility criteria laid down in the Chapter (II) of the said documents was in the following terms:

1) (a) The tenderer must be experienced and qualified surveyor having minimum 2 years experience in the work of survey of import/export cargo and ISO containers. Experience should be supported with Copies of work order/experience for having worked as surveyor with any of the organisations of following type:

i) Any Major Port Trust

ii) ICDs/CFSs owned by CONCOR/CWC/any other Public Sector Undertaking

iii) Cargo terminals managed by Airports Authority of India.

Tenders received without proof of such experience will be summarily rejected.

(b) The Tenderer should have had an annual turnover of at least Rs.10 lakhs per year during last three years for every year separately.

(c) Tenderer should have employed at least 20 persons including at least two IICL certified supervisors for preceding 3 years.

(d) The tenderer must have license to act as surveyor/loss assessor under Insurance Act, 1938.

4.4. The scope of work was spelt out in Chapter (III) of the tender documents. In particular a successful tenderer, to be referred to as a ""Surveyor"" after the award of the tender, was required to provide the following professional services:

3.1"" Carry out external survey of all containers upon their arrival/dispatch by road/rail and prepare and submit a shift wise/train wise report in a format containing following details for each container:

(a) Number, Size, Type and Status of container (Whether empty or loaded).

(b) Seal condition (Whether sealed o.k. or broken/open). In case of sealed containers, seal numbers and logo of the seal, i.e., Customs/shipping line (with name/CONCOR etc. must be recorded. It will be duty of surveyor to bring to the notice of CONCOR/ security in charge of gate about any import/export containers found with defective/tampered/missing seals. The surveyor shall get into container released as per the directions issued by CONCOR immediately.

(c) Condition of container as per survey (O.K./Damaged). In case container is found damaged on arrival at the gate/rail side, surveyor shall make the necessary note of the damage and have such a report signed by the CONCOR gate staff and the driver of t e vehicle. Such a container should be surveyed in detail preferably within 24 hours along with surveyor of the concerned shipping line/agent. The damage report must be presented in the recognized EIR format along with an estimate of repair. All damaged containers shall be photographed by the surveyor for which no additional payment will be made.

3.2 Conduct and carry out internal survey of containers before stuffing of export cargo/after de-stuffing of import cargo, whenever asked. A report will have to be submitted in respect of each such container in the manner required by the terminal in charge

3.3 Carry out detailed cargo survey including labelling the lots at time of stuffing of export cargo/destuffing of import cargo at ICD, whenever asked. Surveyor will have to undertake preparation of tally sheets, scrutinize cargo conditions etc. along with survey of containers. The surveyor may also be asked to carry out survey for reworking of containers whenever directed by CONCOR officials.

3.4 Carry out survey of Reefer containers including inventorying of all parts, as per check list format to be provided by CONCOR, at time of their arrival/exit in/ from ICD.

3.5 In the course of carrying out the work indicated above, the contractor may also be required to perform other incidental tasks such as physical inventory of all the containers lying at ICD/TKD and its ancillary facilities on a periodic basis as instructed by the terminal in charge, for which no separate payment will be made.

3.6 An indicative list of locations, number of shifts required to be operated and the specific duties/functions of survey staff at different locations in the ICD and the empty yards is given in Annexure-I. The formats of various reports required to b prepared and submitted to CONCOR are given at Annexure II(A-F).''''

5. Pursuant to and in furtherance of the NIT the petitioner, who was already providing the afore-mentioned services to the first petitioner on ad-hoc basis, submitted their tender. The envelope containing the bid was opened on 15 December 2003 in the presence of the representatives of the petitioner and respondent No.2. Subsequent to the opening of the pre-qualification bid it was noticed that respondent No.2 did not meet the criteria as laid down in the tender documents, in as much as, the said respondant, a company incorporated under the Companies Act, 1962 did not hold a surveyor''s license in their own name and the license submitted was in the name of an individual, who happened to be the Chairman of the tenderer company. It is averred that immediately on coming to know about the deficiency in the tender submitted by respondent No.2 the petitioner lodged his objection with respondent No.1 on 16 December 2003 and demanded disqualification of the said respondent from any further participation. On 27 February 2004, the petitioner received a communication from respondent No.1, inter-alia, informing that their bid had been pre-qualified and that the financial bid would be opened on 28 February 2004 On 28 February 2004, the petitioner found that respondent No.2 had also been invited for opening of their financial bid though according to the petitioner they did not qualify in the first stage of the tendering process. The petitioner claims to have lodged their protest prior to the opening of the financial bid but the same was ignored by respondent No.1. Respondent No. 2''s bid was marginally lower than the petitioner''s bid. Petitioner''s oral protest having been ignored, vide their letter dated 3 March 2004 they lodged the protest in writing and requested for rejection of the bid of respondent No. 2 summarily.

