

(1998) 12 MAD CK 0054

In the Madras High Court

Case No : W.P.Nos.15787 to 15789 of 1998 and W.M.P.Nos. 23834 to 23836 of 1998 and 26952 of 1998

M/s. Vira Builders

APPELLANT

Vs

The Tamil Nadu Slum Clearance Board and others

RESPONDENT

Date of Decision : 11-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 299

Citation : AIR 1999 Mad 173 : (1999) 1 CTC 676

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : Mr. V.S. Subramanian, for the Appellant; Mr. Haja Naziruddin, for the Respondent

Judgement

1. This judgment shall govern Writ Petition Nos. 15787 and 15789 of 1998, since a common controversy is involved in these petitions.

2. The following factual scenario will highlight the controversy:- The petitioner is the Proprietor of a building construction firm Sealed tenders were

invited by the 4th respondent from contractors for taking several items of works in relation to construction of 112 tenements at Valluvar

Kudiyiruppu as also for the development works in Corporation Division No. 107. Amongst the tender conditions, the following tender conditions

are relevant:- By the first tender condition, only contractors registered under Class-I with the 1st respondent or any other Government Department

Undertakings with monetary limits of Rs. 25 lakhs and above were eligible to participate. Secondly, it was insisted that the tenderer should be an

assessee of Income Tax and should also attach the Income Tax Clearance Certificate along with the tender. It was also provided that a Contractor

should have executed works of similar nature costing more than 50% of the value of works for which it tender is given in any single contract. It was further provided that the tenders should be accompanied by three envelopes "A", "B" and "C" duly superscribed with the name of work, reference number, due date of tender and the name of the tenderer and should be sealed with the following particulars:- ""Envelop "A" should contain Earnest Money Deposit; envelop "B" should contain pre-qualification schedules; and envelop "C" should contain price schedules"". It is the case of the petitioner that the petitioner fulfilled all the conditions of pre- qualification. He further pleads that he submitted his tender within the time-limit fixed for that purpose. It is then pleaded that there were only four tenderers before the fourth respondent for the consideration of the tender. According to the petitioner, tender envelopes of all the four tenderers were opened and the authorities took time for analysing the data and a letter dated 1.9.1998 was sent by the fourth respondent to the petitioner to produce several documents, which were produced by the petitioner on 7.9.1998 at 3 P.M. The petitioner further pleads that a further letter dated 7.9.1998 was received by him wherein it was informed that the price schedule contained in cover "C" would be opened on 10th September, 1998 at 3 P.M. and on the opening of the same, it was found that the price schedule quoted by the petitioner was the lowest being 6.48% lower than the estimated cost. The petitioner further says that probably, finding that his tender was the lowest, the 5th and 6th respondents had given objection on 11.9.1998 that the submission of his tender was not in the proper form. However, that objection was overruled and he was called for discussions and was requested to lower down his prices which he did vide: his letter dated 12.9.1998 addressed to the fourth respondent. The petitioner says that because of all these, he was expecting the work order, but to his surprise, he received a letter dated 23.9.1998 that his tender had not been accepted and that he was requested to contact the Executive Engineer for the refund of the Earnest Money Deposit. He points out that no reasons were assigned for the rejection of the tender. The petitioner, therefore, challenges the rejection of the tender and prays for a writ of certiorarified mandamus to quash the letter dated 23.9.1998 and for a further direction that the tender should be awarded in favour of the petitioner.

3. The stand taken by the respondents is that the tender envelopes submitted by the petitioner were not sealed nor was the tender in the proper form inasmuch as the price schedules were not tallied. However, since the Chief Engineer found that the offer by the petitioner was lower, his tender was recommended to the Tender Committee for being accepted in spite of the lapses. It is pointed out that even the Financial Adviser and the Chief Accounts Officer has strongly objected to the acceptance of the tender of the petitioner. Firstly, on the ground that the tenders were opened by the Executive Engineer, Division-V when he was not the authorised Officer to open the tenders. According to the Financial Adviser, it was only the Superintending Engineer (Central) who should have opened the tender, he being the tender calling authority. The second objection was that the tender envelopes should be properly sealed. As the envelopes of the petitioner were not sealed; the tender was liable to be rejected forthwith in keeping with the condition of the tenders. The Financial Adviser had pointed out that even the "C" envelope, which contained the price schedules, was also not sealed. The respondents, therefore, took a stand that the Committee took a decision to cancel the tenders and call for re-tenders at a short notice. While recommending the cancellation of the tenders, the Committee also took a stand that one more condition should be incorporated that the Contractor should be executed the works of similar nature costing more than 50% of the value of works in a single contract pertaining only to the Government Departments. The respondents, therefore, pleaded that since the second tender is already called, the writ petition becomes infructuous. As regards the introduction of new condition, they say that this condition was introduced only in consonance with the situation prevailing in the other departments and in the interest of the poor slum-dwellers.

