

(1996) 08 DEL CK 0029
In the Delhi High Court
Case No : C.W.P. No. 1841 of 1996

M/s. Repl Limited

APPELLANT

Vs

Gas Authority of India Limited and others

RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Citation : (2003) 39 DRJ 227

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Smt. Indira Jaising and Sh. Kirti Uppal, for the Appellant; Sh. Arun Jaitley, Sh. Mukul Rohtagi, Sh. Arvind Nigam and Sh. A. K. Singla, for the Respondent

Judgement

C.M. Nayar, J.—The present petition is directed against the respondents and questions the legality and validity of the recommendations made by respondent No. 2 to respondent No. 1 to award the contract to respondent No. 3 with consequential prayer to quash and set aside the same. Further direction is prayed against respondents 1 and 2 to appropriately evaluate the price bid of the petitioner and after going into the legality of the same to award the contract to the said petitioner, being the lowest qualified bidder. Respondent No. 1 is a company wholly owned by Union of India and is registered under the Companies Act and its main business is to generate and supply gas to various consumers. Respondent No. 2 is also a Government company and its main objects include the providing of consultation services in the matter of engineering and procurement of equipments for the petroleum and oil gas industries. The said respondent has acted as consultant to respondent No. 1 in the matter of issuance of a tender which is the subject matter of consideration in the present petition. Respondent No. 3 is a company which, inter alia, along with other companies made a bid for contract with respondent No. 1. The petitioner has alleged that respondents 1 and 2 are intending to award the contract to respondent No. 3 in an illegal manner as respondent No. 3 is not qualified for the same. The petitioner, on the other hand, is duly qualified and will have secured the contract

but for the fact that the contract is proposed to be illegally awarded to respondent No. 3.

2. The facts leading to filing of the present petition are that in the month of February, 1995, respondent No. 1 floated a tender bearing No. 2986/T-15/94-95/SKD/25, which was advertised and published in several leading newspapers. Pursuant to the said advertisement, the petitioner applied to respondent No. 1 and obtained tender documents which were duly filled up and the petitioner submitted a bid along with a Bank Guarantee of Rs. 30 lakhs for the proposed contract. A copy of the invitation for the bid, which forms part of the tender document, is filed as Annexure P1 to the writ petition. The material terms and conditions are annexed as Annexure P2. The relevant details for the proposed contract are stated in paragraph 1.1, 1.2 and 1.3 in the bid documents which read as follows.

"1.1. The Gas Authority of India Ltd. (GAIL) have been sanctioned a loan from the Asian Development Bank (ADB) and co-financed by the Exim Bank, Japan in Us Dollars towards the cost of Gas Rehabilitations and Expansion Project (HBJ) and intends to apply part of the proceeds of this loan to eligible payments under the contract for Telecommunication System. Further, payment by ADB will be made only at the request of GAIL and upon approval by ADB and will be subject in all respect to the terms and conditions of loan agreement. No party other than GAIL shall derive any right from the loan agreement or have any claim to the loan proceeds.

1.2. GAIL has appointed. M/s. Engineers India Limited (EIL) as consultant who invites sealed Bids under single stage two envelope system, from eligible Bidders from the member countries of ADB, with sound technical and financial capabilities meeting the qualification requirement as stated hereunder and Bid Evaluation Criteria as mentioned in Bidding Document.

1.3. BRIEF SCOPE OF WORK

1.3.1. System Design, Detailed, Engineering, supply of all related goods and providing all related services, testing, Installation of a 34 MBPS Optical Fibre based Digital Communication System, Mobile VHF communication System and Network Management System, Integration, Trail Run, Commissioning for about 515 k.m. long Bijapur-Dadri-Faridabad Gas Pipeline in Central India, as per requirements/specifications of the Bidding Document.

1.3.2. The supply and laying of Optical Fibre Cable in trench is excluded from the scope of work.

1.3.3. The above scope of work consists of two parts.

Part-A : The optical Fibre Communication System with Network Management System (MS) and test instruments.