6.There being no response to the said protest by the petitioner, alleging favoritism, arbitrariness, unfairness in the action of first respondent in considering the technical bid of the second respondent the petitioner filed a writ petition (W.P.(C) No .3667/04) before this Court. However, the said writ petition was dismissed on the ground that respondent No.2 might have obtained the license to act as a Surveyor/Loss Assessor under the Insurance Act, 1938 in the meanwhile and, Therefore, the Court could not be asked to undertake a roving and fishing inquiry. The Court observed that it was for the appropriate authorities to consider and decide the matter in accordance with law. Petitioner''s SLP in the Supreme Court against the said order was unsuccessful.

7. Pursuant to the orders passed in the writ petition, the petitioner addressed another representation to respondent No.1, inter-alia, praying that the decision to award the work be taken keeping in mind the observation of the Court in the

said writ petit ion.

8. There was no response to the said representation. Instead, vide their letter dated 19 May 2004 respondent No.1 asked the petitioner to hand over all the functions at the ICD to the second respondent with effect from 1 June 2004 Aggrieved by the said decision the petitioner has preferred the present writ petition.

9. The writ petition is resisted by the respondents. In reply to the show cause notice it is stated that neither the petitioner nor respondent No.2 had fulfilled all the conditions stipulated in the eligibility criteria and, Therefore, exercising its power under Clause 12 of the instructions, the first respondent relaxed the tender conditions and qualified both the bidders in public interest. In answer to the averment of the petitioner that respondent No.2 company did not possess a license under the Insurance Act, 1938, and Therefore, did not meet the eligibility criteria as stipulated in Clause 1(d), it is stated that the said respondent had submitted a license from the Insurance Regulatory and Development Authority (''''IRDA'''' for short) in the name of C pt. Percy Meher Master as sole proprietor of the concern Master Marine Services, which was later on converted into a company, with a clarification that though the said license was issued in the name of Captain Percy Meher Master in his capacity as the proprietor of the said concern but he is now the Chairman of the tenderer company. It is averred that the Tender Evaluation Committee deliberated upon the said fact and opined that respondent No.2 being an established surveyor, doing work of number of shipping lines and Capt. Percy Meher Master, holder of a valid license, being the Chairman of the tenderer company, both the bids be opened. It is also stated that the major work (98%) under the contract being of data entry no license under the IRDA was required. While refuting the claim of the petitioner that it was the sole bidder fulfilling all the conditions of the eligibility criteria, it is asserted that respondent No.2 also fulfilled the eligibility criteria. It is also pleaded that since the decision of the first respondent to relax the tender condition was in the overall interest of the corporation and the trade, it is not a fit case for judicial review.

10. We have heard Mr. I.S. Alag, Advocate on behalf of the petitioner and Mr.R. K. Joshi, Advocate and Mr. Chetan Sharma, Sr. Advocate on behalf of respondents No.1 and 2 respectively. We have also perused the original record, produced by the first respondent in deference to our direction.

11. Challenging the validity of the said decision, Mr. Alag has strenuously urged that para 1(d) of the eligibility criteria clearly stipulates that the ''''tenderer'''', who can be a firm, a company or an individual must have a license to act as surveyor/loss assessor under the Insurance Act, 1938. The submission is that the tenderer being a company, it should have furnished a valid license issued by the IRDA, in its own name and not in the name of an individual, who may be its Chairman. It is thus, contend d that the said requirement being an essential pre-qualification condition, the bid submitted by respondent No.2 should have been

rejected at the threshold. It is alleged that despite the said serious deficiency, respondent No.2 was adjudged as qualified and awarded the work. Emphasizing that the said condition, being an essential term, could not be relaxed, it is pointed out that when an earlier tender was floated on 24 February 2002 respondent No.2 was disqualified on the short ground that it did not have a surveyor license under the Insurance Act in its name but now for some oblique reason the first respondent has chosen to ignore the said requirement to accommodate respondent No.2, contrary to its own earlier stand. It is thus pleaded that first respondent having acted arbitrarily, capriciously and in unjust manner, its decision to award the contract to respondent No.2 deserves to be set aside.

