
(1997) 05 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No's. 179 and 280 of 1996

Nagesh M. Daivajna and etc.

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

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

Citation : AIR 1998 Bom 166 : (1997) 4 ALLMR 533

Hon'ble Judges : R.M.S. Khandeparkar, J; R.K. Batta, J

Bench : Division Bench

Advocate : S.D. Lotlikar and M.S. Sonak, for the Appellant; G.J. Ghobe, Government Advocate (for Nos. 1 and 2) and S.S. Kantak, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Batta, J.—In these petitions, the Petitioners seek a Writ, of Certiorari to quash the Award of work of printing and distribution of books for Standards V-VII in the State of Goa in favour of the 3rd respondent Holy Faith International Pvt. Ltd, pursuant to tenders invited vide advertisement published in the daily Navhind Times dated 30th January, 1996 by the 1st and 2nd Respondents. The petitioners also seek directions in the nature of Writ of Mandamus for the award of tender in their favour.

2. The facts giving rise to these petitions may first be stated. Tender Notice for the award of work in question was published in Navhind Times dated 30th January, 1996. The last date for submitting the tender was 15-2-1996. In all, 20 persons had submitted the tenders which were opened on 16-2-1996. The Screening Committee met on 23-2-1996 and 7 parties including the petitioners and the respondent No. 3 were shortlisted and the Screening Committee decided to call the parties on 1-3-1996 for discussion to assess their credibility, reputation, financial capacity and experience for printing text books. The petitioner in Writ Petition No. 179/96 did not report on 1st March, 1996. The

other 6 parties including the petitioner in Writ Petition No. 280 of 1996 and the respondent No. 3 furnished necessary information in relation to the following parameters :

- (i) Quality of printing;
- (ii) Availability of books in time;
- (iii) Capacity of the Printer;
- (iv) Experience in the line of printing;
- (v) Financial capacity of the party.

The Screening Committee, after recording reasons, decided to recommend the tender of the. Respondent No. 3. On further discussion with the Respondent No. 3, its representative expressed willingness to undertake the work at 9.5 paise per page per single colour and 11 paise per page per double colour.

3. The case of the Petitioner in Writ Petition No. 179/96 is that he did not receive the telegram alleged to have been sent by the Respondents Nos. 1 and 2 to remain present on 1st March, 1996. However, when he came to know that some parties had been called by the 2nd Respondent, the Manager of the Petitioner met the 2nd Respondent and handed over to him letter dated 7-3-1996 containing necessary particulars which were required to be furnished on 1-3-1996.

4. The case of both the Petitioners is that on or about 14th March, 1996 they came to know that preparations were being made to allot the work to the 3rd Respondent and, as such, both the Petitioners sent a letter to the Chief Minister of Goa protesting against the move to allot illegally the contract to the 3rd Respondent and bypassing the claim of the Petitioners whose tenders were lower than the 3rd Respondents. In this letter dated 14th March, 1996, both the Petitioners submitted that considering the relative time available for the production of books, the work could be distributed amongst the local publishers who are eligible. The Petitioners' case further is that they were not informed of the grounds of rejection of their tenders. According to the Petitioner in Writ Petition No. 179/96, an agreement was entered into between the 1st and 2nd Respondents on one side and the 3rd Respondent on the other side on 2nd April, 1996 thereby awarding the tender for the work to the 3rd Respondent. The Petitioner in Writ Petition No. 179/96 filed the Writ Petition on 23rd April, 1996. Though this Petitioner had sought restraint by way of temporary injunction to restrain the 3rd Respondent from, in any manner, acting upon the allotment of work and had also prayed for temporary injunction, yet, the said reliefs were not pressed and the Writ Petition came up for hearing on 25th June, 1996. Rule was issued on 2-7-1996.

5. In Writ Petition No. 280 of 1996, the Petitioner's case further is that he came to know of the allotment of tender in favour of the 3rd Respondent only in the

second week of June, 1996 when the printed books came out for sale in the markets and, as such, the Petitioner filed Writ Petition in question on 1-8-1996. This Petitioner had also sought stay in respect of further period of the contract as well as ex parte relief in the same terms but the same was not pressed. Rule was issued in this Petition on 5-8-1996 and this Petition was ordered to be heard along with Writ Petition No. 179/96.