4. In Writ Petition No. 15788 of 1998, the writ petitioner has challenged the action on the part of the respondents to float the second tender vide:

Advertisement dated 28.9.1998. In that writ petition, he has also challenged the newly added condition that the work, which should have been

done by the Contractor, should only be the Government work. According to the petitioner, this condition has been added only to avoid him and

the introduction of the condition is mala fide. In this Petition, he prays that the respondents should be restrained from proceeding with the second

tender calling in pursuance of letter bearing No. 1005-1/D2/SE(N) of 1998 dated 25.9.1998. In this writ petition, the petitioner has also

additionally contended in paragraph 11 that the fourth respondent has been evading to issue tender documents to other Contractors only with a

view to favour one Radhakrishnan and another construction firm M/s. Radha Rukmani. He further pleads that the said persons have not

deliberately filed in the tender forms so that the petitioner's tender forms should be treated to be a single tender and should be automatically

rejected on that count.

5. By their Counter, the respondents have refuted all the allegations. They alleged that there was a collusion between the petitioner and two other

agencies in relation to the tender and it was in pursuance of their collusion with the two other agencies, the petitioner has quoted low rates. They

have denied all the other allegations in tune with their counter in W.P.No. 15787 of 1998.

6. In Writ Petition No. 15789 of 1998, the petitioner, reiterates the challenges to the rejection of the petitioner's tender and also floating of a

second tender. He also challenges the introduction of the new clause by which it was insisted that the work done by the contractor in a single

contract for being qualified should be that of the Government contract only.

7. The respondents have opposed the petition on the similar grounds. They have strongly refuted the assertion that the fourth respondent was being

evasive in issuing the tender documents of that tender documents were not issue to the petitioner deliberately. They also assert that there was

absolutely no question of any collusion between the fourth respondent and any other person to the prejudice of the petitioner. In paragraph 5 of

their counter affidavit, they point out that the tender schedules were issued to all the three eligible persons. They again reiterated that the petitioner

seems to have acted in collusion with two other agencies for getting the tender in his favour according to his quoted rates. They pointed out that the

Board has passed a Resolution No. 16 dated 30.7.1998 that single tender, should not be considered. They pointed out that even if the fourth

respondent invited the petitioner for discussion, it would be of no consequence, particularly because the tender forms of the other competitors

were found to be incorrect and had to be rejected and there remained a single

tender of the petitioner in the fray. In that view, they justify their action of rejecting the first tender and inviting the other tenders.

8. On the backdrop of these rival contentions the following questions fall for consideration in these writ petitions:

1. Was the respondent justified in rejecting the tender of the petitioner for non-compliance with the tender conditions?
2. Was the respondent justified in rejecting the tender of the petitioner on the ground that is a single tender?
3. Was the respondent-4 justified in inviting the second tender?
4. Was the respondent-4 justified in modifying the condition regarding the pre-qualification by insisting that the single work done by the Contractor for being qualified should be the Government work alone?