Part-B : VHF Mobile Communication System with its associated items including

its integration with Optical Fibre Communication System.

To qualify, the Bidder shall quote for both the Parts-A and B. GAIL reserves the right to award Part-A with or without Part-B subject to statutory clearances for the VHF System The likely band for VHF system is 134-76 MHz."

3. The estimated value of the work was Rs. 21 crores and the mode of opening of bid was by way of open international competitive bidding under Asian Development Bank Financing Loan. Approximately 34 persons purchased the bid documents which were sold between the period February 13, 1995 to April 24, 1995 extended up to May 26, 1995. The date for pre-bid conference was March 14, 1995. The due date for submitting bids was May 1, 1995 extended up to June 15, 1995. Approximately 10 bids were received within the due date. The names of such bidders are given in the petition as follows :

- (1) M/s. Hindustan Cables Ltd.
- (2) M/s. ITI Limited, Bangalore.
- (3) M/s. Optel Telecommunications Ltd. Bhopal.
- (4) M/s. Unitech Ltd., New Delhi.
- (5) M/s. Punjab Communications Ltd., Chandigarh.
- (6) M/s. Punjab Wireless Systems Ltd., Chandigarh.
- (7) M/s. ABB Limited, Bombay.
- (8) M/s. REPL Engg. Ltd., Bombay.
- (9) M/s. OLEX Ltd. Australia.
- (10) M/s. Himachal Futuristic Comm. Ltd., New Delhi.

4. The petitioner has contended in the writ petition that unless and until the bidder fulfills the conditions as envisaged in the clauses, referred to above, his priced bid could not have been opened. It is further submitted that only three bidders actually fulfilled the techno commercial priceless bid conditions, namely, the petitioner, UNITECH and OLEX. None of the other bidders fulfilled the conditions. It, Therefore, appears that respondent No. 1 took a decision to consider the case of even that bidder who had not fulfilled the qualification, such as, that of respondent No. 3, Punjab Communication Ltd., for short PCL. Respondents 1 and 2 took a decision to open the priced bid of PCL subject to their furnishing fresh consortium agreement. The submission of the petitioner as incorporated in the writ petition in this regard is referred to in paragraph 9, the operative part of which reads as follows.

"The respondent Nos. 1 and 2 took a decision to open the priced bid of PCL subject to their furnishing fresh consortium agreement. The said PCL had bid as a consortium of four parties namely PCL, IRCON, TINS and AT & T. Of the

consortium members, M/s. TINS did not have the relevant experience for the supply, installation, training documentation of the optical fibres system and which was a critical component of the offer. So far as the respondent No. 3 is concerned, the respondent Nos. 1 and 2 decided to open their price bid subject to their furnishing an undertaking that the responsibility assigned to M/s. TINS shall be discharged by them under the overall supervision of M/s. AT & T who are observed to have relevant experience for the same and furnishing extension of the bid security up to 30.4.1996. The petitioner say and submit that it is obvious from the face of the record that the respondent No. 3 did not have the required qualification to make the bid. It appears that AT&T alone had the requisite experience to perform the work assigned to TINS. It appears that as on the date of the opening of the techno commercial unpriced bids, the respondent No. 3 did not have a signed agreement from M/s. AT&T for discharging the contract work assigned to TINS. It is Therefore obvious that the said respondent No. 3 was not qualified on the date when the techno commercial bids were opened. It is respectfully submitted that the requirement of experience was not only substantial in nature but indeed went to the root of the matter as the contract could never be awarded to an unqualified person."

5. The terms, conditions relating to the opening of the bids may now be reproduced as below :

E. Bid opening and Evaluation

"31.0. OPENING OF BIDS BY owner/CONSULTANT

31.1. The owner/CONSULTANT will open bids, as per the procedure prescribed in invitation for Bids, in the presence of bidders's Representatives, who choose to attend on date and time as specified in Invitation for bids. The bidder's Representatives who are present shall sign Bid opening statement evidencing their attendance. Only those bidders shall be called for the price bid opening whose offers have been considered responsive and technically and commercially acceptable.