6. The comparative statement which was prepared in connection with the said tenders is as under :--

Sr.No. Name of the tenderers Rates quoted in paise per page Remarks

Single colour two colours multi colours

1. M/s. Neelkanth Publisher, Bombay. 17.5 20.00 --
2. M/s. Shirodkar Offset Printers, Margao. -- -- -- The quotation is not in accordance with the requirement.
3. M/s. Sheth Publishers Pvt. Ltd., Margao. 15.50 18.50 --
4. M/s. Centre For Communication, Bombay. 14.00 -- 18.00
5. M/s. Shreeji Prakashan, Bombay. 09.75 12.00 --
6. M/s. Standard Publications, Nagpur. 16.25 -- 19.05
7. M/s. Star Publications, Bombay. 15.00 -- 19.00
8. M/s. Kaydee Publications, Bombay. 17.50 20.00 --
9. M/s. PitamberPublishingCo.P.Ltd., New Delhi 11.00 17.00 --
1. He has quoted Rs. 0.68 per page for language book (Multi colours) plus Rs. 6.25 cover page per book. 2. In case of single colour they have quoted Rs. 0.41 per page of tax (sic) plus Rs. 6.25 of cover per book.
10. M/s. The Standard Book Co., Bangalore 30.00 -- 35.00
11. M/s. Kaveri Enterprises, Margao. 9.00 11.00 20.00
12. M/s. Modern Publishers, New Delhi 13.20 14.20 16.30
13. M/s. M. Gulab Singh & Sons (P) Ltd., New Delhi. 13.70 14.70 16.70
14. M/s. Malhotra Book Depot, New Delhi. 12.70 13.70 15.70
15. M/s. Holy Faith International Pvt. Ltd., New Delhi. 12.50 13.50 15.50
16. M/s. Singbal's Book House, Panaji, Goa. 14.00 15.00 17.00
17. M/s. Om Graphics ,Mardol-Goa. . -- -- --

The rates quoted are not in accordance with our requirement.

18. M/s. Rajhauns, Panaji-Goa. 8.75 9.35 10.2511.15

He has specifically mentioned that if printing is required to be done in more than two colours in that case the. extra charges of Rupees 750/- per picture will be made applicable. This condition is only for inner colour page.

19. M/s. Ashwini Printers & Publishers P. Ltd., Hubli 6.08

12.02

20. M/s. Samrat Printers, Banastarim-Goa.

He has quoted the average rate of color printing workout to 16 paisa per page and on colour printing workout to 15 paise per page. He has requested to exempt from paying security Deposit.

7. The comparative statement in respect of 7 short-listed parties is as follows:--

Single colour Double colour Multi colour

- a) AshWini Printers, Hubli. 6.80 12.20
- b) Rajhauns, Goa. 8.75 9.35 10.50
- c) Kaveri Publications, (Petitioner) 9.00 11.00 20.00
- d) Shreeji Prakashan (Respondent) 9.75 12.00 --
- e) Holy Faith (Respondent) 12.50 13.50 15.50
- f) Malhotra Book Depot, New Delhi. 12.70 13.70 15.70
- g) Pitambar Publishing Company 11.00 17.00 --

The Petitioner in Writ Petition No. 280 of 1996 had also quoted additional Rs. 750/- per book as scanning charges.

8. The challenge thrown by the Petitioners in these Writ Petitions is that the 1st and 2nd Respondents have arbitrarily rejected the tender of the Petitioners for extraneous reasons; that there has been colourable exercise of power in awarding tender in favour of the 3rd Respondent; that the grounds of rejection of Petitioners' tender were never communicated to them and that the award of tender in favour of the 3rd Respondent is contrary to the public interest.

9. Learned Advocate Shri Mahesh Sonak, appearing on behalf of the Petitioner in Writ Petition No. 280/96, has made the following submissions :

- (1) It is mandatory to communicate reasons of rejection of tender which has not been done in this case;
- (2) The Screening Committee is bound by the terms of tender document which does not speak of existence of infrastructure, past performance or financial standing and these irrelevant factors have crept into and influenced the decision-making process of the Screening Committee;
- (3) Negotiations are not permitted in the tender document and in case

negotiations had necessarily to be done, opportunity for negotiations should have been granted to the Petitioners.