9. Question No.1: It has been reiterated by the respondents in their counter that the petitioner did not comply with the tender conditions, Though

haltingly, the petitioner has almost admitted that the tender envelopes were not sealed, there is also no effective contradiction to the assertion on the

part of the respondents that the price schedules included in the "C" envelope were not also totalled. Now these defects were noticed by the

Executive Engineer who opened the tender. However considering that the petitioner had offered relatively low prices, he recommended for

acceptance. However, the tender committee has chosen not to accept his recommendations and to uphold the objections raised by the Financial

Adviser. The Minutes of the Tender Committee have been placed before the Court by the 4th respondent as also the recommendations by the

Chief Engineer and the remarks by the Financial Adviser and Chief Accounts Officer. The first objection raised by the Financial Advise is that the

Executive Engineer should not have opened the tender as he was not the Tender Calling Authority and it was only the Super intending Engineer

(Central) who was liable to open the tender. The second objection raised is about is the sealing of the envelopes. It has been pointed out that

under "A, "B" and "C" should be superscribed with the name of the work and should be stated Further, it was also reiterated that the unsealed

tenders would be summarily rejected. The second objection raised by the Financial Adviser is that the envelopes of the petitioner were not in the

sealed condition. It is also objected by the Financial Adviser that no details of

unsealing of "A", "B" and "C" envelopes of the petitioner were available as also the Contractors and the Officers, who were present, were also not known. It seems that objection was taken by the other Contractor, M/s. Radha Rukmani Constructions. On this factual basis, the Tender Committee recommended for the cancellation of the Tender itself.

9(a). Mr. Subramanyan, learned counsel appearing for the petitioner, contended that there was hardly any justification in rejecting the tender on this basis. Mr. Subramanyan points out that inspite of all these, the petitioner was invited by the concerned Officer for negotiations in pursuance of which the petitioner had agreed to cut down the prices. According to the learned counsel, the respondents were wholly unjustified in abruptly cancelling the whole tender and inviting the second tender. Mr. Subramaniyan heavily relied on the observations made by the Apex Court in a reported decision in Union of India and others Vs. Hindustan Development Corpn. and others, , wherein the Apex Court reiterates the doctrine of legitimate expectation and proceeds to observe in paragraphs 33-34 as under:

On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise of withdrawing an undertaking is taken, The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied of restricted, A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within

those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that

there is a foundation and thus had locus standi to make such a claim. In considering the same several factors which give rise to such legitimate

expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is

a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case whether there are such facts

and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the Court is

satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before

the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be

quashed. If that be so, then what should be the relief is again a matter which depends on several factors.

Relying heavily on the above observations, Mr. Subramanyan, learned counsel for the petitioner, says that here was a situation where the

concerned authorities had not only accepted the tender of the petitioner but has also proceeded to discuss the prices and had persuaded the

petitioner to cut down the prices. This was so, there was no question of the whole tender being rejected without assigning any reason. It will be

seen that the contention is though attractive at the first blush, it lacks the necessary merit. It will be seen that in this case, there is a clear cut

condition involved that the tenders should be in the sealed condition. It is also seen that there is a valid objection raised by the Financial Adviser

that in not sealing the tender envelopes, the petitioner had breached the tender conditions. Again, the Financial Adviser has pointed out that even

the price- schedules were not totalled in the envelope marked as "C". Merely because the petitioner was invited by the concerned Engineer, it

would not mean that such action of the Engineer would be binding on the Tender Committee. Under the rules, the Tender Committee was

formulated and the Tender Committee has considered the pros and cons of recommendation by the Chief Engineer dated 17.9.1998 as also the

objection raised by the Financial Adviser dated 21.9.1998. All these were admitted subsequent to the negotiations which took place on 11th

August, 1998. It cannot, therefore, be said that there was any finality in favour of the petitioner because of the discussions which were held on 11th

August, 1998. It cannot be again forgotten that the other respondents and more particularly respondents 5 and 6, who were the competing

respondents, had raised objections regarding the unsealed condition of the envelopes in which the offer of the petitioner was made and that

objection was taken by them on 4.9.1998. It seems that the Financial Adviser has taken note of these objections in his communication to the

Tender Committee. Under such circumstances, it cannot be said that merely because the petitioner's tenders were opened and the petitioner was

invited for negotiations by the fourth respondent, there could not be any legitimate expectation in favour of the petitioner for acceptance of his

tender offer. It cannot be forgotten that cover "C" was opened on 10th September, 1998 and the objection was taken immediately on 11th

September, 1998. There is an assertion in the Petition that the 4th respondent had overruled the objections raised and had invited the petitioner for

negotiations. The question would be whether the 4th respondent had the necessary "authority" to overrule the objection in respect of the sealing of

the tender conditions which was one of the basic conditions for the acceptance of the valid tenders. In my opinion, the ultimate authority lays in the

Tender Committee which was framed under the Rules and it was for the Tender Committee to consider as to whether the tender was validly

accepted or not. The 4th respondent could only make a recommendation but that by itself could not create a right in the petitioner. Interestingly

enough, the counter affidavit has been sworn by the Superintending Engineer who has pointed out that there was a Board's Resolution in B.R.No.