31.2. The bidder's name, presence or absence of the requisite bid security and such other details as the owner/CONSULTANT, at its discretion, may consider appropriate will be announced and recorded at the opening.

31.3. Prices discounts offered, modifications and bid withdrawals and such other details as the consultant at its discretion may consider appropriate will be read out at the time of opening of price bills of technically and commercially acceptable bidders."

"32.0. CLARIFICATION OF BIDS

32.1. To assist in the examination, evaluation and comparison of bids, the owner/CONSULTANT may, at its discretion, ask the bidder for a clarification of its bid. All responses to request for clarification shall be in writing, and no change in the price or substance of the bid shall be permitted to the bidder after opening of

prices."

"33.0. TECHNO-COMMERCIAL EXAMINATION OF THE BIDS

33.1. The CONSULTANT will examine the bids to determine whether they are complete, whether required, securities have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.

33.2. Prior to detailed bid evaluation, the CONSULTANT will determine the substantial responsiveness of each bid to the documents. A substantially responsive bid is one which conforms to the terms, conditions, and specifications of the Bidding Documents and bid Evolution Criteria without material deviation. A material deviation is one which affects in any substantial way the scope, quality or performance of the works, or which limits in any substantial way, inconsistent with the bidding documents, the owner's rights or the bidder's obligation under the Contract, and the rectification of which deviation or reservation would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

33.3. Substantially responsive bidders will be Short listed by the owner/CONSULTANT for opening of price part of their bids. Date, Time and Venue for opening of price bids will be informed to the short listed bidders."

"34.0. BID EVALUATION CRITERIA

34.1. The bids without requisite Bid Security and/or not in the prescribed proforma will not be considered and bids of such bidders shall be rejected."

"35.0. QUALIFICATION REQUIREMENT

35.1. Experience in case of single Bidder

35.1.1. The bidder must have successfully executed on turnkey basis (i.e., System Design, Detailed Engineering, Supply, Testing and Commissioning) during last five years, at least one Digital Optical Fibre Cable based Communication system including Network, Management System (NMS) (or similar to NMS) having minimum Six Hops. The bidder must have also successfully executed during the last five years, at least one project of VHF Mobile Communication System with minimum Six Hops and should have successfully integrated the said VHF system with the main communication system.

35.1.2. The equipments offered shall be filed proven with satisfactory performance for a minimum of one year.

35.1.3. The annual financial turnover of the single bidder/consortium leader should be more than the equivalent of US Dollars Six and half millions (for foreign bidders) or Rupees Two hundred millions (for Indian bidders) during any ONE of the previous THREE financial years.

35.2. EXPERIENCED IN CASE OF CONSORTIA

(a) Bids from consortium comprising of Indian or foreign parties or a combination of such parties are also acceptable, provided members to their respective filed of operation of such consortium fulfill the qualifying requirement applicable and members of such consortia assume joint and several responsibility. One member of the Consortium shall be nominated as the leader for the purpose of bidding. The leader of the consortium should accept overall responsibility for the total scope of work, including project management and GAIL shall only communicate with the leader of the Consortium.

(b) In addition to bid from consortium as above, GAIL/EIL can also accept the offer from an Indian bidder who has entered into a technical collaboration with overseas parties for technology transfer, technical support and backup guarantee for the works covered under this bid document and the foreign collaborator meets the experience criteria as mentioned at paras 1.8.1. above. In that case, the overseas collaborators have to provide backup guarantee for quality/warranty and satisfactory performance and to this extent there should be a separate agreement between collaborator and the Indian bidder for this job and the same shall form part of the contract. The copy of said agreement shall be submitted along with bid. The performance bank guarantee for the said job will be provided by the bidder.