12. Per contra, Mr.Joshi, learned counsel for the first respondent while asserting that the said respondent has not committed any wrong and has evaluated the bids strictly in terms of the NIT, has submitted that the requirement of a valid license in the name of the company under the Insurance Act is not an essential condition, particularly when respondent No.2 is a closely held company of the family members of the said Capt. Percy Meher Master. Reliance is placed on a decision of the Supreme Court i New Horizons Limited and Another Vs. Union of India (UOI) and Others, to contend that the corporate veil can always be pierced to ascertain the true nature of a company, which was done in the instant case by the tender evaluation committee, while recommending opening of the bid submitted by respondent No.2. In any case, it is urged by the learned counsel, that the said condition having been relaxed by the Tender Evaluation Committee in public interest, the impugned decision cannot be termed as arbitrary or illegal and Therefore, there is no case for interference by this Court. Reliance is also placed on another decision of the Apex Court in Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, to contend that the paramount considerations for award of a contract are the commercial considerations and the public interest and a rational departure from the laid down norms does not per se render such a decision illegal.

13. Mr. Chetan Sharma, learned senior counsel appearing for the second respondent while placing strong reliance on New Horizons''s, case (supra) has submitted that the decision of the first respondent has to be construed from the stand point of a prudent businessman and, Therefore, the action of the first respondent in accepting insurance license in the name of the Chairman of the tenderer company as fulfilling the requisite condition cannot be said to be unreasonable. It is asserted that license in the same of the Chairman is a sufficient compliance with the eligibility criteria stipulated in Clause 1(d). It is pleaded that the impugned decision being reasonable and fair, it cannot be struck down on the touchstone of the principles governing the exercise of power of judicial review, as laid down by the Apex Court in Tata Cellular Vs. Union of India, . Reliance is also placed on the decisions of the Apex Court in Air India Ltd. Vs. Cochin International Airport Ltd. and Ors., (2000) 2 SCC 17 and West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others, , to contend

that respondent No.1 having taken the decision to award the contract to the second respondent keeping in view the nature of the work involved, the Court should not interfere with the said decision.

14. Thus, the question that emerges for our consideration on the basis of the respective pleadings is whether the decision of the first respondent to treat the license issued under the Insurance Act in favor of the Chairman of the tenderer company to be sufficient compliance with the eligibility condition stipulated in Clause 1(d) of Chapter (II) of the tender document and consequential evaluation and award of contract in favor of respondent No.2 is valid in law?

15. Before adverting to the question posed, it will be useful to bear in mind the broad parameters governing the exercise of power of judicial review while examining an administrative decision. Although Article 226 of the Constitution confers on the High Courts a very wide power of judicial review to examine whether the administrative action is valid or not, but judicial restraint in interfering in matters relating to administrative functions, particularly in contractual matters is the order of the day. n administrative matters, the quest has been to find a right balance between the administrative discretion and the public policy. Ultimately what prevails with the Courts in such like matters is that while public interest is paramount, there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. The State or its instrumentality cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate. [Refer: M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others,

16. It is equally true that even in contractual matters a public authority does not have an unfettered discretion to ignore the norms recognised by the Courts while dealing with public authority but at the same time if a decision has been taken by a public authority in a bona fide manner, although not strictly following the norms laid by the Courts, such decision is upheld on the principle that the Courts, while judging the constitutional validity of executive decision, must grant certain measure of freedom of ''''play in the joints'''' to the executive [See Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, . Taking note of these observations, in Union of India and Others Vs. Dinesh Engineering Corporation and Another etc., , their Lordships of the Apex Court have observed that a public authority even in contractual matters should not have an unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by the Courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities, whose actions are amenable to judicial review. In Preston, in re. (1985) 2 All 327 it was observed that ''''the principle of fairness has an important place in the law of judicial review'''' and ''''unfairness in the purported exercise of a power can be such that it is an abuse

or excess of power''''. Thus, merely because t e authorities have certain ''''elbow room'''' available for use of discretion in accepting offer in contracts, the same will have to be exercised within the four corners of the requirements of law, especially Article 14 of the Constitution.

17. In Patel Engineering (supra), it was observed by the Apex Court that tender conditions have to be adhered to scrupulously for otherwise any relaxation or waiver of a tender condition, unless so provided in the NIT would encourage and provide scope for discrimination, arbitrariness and favoritism, which are totally opposed to rule of law and our constitutional values. It was also observed that where power to relax or waive a condition exists under the Rules, it has to be done strictly in compliance with the Rules.