10. In Writ Petition No. 179/96, learned Advocate Shri S.D. Lotlikar, urged before us:--

(1) The telegram purported to have been given by the 2nd Respondent Calling the parties on 1 -3-1996 was not received by the Petitioner;

(2) There was no justification for short-listing 7 tenderers and all should have been given opportunity to establish their credentials;

(3) Even after negotiations, which was not permissible under the tender document, the quotation of the Petitioner was 50 paise lower in one item and in the other item it was at par with the 3rd Respondent;

(4) Petitioner had placed necessary particulars before the 2nd Respondent on 7th March, 1996;

(5) Reasons for rejection of tender were not communicated to the Petitioner;

(6) Students have to pay more on account of arbitrary selection of Respondent No. 3 for the job; and

(7) The successful tenderer was required under the tender document to deposit 50% with the 2nd Respondent who only took Bank guarantee from the 3rd Respondent thereby violating essential condition of the tender document.

11. Learned Government Advocate Shri G.U. Bhole for the 1st and 2nd Respondents urged before us that all the 5 parameters which were taken into account by the Screening Committee are material and relevant factors to be taken into account and the parties were required to furnish information relating to the said parameters; that the Screening Committee which consisted of 4 Gazetted Officers has recorded sound and valid reasons in support of the award of tender in favour of the 3rd Respondent; that though the Petitioners have alleged of extraneous considerations, yet no material has been placed to substantiate the said contention and it is pertinent to note that no mala fides is alleged against any member of Screening Committee; reasonable person, under the circumstances, would have come to the same conclusion which has been arrived at by the Screening Committee; and that the Government has right to choose the best tender.

12. Learned Advocate Shri S.S. Kantak, on behalf of the 3rd Respondent, urged before us that even if the ground of rejection of Petitioners' tender is not communicated, the said ground is not sufficient for quashing of tender sought by the Petitioners; that the parameters laid down by the Screening Committee are relevant considerations in order to decide as to whom the job in question should be entrusted and none of the said considerations can be said to be irrelevant considerations as alleged by the Petitioners; that there has been no allegation whatsoever as to the non-communication of the parameters taken into account,

but the petitioner in Writ Petition No. 179/96 has even gone to the extent of denying the receipt of telegram wherein such particulars were called; that all necessary particulars had been furnished by the Petitioner in Writ Petition No. 280/96 and the decision-making process of the Selection Committee cannot be faulted with. Learned Advocate Shri Kantak pointed out that even the Petitioner in Writ Petition No. 179/96 had furnished the information called for though lately on 7-3-1996; that letter dated 14-3-1996 of the Petitioner shows that they are not capable of handling the work in question and, as such, sought for distribution of work between them. Shri Kantak forcefully argued that both the Petitioners are guilty of laches; that the Bank guarantee furnished by the 3rd Respondent and accepted by 2nd Respondent is as good as deposit which was made for ensuring the successful completion of the job within the given time-frame; that the Bank guarantee was to be furnished only by the successful tenderer and this could not be treated as essential term of the contract and there has been sufficient compliance.

13. In reply, learned Advocate Shri Sonak urged that essential conditions/considerations do not figure in the tender document; that the Petitioner was willing to give security deposit of Rs. 20 lakhs and no opportunity for negotiations was given to him. According to him, the bringing down of rates during negotiations with 3rd Respondent alone and permitting him to furnish Bank guarantee have gone into the decision-making process. Learned Advocate Shri Lotlikar also urged that the question of Bank guarantee was taken into consideration while accepting the tender of the Petitioner.

14. Learned Advocates for the parties have relied upon authorities in support of their submissions.

15. First we shall refer to two authorities on which reliance has been placed by the Advocates for the parties which lay down principles to be applied in such matters. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, while dealing with tenderers called for Snack Bars at the Airport by the International Airport Authority, which is State, the Apex Court has laid down :--

".... It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle

which in itself was not irrational, unreasonable or discriminatory." Referring to the case of *Trilochan Mishra, etc. Vs. State of Orissa and Others*, , it was observed by the Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, that the Government may reject a higher tender and accept a lower one only when there is valid reason to do so, as for example, where it is satisfied that the person offering the lower tender is on an overall consideration preferable to the higher tenderer, but there must be some relevant reason for preferring one tenderer to another and it cannot be done arbitrarily or for some extraneous reasons.