(c) The bidders shall submit documentary evidence along with their bids in order to fulfill the qualifying requirements stated above. The consortium bidders shall also submit Memorandum of Understanding along with their bids. The MOU between the consortium members shall clearly define the role, responsibilities and scope of work of each member Along with nomination of the leader, commensurate with their experience and capabilities and a confirmation that members of the consortia assume joint and several responsibility.

35.3. Further examination/evaluation of only such bids, as are determined. meeting the qualification criteria mentioned as above, shall be taken up. When technical modifications are required in any bids and subsequent price adjustments are necessary, a supplement price proposal shall be required to be submitted within a specified period.

35.4. The provisions of following clauses of the bidding documents must be adhered to, failing which the bid shall be considered non-responsive and shall be rejected.

(i) Bid security.

(ii) Bid validity period.

(iii) Force Majeure.

(iv) Compensation for delay.

(v) Arbitration.

(vi) Defect Liability period.

(vii) Performance Guarantee.

(viii) Warranty and Guarantee of goods.

35.5. Bids conforming to technical specifications/requirements as mentioned in the Bidding Document shall only be short listed.

35.6. Time Schedule for completion.

Time Schedule for completion is given in Bidding Document. Bidder conforming to the completion schedule or earlier completion schedule shall be considered for qualifying.

F. AWARD OF CONTRACT

42.0. POST-QUALIFICATION AND AWARD.

42.1. The owner/Consultant will determine to its satisfaction whether the bidder selected as having submitted the lowest-evaluated responsive bid is qualified to perform satisfactorily the contract.

42.2. The determination will take into account the bidder's financial and technical capabilities, as well as such other qualifications as the owner/consultant deems necessary and appropriate.

42.3. The owner will award the contract to the successful bidder whose bid has been determined to be the lowest evaluated responsive bid, provided that the bidder is determined to be qualified to perform satisfactorily the contract."

6. The learned counsel for the petitioner further submits that it appears that respondents 1 and 2 decided to give the bidders time till January 19, 1996 to submit additional documents and despite repeated requests, respondents No. 3 made various excuses for extension of time for submission of documents. The Tender Committee gave the last opportunity in this regard and recommended that the bidders be asked to submit the requisite documents latest by January 19, 1996 failing which their offers will be rejected. However, the date for providing the necessary information was further extended and finally to March 8, 1996. Respondent No. 3 failed and neglected to provide the necessary documents on or before that date and respondent No. 2 took the decision to open the priced bid on March 11, 1996. Just before that, respondent No. 3 sent to respondent No. 1 certain defective documents signed by unauthorised persons and the undertaking forwarded to the effect that M/s. AT&T would provide overall services to respondent No. 1 was not signed by authorised persons on behalf of AT&T and TINS. This information had to be supplied by respondent No. 3, as it is contended, that PCL as well as TINS were not qualified and their bid could not be held responsive. It is further submitted that respondent No. 3 was not entitled to have its priced bid opened since they failed to cross the pre-qualification hurdles for opening of bid despite repeated opportunities. Despite that, respondent No. 1 prevailed upon respondent No. 2 to open the priced bid of respondent No. 3 with purely mala fide intentions and with the sole intention of accommodating them

knowing fully well that they had failed to produce the necessary documentation. Therefore, the main grievance of the petitioner is that respondent No. 3 was not entitled to have the priced bid opened, as it had failed to comply with necessary and essential conditions of the technical bid, namely, the providing of an undertaking by AT&T and M/s. TINS. It is, however, not denied that AT&T had the requisite experience and was duly qualified.

7. The price bids of various bidders were opened at 16.00 hrs. on March 11, 1996 and it is alleged that it was only during the opening of the price bids that the respondent No. 3 was asked to furnish the requisite undertakings within a week's time. The said undertaking was, however, furnished only on or about March 20, 1996. The petitioner further alleges that when it was found that bid of respondent No. 3 was the lowest and the bid of the petitioner was the next lowest, that respondents 1 and 2 chose to favor respondent No. 3 though the said respondent was not even entitled to have its bid considered at all taking into consideration the fact that prior to the date of opening of the price bid, the said respondent failed to comply with the mandatory technical requirements.