18. In M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, their Lordships of the Supreme Court, while drawing a distinction between the essential conditions of eligibility and others, which are merely ancillary or subsidiary, observed that the former have to be enforced punctiliously and rigidly but latter can be deviated from, depending on the facts and circumstances of a given case.

19. Therefore, before we proceed to deal with the afore-noted moot question, it would be necessary to also consider whether the stipulation in Clause 1(d), of the eligibility criteria is an essential condition?

20. The eligibility condition stipulated in Clause 1(d) is that the ''''tenderer'''' must have a license to act as surveyor/loss assessor under the Insurance Act, 1938. The plain language of the Clause makes it clear that the said condition of eligibility is a n essential condition. Further, a conjoint reading of various Clauses of the tender conditions, particularly the fact that a ''''tenderer'''' could be either a partnership, a company or even a sole proprietary concern, leaves no doubt in our mind that the eligibility criteria stipulated in Clause 1(d) of Chapter (II) has to be satisfied by the ''''tenderer'''', who may be an individual, a firm or a company.

21. Having held so the next question for consideration is whether in a case where the ''''tenderer'''' is a company, holding of a license under the Insurance Act, 1938 by one of the Directors or the Chairman of the company is sufficient compliance with the said Clause? Answer to the question is provided by section 64UM of the Insurance Act itself. Sub-section (D) of section 64UM provides that no license to act as a surveyor or loss assessor shall be issued unless, the applicant, where he is a company or fir , satisfies the competent authority that all his directors or partners, as the case may be, possess one or more of the qualifications specified in Clause (i) and none of such directors or partners suffer from any of the disqualifications mentioned in sub section (4) of section 42 of the said Act, which lays down certain norms for disqualification as a licensed surveyor/insurance agent. It is evident from the said provision that a license under the said Act in the name of the company can be issued only when all its

directors fulfill the qualifications specified therein and holding of a license by one of the directors does not entitle the company to have the license in its own name. That being so, in our view, the tenderer being a company, the holding of license under the Insurance Act by its Chairman was not a sufficient compliance with the essential eligibility criteria. Being a mandatory statutory provision, the doctrine of lifting the veil, pressed into service by learned counsel for the second respondent cannot be invoked in the present case.

22. The minutes of the Tender Evaluation Committee of the first respondent recorded on 17 January 2004 lend support to our view. The final conclusion of the Tender Evaluation Committee reads thus: ''''The documents given by M/s Metcalfe are perfectly in order. There is slight ambiguity about one of the documents given by M/s Master Marine Services. This concerns the surveyor license. The license is issued in the name of Mr. Percy Meher Master who s the sole proprietor of M/s Master Marine Services. The license issued by the IRDA mentions Mr.Percy as being the sole proprietor of M/s Master Marine Services. As per our tender criteria, clause 1(d), Chapter-2 (Pg.6) mentions that ''''the tenderer must have license to act as surveyor/loss assessor under Insurance Act 1938''''. The TEC feels that there are only two bidders in this tender. It would be desirable to prevent this tender from lapsing into a single bidder tender. Therefore, the TEC feels that, subject to the approval of Accepting Authority, Master Marine Services can be asked to provide proof of the company, i.e., Master Marine Services, having a survey license in the name of the company. This might require the company to get an endorsement o the license issued to Sh. Percy as per clause-3 of the license issued by IRDA. The Committee feels that subject to M/s Master Marine fulfilling this condition, both the bidders can be considered for short-listing and a date fixed for opening the financial bids by the accepting authority.

This is without prejudice to Competent Authority''s discretion to accept/reject/ modify/amend the Committee''s recommendations.'''' (underlined for emphasis)

23. Pursuant to recommendation of the Tender Evaluation Committee, which was accepted by the Director, the DGM of the first respondent vide his letter dated 30 January 2004, requested respondent No.2 to provide proof that the company is having a license in its name, or an endorsement in the name of the company in their current license issued by the IRDA.

24. In response thereto, vide their letter, received in the office of respondent No.1 on 5 February 2004, the first respondent was informed that the license had been issued in the name of Capt. Percy Meher Master in his capacity as proprietor of M/s. Master Marine Services and now the Chairman of their company. A copy of the Board Resolution appointing Capt. Percy Meher Master as Chairman of the company was enclosed with the said letter.