16. In *Tata Cellular Vs. Union of India*, , the Apex Court has laid down that only the decision-making process and not the merits of the decision itself is reviewable as the Court does not sit as appellate Court while exercising power of judicial review; that while Court cannot interfere with Government's freedom of contract, invitation of tender and refusal of any tender which pertain to policy matter, but whether the decision/action is vitiated by arbitrariness, unfairness, illegality, irrationality or "Waynesburg unreasonableness" i.e. when decision is such as no reasonable person on proper application of mind could take or procedural impropriety, can be looked into by Court. It was pointed out that the duty of the Court is thus to confine itself to the question of legality and its concern should be :--

- (1) Whether a decision-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.

The Apex Court classified the grounds upon which administrative action is subject to control by judicial review as under :--

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

(ii) **Irrationality**, namely, "Waynesburg unreasonableness": It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

(iii) **Procedural impropriety**. After reviewing the entire case law and taking into consideration the authorities under the English law, the principles deducible have been laid down as under :--

- (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 Waynesburg 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.

17. We shall now deal with the case of the Petitioners and examine whether the action of the 1st and 2nd Respondents suffers from the vice of arbitrariness or it was influenced by irrelevant considerations or there is any compelling reason or justification referred to in the decisions quoted above which necessitates intervention by this Court in the exercise of its jurisdiction of judicial review over such matters.

18. First of all, we shall deal with the question of non-communication of the reasons of rejection of tender to the Petitioners and its effect on the award of tender in question in favour of the 3rd Respondent. In this respect, learned Advocates for the Petitioners have relied upon *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, wherein it is laid down by the Apex Court that the Authority concerned must record reasons for rejection of tender and the same should ordinarily be communicated to the concerned parties unless there is justification not to do so. There cannot be any dispute on this proposition, but the question is as to what would be the effect of non-communication of the reasons to the parties concerned in the facts and circumstances of the case. In our view, non-communication of reasons, by itself, in the case in hand, would not be sufficient to quash the award of tender and there is every reason to hold that the Petitioners were aware of the reasons for rejection of their tender as can be seen from letter dated 14th March, 1996 written by the Petitioners to the Chief Minister of Goa. In this letter the Petitioners had stated that the Director of Education was not very sure of their ability to produce books in time since they did not possess the required infrastructure essential for this kind of work. Of course, their contention in the said letter was that the consideration, relating to

infrastructure was out of place. Therefore, nothing turns out of the first objection--raised by the Petitioners.

19. Learned Advocate Shri Lottikar has submitted that there was no justification for shortlisting 7 tenderers and all should have been given opportunity to establish their credentials. We do not find any merit in this submission. Shortlisting is permissible and only safeguard to be adopted in shortlisting is that it should not be arbitrary and it should be based upon some principle. The seven shortlisted tenderers had quoted lower than the rest of the tenderers and, as such, shortlisting cannot be faulted with.

20. Insofar as Petitioner in Writ Petition No. 179 of 1996 is concerned, he had not appeared before the Screening Committee on 1st March, 1996 in pursuance of telegram which was sent to him and the other shortlisted tenderers. By this telegram, the shortlisted tenderers were asked to produce documents of financial position, Bank certificate and details of previous similar work done. The Petitioner in the said Petition even went to the extent of falsely alleging that the said telegram was never received by him whereas it has been duly established by Respondent No. 1 that the telegram was delivered to the Petitioner. The Respondent No. 2 has produced letter dated 27-6-1996 that telegram dated 27-2-1996 addressed to M/s. Kaveri Enterprises Book Sellers and Stationers was delivered to the addressee on the same day, i.e. on 26-2-1996 between 6.30 p.m. and 8.30 p.m. under clear acquaintance. The question which arises is whether a publisher, who even goes to the extent of denying the receipt of telegram by which necessary particulars were called in connection with the tenderer can be entrusted with a highly responsible time-bound contract of publication of books which were to be made available to the students from end of May, 1996 onwards. In our opinion, the Government could not have taken chance with such type of printer, which is otherwise not expected from reputed printers from whom the tenders had been invited. The Petitioner did submit the particulars called on 7th March, 1996 but the decision to award tender in favour of the Respondent No. 3 had already been taken on 6-3-1996. Accordingly, the particulars furnished by the Petitioner on 7-3-1996 could not be looked into.