8. The counsel for the petitioner has contended that based on the evaluation of the price, respondent No. 2 recommended to respondent No. 1 as follows :

In view of what is stated in the above paras, it is recommended that the contract for telecommunication system for GREP (HBJ) may be awarded to the consortium of M/s. PCL, M/s. IRCON, M/s. TINS and M/s. AT&T for a fixed price of US \$ 10,33,430 and Rs. 7,07,38,831/- to be completed within a period of 12 months from the date of the award subject to the following :

4.1.1. A formal consortium agreement may be executed by the member companies defining the detailed, scope of each member in line with the undertaking furnished by them and the qualifications of each member.

4.1.2. Since M/s. PCL have not indicated C&F prices for imported goods, the same may be obtained from them.

4.1.3. Since M/s. PCL have not indicated detailed price breakups for Indigenous Special Tools (Schedule B1), other services (Schedule C2) and Recommended Spares (Schedules D1 and D3) the same may be obtained from them."

9. The learned counsel for the petitioner has vehemently contended that respondent No. 3 was not entitled to have its bid opened as on that date, the said respondent did not have the requisite qualifications in terms of clauses 1.8.1, 1.8.2 and the bid of respondent No. 3 could not be considered responsive and technically and commercially accepted in terms of clause 31. Similar reference is made to clauses 35.4. and 35.5 to reiterate that the relevant provisions referred therein have not been adhered to and the bid of respondent No. 3 was liable to be rejected. It has further been argued that in any case, the necessary documents and undertaking for AT&T which respondent No. 3 was asked to supply were not forwarded within the stipulated time i.e., by March 8th,

1996 and the documents which were subsequently supplied on March 11th, 1996 were obviously defective documents as being signed by unauthorised persons. The PCL as well as TINS were not qualified to have their price bid opened though AT&T was qualified and had the requisite experience but respondent No. 3 failed to produce the agreement with the said company to the effect that it would provide back up guarantee/warranty for satisfactory performance and provide overall supervision and leadership.

10. Respondent No. 1 has filed its counter affidavit wherein it is contended as follows :

"(1) That the Answering Respondents floated a Tender on International Competitive Bidding for Telecommunication System of the HBJ Upgradation (gas pipeline). As the said work envisaged under the said Tender was to be financed by the Answering Respondents. The ADB checks and approves the entire bidding prices of the Notice Inviting Tenders to be published; the Tender Documents with the Bid qualifying criteria, Technical Specifications etc."

"(2) In the procedure adopted by the respondents with the approval of the ADB the bids were invited by GAIL and were to be evaluated opened and scrutinised by the Consultant the Respondent No. 2."

"(3) All the Bidders were required to submit the unprice bids and the price bids. In the first instance the unprice bids were opened. The Bidders were given an opportunity to clarify and remove any shortcomings in their respective bids. The Respondents allowed an opportunity to the Bidders to submit all pending documents and/or furnish clarifications sought in the scrutiny before the opening of the price bids.

Those Bidders who submitted the pending documents before the opening of the price bids qualified for the price bids opening and were treated as Techno-commercially acceptable Bidders.

The recommendations of unprice bids were also sent to the ADB for their approval and upon the approval being received of the ADB the price bids of the Techno-commercially acceptable Bidders were allowed to be opened. Orders are now to be placed accordingly on the Lowest evaluated bidder."