159 dated 29.1.1996 by which the powers to accept the tenders were with the tender committee where the tender was of the value up to Rs. 50

lakhs. It is, therefore, clear that it was the tender committee alone which could have accepted the tender offers by the Contractors. Under such

circumstances, no fault can be found if the tender committees did not choose to accept the tender for the reason that the tender conditions were

breached by the petitioner. The Superintending Engineer has reiterated that the acceptance of the tender was not within his powers at all. The said

Superintending Engineer reiterates that though he had recommended for the acceptance of the petitioner's tender, he had no authority to accept the

tender and it was only the tender committee which could accept the tender. It is pointed out that the tender committee was consisting of Managing Director, Chief Engineer, Financial Adviser and Chief Accounts Officer, Tamil Nadu Slum Clearance Board. Thus, it is clear that there was no question of a "legitimate expectation" being raised in favour of the petitioner merely because he was invited for the negotiations. The observations made by the Apex Court in the above mentioned case very specifically show that for raising the legitimate expectation, the concerned body should have the powers to fulfil the expectation. Here, the Superintending Engineer, who called the petitioner for negotiations, did not have the powers to accept the tender. It is clearly mentioned in this behalf by the Apex Court that a case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The Apex Court further goes on to say that the protection is limited to that extent and a judicial review can also be within those limits. It, therefore, cannot be said that in this case, the petitioner has established that there was a foundation for such a legitimate expectation. The further base for the application of the doctrine of legitimate expectation was that the decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. Here, that is not the case. The tender committee has very clearly observed that the petitioner had breached the very basic condition of the tenders being offered in the sealed envelopes, thereby, the basic condition of secrecy was breached. Under such circumstances, there cannot be a question of holding in favour of the petitioner.

10. Mr. Subramanyan, learned counsel appearing for the petitioner, also invited my attention towards the principles as laid down by the Apex Court in the reported decision in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, to the effect that the decision making process of the public authorities cannot be influenced by the extraneous and irrelevant considerations and if it is so, it would vitiate the decision and that there is always a power of judicial review in case of the decision taken by the public authority in commercial/contractual transactions of the State or its instrumentality and that the decision making process should be transparent and open to the judicial review where

indeed cannot be any dispute about these principles. However, as I have already pointed out, there was no question of any secrecy or arbitrariness

in the decision taken by the Tender Committee. In this behalf, the Apex Court has observed in this decision that by way of judicial review, the

Court is not expected to act as a court of appeal while examining an administrative decision and to record a finding whether such decision could

have been taken otherwise in the facts and circumstances of the case. The Court has to find as to whether there is any infirmity in the "decision

making process". I am afraid, the petitioner had not been able to show any such infirmity in the "decision making process" involved in the present

set of facts. As reiterated by the Apex Court, the Courts have inherent limitation on the scope of such enquiry and if the contract has been entered

into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking

into account the interest of the State and the public, then the Court cannot act as an appellate authority by substituting its opinion in respect of the

selection made for entering into such contract. Here is a case, where no such selection has been made so far. The decision is clearly taken in the

interest of the General Public and, therefore, it will not be open for this Court to examine the action on the part of the Superintending Engineer. Mr.

Subramanyan says that the petitioner had quoted much lower price and had the contract been accepted, the State exchequer would have been

benefited to a larger extent. I am afraid that it is not a relevant consideration, nor can this Court go into that aspect in the light of the present facts.

It would be for the Tender Committee to consider those facts. Again, the contract has not yet been finalised owing to the interim orders of this

Court. Under such circumstances, the petitioner cannot contend that in not accepting his tender, the State exchequer has suffered.