21. The major challenge on which the award of tender in favour of Respondent No. 3 is impugned is that the Screening Committee was bound by the terms of the tender document which does not speak of existence of infrastructure, past performance or financial standing and all these irrelevant factors have crept into the decision-making process of the Standing Committee.

22. The tenders were called from reputed printers and distributors and the work in question regarding printing and distribution of 36 text books in English and Devanagiri script was stated to be of time-bound nature as the books were to be made available in the market for sale latest by end of May, 1996. The Committee appointed for selection of tender consisted of Gazetted Officers of Goa Government and the constitution of the Screening Committee is as under :--

The constitution of the Screening Committee reveals that it is an Expert Committee having expertise in the the field of education and printing. The Expert Committee had called the 7 shortlisted tenderers on 1-3-1996 for individual discussion with reference to 5 parameters, namely:

- (i) Quality of printing;
- (ii) Availability of books in time;
- (iii) Capacity of the printer;
- (iv) Experience in the line of printing;
- (v) Financial capacity of the party.

It cannot be said that the said parameters are either unconnected or irrelevant for the purpose of decision for the award of tender for publication of 36 text books in English and Devanagiri script. All shortlisted parties were asked to appear and produce documents of financial position ,Bank certificates and details of previous similar works done. Without any demur or objection these details were furnished by all though Petitioner in Writ Petition No. 179/96 furnished the same after the Expert Committee had decided to award the work to Respondent No. 3. It is pertinent to note that the tenders had been called from reputed printers which in itself would bring within its ambit parameters (i), (iii), (iv) and (v) besides being time-bound work and making availability of books in time. Accordingly, we are not able to accept the contention of learned Advocates for the Petitioners that all these parameters which were taken into consideration are irrelevant factors which have crept into the decision-making process of this Committee. We are, therefore, of the opinion that the parameters adopted by the Screening Committee flow out of the tender document under which tenders were called from reputed printers for work of time-bound nature.

23. The Screening Committee examined the tenders of the six shortlisted tenderers who appeared before the Screening Committee on 1-3-1996. The tender of Petitioner in Writ Petition No. 179/96 was not considered as he did not appear with the relevant particulars which were sought. The tender of the shortlisted tenderer M/s. Ashwini Printers, Hubli was rejected by the Screening Committee on account of notification of proposed liquidation and, obviously, tender of such party could not have been accepted.

24. The tender of M/s. Rajhauns Vitaran, Panaji, Petitioner in Writ Petition No. 280/96 was rejected on various grounds, namely, that the party does not have its own printing facilities and is dependent upon Printers from Belgaum; that since the printing of the text books has to be undertaken on time-bound manner, there is no scope for taking chances; the party had done smaller works and had turnover of 7 lakhs per annum; that the party did not have financial capacity and was reluctant to give full security deposit/Bank guarantee as required. The Petitioner's case is that Impression Printers, Belgaum had agreed to do the printing and Andhra Bank had given financial assurance and they were, ready to

give token Bank guarantee and not full security deposit. The Petitioner has claimed in the Writ Petition to be a small scale industrial unit and exempted from deposit of earnest money or security deposit as well as price preference up to 15%. The Petitioner's stand further is that the obligation to make security deposit or deposit earnest money was not applicable to the Petitioner.

Even though the Petitioner in Writ Petition states that when the Petitioner was questioned regarding the party to give security deposit of Rs. 10 lakhs he had replied the same in the affirmative, it is rather difficult to accept the said contention in view of the fact that the Petitioners are claiming to be small scale units and exempted from security deposit or earnest money. The report prepared by the Screening Committee that the Petitioner was ready only to give token guarantee and not full security deposit, therefore, cannot be disbelieved. The Petitioner had also quoted additional Rs. 7-50 per book as scanning charges.

25. The tender of Shreeji Prakashan, Bombay was also not accepted on account of its tie-up With 3 other printers of Bombay.

26. The tender of the Respondent No. 3, Holy Faith International, New Delhi, was accepted mainly on the ground that all facilities were available under one roof and it had an annual turnover of Rupees 10 crores and was ready to give Bank-guarantee. In addition, the Respondent No. 3 had also indicated that it was ready to consider the proposition to bring down the rates. It appears that M/s. Pitamber Publishing Co. Pvt. Ltd., New Delhi was not considered, since the rate quoted by it for double colour was quite high.