The case of respondent No. 3 is explained and clarified by respondent No. 1 in the following manner :

"The Respondent No. 3 PCL had Bid as consortium leader of the Consortium comprising of Punjab Communication Ltd. (PCL) a State Government undertaking, Indian Railways Construction Company Ltd. (IRCON) a Govt. of India undertaking. Trans India Network System Ltd. (TINS) a joint venture of TATA Telecom and AT&T and M/s. AT & T. The PCL had along with their Bid submitted consortium agreement dated 12.6.1995 a copy of which is appended herewith and marked as ANNEXURE R-1. In accordance with clause 1.8.2(a) bids from consortium comprising Indian or Foreign Parties or a combination thereof

are acceptable provided members of their respective fields of operation of such consortium fulfill the qualifying requirement applicable and members of such consortia assume joint and several responsibility.

It is stated that even though the provision of joint and several responsibility exist, by way of abundant caution and to avoid any objection of any nature whatsoever in the event of one member of the consortia not performing an additional undertaking, was considered appropriate to be obtained for making AT&T totally responsible for their and TINS's scope of work."

The learned counsel for respondent No. 1 has argued that PCL was advised to submit by way of abundant caution an undertaking on behalf of each member of the consortium that the responsibility assigned to TINS shall be discharged by them under the overall supervisions of AT&T who had the relevant experience for the same. It is also not in dispute that respondent No. 3 had stated in reply to FAX dated March 4, 1996 from respondent No. 2 that "clauses C. 1 and C. 2 on page 6 of Consortium Agreement submitted as part of our bid offer clearly states that AT&T will provide complete technical back up support for TINS" portion of supplies & services and also provide technical support to TINS on various aspects relating to system engineering, supervision of equipment installation, equipment testing and field trials and all other related activities to be conducted prior to handing over the system. The Consortium Agreement has been signed by authorised persons on behalf of each member of the consortium". It was further contended that AT&T were responsible and liable for the due performance of the contract as all the Consortium members were jointly and severally liable for the due execution of the entire agreement. The undertaking in this regard dated March 8, 1996 was also sent as would be indicated from the communication of the same date filed as Annexure R-4 which seems to have been received in the office of respondent No. 2. on the same date at 18.53 hrs. as would be indicated from noting at the top in the communication from AT & T. 9th and 10th March, 1996 being Saturday and Sunday, the same was noted by the concerned officer to have been received only on 11th March, 1996, the first working day after 8th March, 1996. The Explanation which has been given by learned counsel for the respondent No. 1 is plausible and is based on the relevant documents on record.

11. The question now arises, as to whether, the mere delay, even if it is accepted, that the communication reached respondent No. 2 later than the date as fixed i.e., on March 11, 1996 is so fatal that the entire exercise of consideration of price bids and the ultimate award of contract is to be quashed on the basis of the averments made in the petition. The Consortium agreement was already entered into between the parties i.e., PCL, Indian Railway Construction Co. (IRCON), M/s. Trans India Network Systems Ltd., (TINS) and AT&T Asia Pacific Inc. for execution of the project for which respondent No. 1, had floated tender. The joint and several liability of the parties to the agreement is clearly specified in different clauses which read as follows :

"All the four parties have agreed to participate in a Consortium together in this

tender as per the requirements for such arrangement as specified by CONSULTANT u/s III of its Tender Documents (Instructions to Bidders) M/s. PCL shall be the Leader of this Consortium and will be the prima contractor responsible for timely completion of work as also during execution of work and shall coordinate with Consultant and owner on behalf of the Consortium receive payments for the works executed and be liable for due performance of the contract in all respects.

All the four partners of the Consortium shall be jointly and severally liable to the CONSULTANT for execution of entire contract in accordance with the Terms and Conditions of Tender No. 2986/T-15/94-95/SKD/25.

A schedule of responsibilities for IRCON, TINS, AT&T & PCL has been mutually, arrived at and is defined in Annexure-I. In the event of charges being necessary to the aforesaid schedule of responsibilities which may be called for as a result of discussions with CONSULTANT and/or owner at the time of award of contract, IRCON, TINS, AT&T and PCL shall prepare with mutual consent a revised schedule of responsibilities so as to clearly define respective portion or works for each other."