25. The Tender Evaluation Committee met again and made the following recommendation: ''''Based on the approval of Competent Authority, M/s Master

Marine Services Pvt. Ltd. were asked, vide letter dated 30.1.04 to provide proof that the company is having a license in its name, or an endorsement in the name of M/s Master Marine Services Pvt. td. in the issued an IRDA license, as it was observed that the survey license was issued in the name of Mr. Percy Meher Master, in the capacity of sole proprietor of M/s Master Marine Services Pvt. Ltd.

In response, M/s Master Marine Services Pvt. Ltd. vide letter dated 4.2.04 has informed that the said license has been issued in the name of Capt. Percy Meher Master in the capacity of proprietor of M/s Master Marine Services and now he is the chairman o their company. A copy of the Board Resolution dated 28.10.1997 appointing Capt. Meher Master as the chairman of the company has also been enclosed.

As per the eligibility criteria in the present tender (chapter 2 Pg-6), the Tenderer must have license to act as surveyor/loss assessor under Insurance Act, 1938. It is seen that Capt. Percy Meher Master, the current chairman of the company is having a license issued in his name, but as proprietor of Master Marine Services.

The TEC Therefore opines that M/s Master Marine Services Pvt. Ltd. is known to be an established surveyor doing work for a number of shipping lines at various CONCOR terminals. Moreover, Mr. Percy Meher Master who was the sole proprietor of M/s Master Marine Services has been appointed the chairman of the company by its Board. Therefore, they do have adequate experience and credentials to carry out the survey activities. In view of the above, Tender Committee is of the opinion that we may qualify both the tenderers. M/s Master Marine Services Pvt. Ltd. and M/s Metcalfe and Hodkinson Pvt. Ltd. for their Technical capabilities. It is Therefore recommended that the financial bids of these two agencies can be opened on a date with due intimation to both the bidders.

Competent Authority may accept/reject/modify the recommendation of the TEC as deemed fit.''''

26. The recommendation of the Tender Evaluation Committee was accepted, with the result that respondent No.2 was pre-qualified and the bid submitted by them was entertained and evaluated, notwithstanding the fact that the Tender Evaluation Committee was o f the view that the tenderer company must have a license in its own name to act as a surveyor/loss assessor under the Insurance Act, 1938. This mandatory condition was glossed over for the reason that the second respondent was known to be an established surveyor doing work for number of shipping lines at their various terminals; its sole proprietor, namely, Capt. Percy Meher Master had been appointed as a Chairman of the company and, Therefore, they have adequate experience and credentials to carry out he survey activities. It is pertinent to note that without recommending the relaxation of the eligibility condition stipulated in Clause 1(d) the Tender Evaluation Committee opined that the petitioner and the second respondent may be qualified in their technical capabilities. The recommendation was accepted by

the Director as it is.

27. It is, thus, clear from the factual scenario projected above, that respondent No.2 did not satisfy the norm of eligibility laid down by respondent No.1 in the tender documents, despite the fact that they were given an opportunity to do so, vide letter dated 30 January 2004, issued by respondent No.1. Minutes of the meeting of the Tender Evaluation Committee recorded on 17 January 2004 also show that the stand of the first respondent in their affidavit that the petitioner also did not fulfill the necessary eligibility criteria is wrong and is an afterthought.

28. We are of the considered view that respondent No.2 having failed to satisfy an essential pre-qualification norm, respondent No.1 was not competent to entertain their bid. Respondent No.1 was bound to observe the eligibility criteria scrupulously. Therefore, bearing in mind the afore-noted broad principles governing an administrative action, we have no hesitation in holding that the decision of respondent No.1 to accept the tender of respondent No.2, being vocative of the equality Clause of the Constitution, suffers from the vice of arbitrariness and Therefore, cannot be sustained.

29. Resultantly, the writ petition is allowed; the award of work of professional services for survey of containers and cargo at ICD Tughlakabad and other ancillary facilities by respondent No.1 in favor of respondent No.2 is quashed and the rule is made absolute.

30. However, bearing in mind the fact that the second respondent is stated to have commenced its work, we permit them to continue to do the work assigned under the contract till the first respondent reconsiders the bid submitted by the petitioner. It will be open to the said respondent to negotiate with the petitioner the bid price and if they are satisfied with petitioner''s offer, the contract shall be awarded to them, failing which, fresh tenders may be invited. The entire exercise in this behalf shall be completed as expeditiously as practicable and in any case not later than two months from the date of this judgment.

31. In the circumstances of the case, there will be no order as to costs.