27. The Report of the Screening Committee shows that it had taken the capacity of the tenderers to perform the time-bound job into consideration, which was the paramount requirement of the tender document. The decision was taken on the basis of relevant parameters essential for the performance of the work order in time-bound schedule. Letter dated 14th March, 1996 of the Petitioners in the two Writ Petitions to the Chief Minister of Goa itself shows that the Petitioners were not able to do the work within the time schedule and that is why they had suggested that considering the relative time available for production of books, to distribute the work amongst the local Publishers who are eligible. The Screening Committee had, amongst other reasons, pointed out that the Petitioner in Writ Petition No. 280 of 1996 did not have its own printing press, was dependent upon printers from Belgaum and since the printing of the text books was to be undertaken in time-bound manner, there was no scope for taking chances. The reasons given by the Screening Committee for not accepting the tender of the Petitioner in Writ Petition No. 280 of 1996, therefore, cannot be said to be unjustified in the circumstances of the case.

28. The law enjoins that the Authority concerned must record reasons. The Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, has laid down that the Government may reject higher tenderer and accept a lower one only when there is valid reason to do so, as for example,

where it is satisfied that the person offering the lower tender is on overall considerations preferable to the higher tenderer. It was further pointed out therein that there must be some relevant reason for preferring one tenderer to another and if there is relevant reason, the Government can certainly enter into contract with a tenderer whose tender may be lower, but it cannot do so arbitrarily or for extraneous reasons. In *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, the Apex Court has once again reiterated that the State is entitled to look for best deal and for that it can refuse to accept even the highest bid, but while rejecting the highest offer in the tender, it must record reasons for such action.

29. The Screening Committee in the Writ Petitions under consideration has recorded sound reasons for accepting the tender of the Respondent No. 3 in the light of time-bound nature of the work in question. The parameters taken into consideration in deciding the award of tender were very much relevant and germane in the context. No mala fides have been alleged against the Screening Committee which consisted of Gazetted Officers having expertise in the field. The Apex Court in *M/s. Star Enterprises*" case (supra) upon which reliance was placed by the learned Government Advocate Shri G. U. Bhole has laid down that in the absence of any allegation of mala fides, it may be presumed that the Authority had acted bona fide in refusing to accept highest offer.

30. The next major attack of the Petitioners is that the negotiations are not permissible under the tender document and in case negotiations had necessarily to be done, opportunity should have been given to all the shortlisted tenderers and learned Advocate Shri Lotlikar submitted that in case of the Writ Petitioner in Writ Petition No. 179/96, the quotation in respect of one item even after negotiations was more by 50 paise with reference to the said Petitioner. This Petitioner had not provided the required information which was essential to determine whether he could do the work in time-bound schedule and, as such, even if his quotation was 50 paise less in one item, it would not make any difference whatsoever. The learned Advocates for the Petitioners have placed heavy reliance on a Division Bench judgment of this Court in *Nazario Noronha and Co. v. Goa Housing Board*, (1989) 1 GLT 133, wherein it has been laid down that the action of the Respondents in holding talks with the tenderer whose tender was accepted to reduce his quotations was not permissible and was discriminatory since no opportunity to negotiate was given to the Petitioner therein. In the Petitions under consideration, the Screening Committee on overall considerations had found that the publication of text-books within the given time-frame could be performed only, by Respondent No. 3 on account of all facilities available under one roof. The Screening Committee was also of the view that the work in question could not be performed by the Petitioner in Writ Petition No. 280/96 as well as *Shreeji Prakashan, Bombay* since they had no printing press of their own and they had to depend upon tie-up with other printers". In case of Petitioner in Writ Petition No. 280 of 1996, in addition, it was found that its financial capacity on its own was not sound and it was dependent upon Andhra

Bank for provision of working capital. Under the circumstances, the decision of the Screening Committee appears to be not only just and reasonable, but also the only option in the given circumstances. Calling for fresh quotations at this stage was out of question because the books were to be made available to the students from academic year starting from June 1996. After having come to the conclusion that the Petitioners and other shortlisted parties could not be entrusted with the work and Respondent No. 3 was selected for the job, further negotiations with Respondent No. 3 to bring down the prices was certainly in the best interest of the students to whom the books were to be made available and guided by this consideration the negotiations to bring down the prices cannot be faulted with in the circumstances of the case. Applying the principles laid down by the Apex Court in *Tata Cellular Vs. Union of India*, and on overall view of the matter, we find that the decision to award tender, by Committee possessing expertise in the field, in favour of Respondent No. 3 was guided by sound exercise of discretion and it does not suffer from arbitrariness, mala fides, unfairness, impropriety, illegality, irrationality or *Waynesburg* unreasonableness so as to warrant intervention.