The responsibilities of AT&T and other members are referred to identical in Annexure 1 to the Consortium Agreement. Reference may be made to clause "C" which deals with AT&T as follows :

"RESPONSIBILITIES OF AT&T

(1) Providing complete technical back up support and necessary documents for qualification requirement pertaining to Part-A and TIN's portion of supplies and services, as set out in the Tender document, during the process of Bid preparation.

(2) Providing technical support to Trans India Network Systems Ltd., on various aspects relating to system engineering, supervision of equipment installation, equipment testing and field trials and all other related activities to be conducted prior to handing over of system to CONSULTANT and/or owner."

Therefore on the basis of the clear-cut clauses in the agreement between the parties, respondents 1 and 2, perhaps were over-cautious to accept the tender of respondent No. 3 subject to furnishing a revised MOU expressly providing that the responsibility assigned to M/s. TINS shall be discharged by them under the overall supervision of M/s. AT & T who are observed to have the relevant experience for the same.

12. It is also not in doubt that respondent No. 3 submitted the information asked for on March 8, 1996 though the same may have reached respondent No. 2 on March 11, 1996 due to the two intervening holidays. In this background, it is difficult to hold that bid of respondent No. 3 cannot be held to be responsive and is liable to be rejected outright.

13. The initial difference in the bid amounts on the basis of comparison between the petitioner and respondent No. 3 is as under :

Respondent No. 3	10,63,09,491	Petitioner	10,84,58,531	-----	Difference
					21,49,040 -----

The ultimate difference, however, has been worked out as referred to by respondent No. 1 in the counter affidavit it Rs. 1,22,29,876/-. Therefore, it can be said that respondent No. 1 has awarded the contract in favor of the lowest evaluated bidder.

14. The Consortium agreement is a "Joint Venture Agreement" entered into between the parties and for the specific purpose of participation in the bid for the project and to submit tender as per the requirement. The rejection of the bid of respondent No. 3 could not be sustained on the ground that fresh undertaking by AT&T had not been supplied though the relevant document was already forwarded to respondent No. 2 and the Agreement took care of all the responsibilities of each party. The Supreme Court in the judgment as reported in Tata Cellular Vs. Union of India, , has clearly defined the limits of jurisdiction to interfere in matters of this kind. Reference may be made to paragraph 45 which reads as follows :

"45. The alternate submission is, the question of error does not arise since the compliance statement was filed on 11.9.1992 while the contract came to be awarded only on 12.10.1992. In such a case the question would be what is the scope of judicial review ? The court could interfere in the following three categories of cases :

- (1) Quasi-judicial.
- (2) Administrative, for example, price fixing.
- (3) Award of contracts.

Here, the matter is technical in relation to award of contract. Judicial review does not mean the court should take over the contracting powers. The parameters for interference in such matters would be :

- (i) Mala fide.
- (ii) Bias.
- (iii) Arbitrariness to the extent of perversity.

If none of these is present the court should not interfere. It must be left to the authorities. The contrary arguments advanced on behalf of the appellants against this respondent are not tenable."

Similarly, the scope of judicial review is defined to mean that it is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made but the decision making process itself. The duty of the

court in this regard is stated in paragraph 77 which reads as under :

"The duty of the court is to confine itself to the question of legality. Its concern should be :

- (1) Whether a decisions making authority exceeded its powers ?
- (2) committed an error of law,
- (3) committed a breach of the rules of natural justice,
- (4) reached a decision which no reasonable tribunal would have reached or,
- (5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative is subject to control by judicial review can be classified as under :

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must given effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, Ex. Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention."

Finally the Supreme Court illustrated the principles in paragraph 94 which can also be reproduced as under :

"The principles deducible from the above are :

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking,

the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

15. The facts of the present case will establish that respondents 1 and 2 have neither exceeded their powers nor committed an error of law or breach of the rules of natural justice. The decision does not suffer from any arbitrary and irrational action on their part.

16. For the aforesaid reasons, there is no merit in this petition. The same is dismissed accordingly. There will be no order as to costs.