11. Reliance was placed by the learned counsel for the petitioner on the observations made in Food Corporation of India Vs. M/s. Kamdhenu

Cattle Feed Industries, . Here also the principle of legitimate expectation has been considered by the Apex Court in the matters of contractual

transactions of the State or its instrumentalities. There can be no question regarding the principles involved. However, it has already been pointed

out that the doctrine of legitimate expectation cannot be raised in favour of the petitioner in the circumstances of the present facts. This case has

already been considered in the aforementioned case viz. Union of India v. Hindustan Development Corporation, AIR 1994 SC 998 which has

been referred earlier in this Judgment. The other case relied upon by the learned counsel for the petitioner is reported in Kinaram Das v. State of

Assam and others, AIR 1983 Gau. 45 which suggests that a trivial technical arithmetical error in stating the amount of the offer in the tender form

cannot be a ground for rejecting the offer and dis-qualifying the tenderer. I am afraid, this case will not apply to the present set of facts because the

rejection here is not on account of a trivial error but for the breach of a basic condition that the tender offers were not sealed. The learned counsel

for the petitioner has also relied upon the Division Bench decision of the Allahabad High Court in M/s. Artee Minerals, Faridabad v. State of Uttar

Pradesh, AIR 1983 All. 416 which suggests that a State cannot arbitrarily choose a person from whom it would obtain supplies. I am afraid, even

this case has no nexus with the present facts and the same is completely uncalled for.

12. Reliance was also placed on the decision in Harminder Singh v. Union of India and others, U.J. S.C. 1986 (2) 159 where the Apex Court has

reiterated the principle that where the State Government chooses to invite tenders, then it must abide by the result of the tender and cannot

arbitrarily and capriciously accept the bid where the bid is much higher and to the detriment of the State. This case was relied upon probably to

show that since the petitioner was the lowest bidder in the first tender, his tender should have been accepted. It has already been shown that in

fact, for good and valid reasons, the first tender has been rejected. This is besides the fact that the petitioner has himself breached the tender

conditions by offering the tenders in the unsealed covers. It cannot again be forgotten that the petitioner could not have insisted on his tender being

accepted solely on the basis of the fact that he was called for negotiations. The learned counsel also relied on a Supreme Court decision reported

in Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, to suggest that the rejection of

the petitioner's tender offer and cancellation of the tender were arbitrary. Reliance was placed on the observation to the effect that though the

State is certainly entitled to look for the best deal with regard to its properties when the highest offers are rejected, reasons sufficient to indicate the

stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties, unless there

be any specific justification not to do so. The learned counsel for the petitioner points out that nothing of the sort has been done in the present case.

However, it will have to be again appreciated that the basic condition of the sealed tenders itself was breached by the petitioner. Therefore, there

was no question of his tender being valid. There, as the tender itself has to be held invalid, there would be hardly any question of further

consideration and his offer being a competitive offer. Even this case would be of no help to the petitioner, though the principles stated therein

cannot be disputed.

13. Question No.2: This brings me to the second question. Writ Petition No. 15789 of 1998 deals with this aspect. The petitioner's case is that

there was no response for the first two items of work in the previous two calls given by the respondents and the present tender was the third call in

relation to those first two items of the work. The petitioner submits that though Mr. Radhakrishnan and M/s. Radha Rukmani Constructions had

obtained tender documents in respect of these two items, there was a collusion between them and the design was to obtain a tender in favour of

any one of them by making a show that two tenders were submitted for that. It is pleaded by the petitioner that seeing the petitioner had applied for

that tender, they decided not to submit their tender so that the petitioner's tender remains as a single tender and is defeated on that account. In

addition to this ground, the petitioner has also alleged the other grounds. The stand has been denied by the 4th respondent and he suggests that

there is no question of any collusion between Radhakrishnan and Radha Rukmani Constructions nor is there any question of a collusion between

the 4th respondent and those two named persons. The allegation has been dubbed as an imagination on the part of the petitioner. On the other

hand, the 4th respondent suggests that there may be a collusion between the petitioner and the other two agencies in relation to the tender and it is

reiterated that no reason could be assigned as to why the other agencies have been chosen to submit the tender documents. Whatever be the

factual situation, the fact remain in respect of these items, the petitioner's tender was a single tender. It is the avowed policy of the Board, vide:

Board's Resolution No. 16 dated 13.7.1998 that the single tender should not be considered. If that is so, the petitioner's tender being a single tender in respect of the first two items in the tender notice, there would be no question of its consideration. The Apex Court has reiterated on more than one occasion that it is for the Government to set up its policy as regards the award of contracts by tenders, and if such policy is not arbitrary and in keeping with the idea of public good, then it cannot be challenged. The existence of a resolution afore mentioned only goes to show that the policy is in the public interest. As a matter of fact, in the Petition, there is no attack on that resolution that the policy which emanates from the resolution is in any way arbitrary or against the public interest. Indeed, that could not be the case. The First respondent-Board has a perfect right to frame the policy that single tender should not be acted upon particularly in view of not creating the monopolies and also to inculcate the spirit of competition which would be beneficial only to the Board. No fault was found with this policy. If that is so, and if admittedly in respect of the first two items, the tender of the petitioner was a single tender, then there was nothing wrong in rejecting the said tender. The petitioner cannot find fault with the other respondents if they chose not to fill up the tenders. The rejection of the tender for the first two items is, therefore, perfectly justifiable and cannot be found fault with. The question has, therefore, to be answered accordingly.

14. Question No.3: It has already been pointed out while discussing the first question that the Tender Committee had found that firstly there was an illegality committed in the tenders being opened by some other Authority, who was not authorised to open the tenders. The Financial Adviser has relied on paragraph 154 (iv) Note (1) of D. Code and Part-IV Para 23 of the Technical Officers Guide to the effect that the tender should be opened by the Tender Calling Authority himself and this duty should not be delegated to any of his subordinates under any circumstances. Though admittedly the first tender was not opened by the Tender Calling Authority, the provisions above quoted contained in the guidelines have not been challenged in the Petition nor is it contradicted that the tender was not opened by the Tender Calling Authority but by some other Officer meaning thereby the Executive Engineer, Division-V when in fact, it was the Superintending Engineer (Central) who was the Tender Calling Authority. If the

Tender Committee proceeded to dub this action as illegal, then there would be nothing wrong in the proceedings of the Tender Committee. It is

clear from the Minutes of the Tender Committee Meeting that the Tender Committee has taken an adverse view of the fact that the Superintending

Engineer, who was the Tender Calling Authority, had allowed his Subordinate to open the tender in contravention of the provisions stated above.

There is nothing wrong with this approach nor has any plea been taken in the petition or argued before me in this behalf. In this way, again it has

already been found that in respect of the first two items, the petitioner's tender was a single tender which had to be rejected concerning Board

policy. If that was so, the calling of the second tender was the only option left for the Tender Committee. It has already been pointed out that the

only basis on which the petitioner is challenging the calling of the second tender is the alleged wrong rejection of his offer in respect of the first

tender. It has already been shown that there was nothing wrong in that behalf. In that view of the matter, it must be held that there was nothing

wrong in calling the second tender for the reasons stated by the Tender Committee.

15. Question No. 4 It would not be necessary for me to consider this aspect particularly because the learned Counsel appearing on behalf of the

respondent-Board has made a statement before the Court that this conditions would be deleted or, at any rate, modified. It is reiterated that the

conditions has not been put as a mala fide motive of avoiding the petitioner alone. Though that is the petitioner's claim, the petitioner has not

brought any material on record to suggest that the first or the fourth respondent had any malice against the petitioner and indeed, could not be such

a malice. The petitioner has also not given any reasons as to why there could be such a malice. In the absence of any relative material regarding the

alleged malice, it is very difficult to reach a conclusion that it is out of the malice alone that such a condition has been introduced. In the wake of

clear cut counter-affidavits by the respondents in this above and in the absence of any suggestive material, it has to be held that there was no malice

in the actions of the respondents. In the wake of the statement made at the Bar that the condition would be modified, the further discussion is not

necessary.

16. In view of what has been discussed above, it will be clear that all the three writ petitions are without any merits and are liable to be dismissed.

They are accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs. W.M.P.Nos. 23834 to 23836 of

1998 and 26952 of 1998 are closed.