31. The contention advanced by learned Advocate Shri Lotlikar that the successful tenderer was required under the tender document to deposit 50% in cash with Respondent No. 2 and Respondent No. 2 only took Bank guarantee from Respondent No. 3 does not have much relevance since Bank guarantee is as good as cash deposit and the same was required for the purpose of ensuring that the work was completed in time and on failure to do the same in time the said amount could be forfeited. In *M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others*, , the Apex Court has brought out distinction between essential conditions of eligibility and those which are merely ancillary or subsidiary to the main object to be achieved. It was pointed out that in case of ancillary conditions it is open to authorities to deviate and not to insist upon strict literal compliance in appropriate cases. Earnest money, in the facts and circumstances of the case, is one such instance.

32. The petitioners approached the Court not only with delay but they did not even press for any interim relief sought by them during the pendency of the writ petitions. The letter dated 14th March 1996 of the Petitioner to the Chief Minister of Goa gives a clear indication that they were aware that the work was being entrusted to the Respondent No. 3 but they did not promptly approach this Court. The Petitioner in Writ Petition No. 179/96 approached this Court on 23-4-1996 and the Petitioner in Writ Petition No. 280/96 approached only on 1-8-1996. Writ Petition No. 179/96 came up for hearing on 25-6-1990 and by that time Respondent No. 3 had already completed the printing of the books and it is at the first stage of printing of books that major expenditure is involved which consists of plate making and printing. For the subsequent years what is to be done is only printing and distribution on the basis of the existing plates made for printing. The first stage also includes proof reading, tallying of the composed material with the manuscript etc. which is not involved in printing of books

second time.

If the Petitioner in Writ Petition No. 179/96 had pressed for interim relief, at least Respondent No. 3 would be put on guard. In the circumstances of the case, we are of the opinion that on account of laches also the petitioners cannot succeed in the writ petitions. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the Apex Court had found that though the acceptance of the tender therein was invalid as being violative of equality clause of the Constitution as also of the rule of the administrative law inhibiting arbitrary action, yet on the ground of laches the challenge to the tender was rejected. In the said case, tenders had been called from persons running registered second class Hotels or Restaurants and having at least 5 years' experience as such, which was the condition of eligibility and, admittedly, the successful tenderer therein did not fulfil the said eligibility condition. It was pointed out by the Apex Court that it was difficult to understand as to why the Petitioner therein should have awaited till 8th November 1977 to file the writ petition when the tender of the successful tenderer was accepted as back as 19th April 1977. Moreover, it was taken into consideration that the successful tenderer had incurred considerable expenditure aggregating Rs. 1,25,000/- in making arrangements for putting up Restaurant and Snack Bar and it would be most iniquitous to set aside the contract in question. It was further pointed out that the position would have been different if the petitioner had filed Writ Petition immediately after the acceptance of the tender, but on account of laches, the successful tenderer had altered his position by incurring huge expenditure.

32A. In the petitions under consideration also practically the same thing has happened. The petitioners did not approach this Court promptly and Petitioner in Writ Petition No. 179/96 did not even press for taking up the matter on Board till 25-6-1996. Petitioner in Writ Petition No. 179/96, as we have already pointed out, was even otherwise not entitled to be considered for award of contract since he had failed to furnish relevant particulars on 1-3-1996 in spite of having received the telegram and went to the extent of even denying the receipt of telegram. There is absolutely no equity in favour of Petitioner in Writ Petition No. 179/96 to grant relief in the exercise of writ jurisdiction. Petitioner in Writ Petition No. 280/96 approached the Court only on 1-8-1996 and on account of laches he is not entitled to any relief in the exercise of writ jurisdiction.

33. For the aforesaid reason we are of the opinion that there is absolutely no reason to interfere with the decision of the Screening Committee in awarding the contract in favour of Respondent No. 3 in the given facts and circumstances. Accordingly, we do not find any merit in these Writ Petitions and the Writ Petitions are hereby dismissed. In the facts and circumstances, parties shall bear their costs.